FILE NO. 021096 ORDINANCE NO.

[Rent Ordinance multiple amendments, including prohibition against severance of parking or other facilities without just cause or consent, extension of coverage to non-tourist tenancies in residential hotels, removing the phrase "in occupancy" from "Rent Increase Limitations for Tenants in Occupancy" and "Notice of Rent Increase for Tenants in Occupancy," limiting annual imposition of banked increases, requiring more specific notice for certain rent increases, prohibiting rent increases or evictions based on additional occupants within Housing Code occupancy limits, extending the statute of limitations for overpayment refunds, increasing relocation payments annually per CPI, and providing that a tenant may also pursue civil remedies for abridgement of certain rights against a landlord's successor in interest; and Housing Code amendments to promote affordable housing.]

Ordinance amending the Residential Rent Stabilization and Arbitration Ordinance (Administrative Code Chapter 37), by amending Sections 37.2, 37.3, 37.8, 37.9, 37.9B, and 37.11A, to: clarify the definition of rental units to include units regardless of zoning or legal status; provide that parking or storage or similar facilities on the same lot may not be severed by the landlord without just cause or tenant consent, except where necessitated by serious landlord hardship or circumstances beyond the landlord's control; extend coverage of the ordinance to non-tourist tenancies in residential hotels by eliminating the 32-day residency requirement for those tenancies; change Subsection 37.3(a) "Rent Increase Limitations for Tenants in Occupancy" and Subsection 37.3(b) "Notice of Rent Increase for Tenants in Occupancy" by deleting the phrase "in occupancy" from both subsections; limit imposition of banked rent increases to 8% per year and require more specific notice; require more specific notice for rent increases authorized under California Civil Code Sections 1954.50 et seq., and require a rent arbitration hearing for certain increases not authorized by Civil Code Sections 1954.50 et seq.; prohibit rent increases or evictions solely for additional occupants, where the total number of occupants is within Housing Code occupancy limits; expand the statute of limitations from three years to five years from discovery, for refunds of rent overpayments due to null and void rent increases; clarify that all endeavors to recover possession for just cause under Section 37.9(a), must be in good

faith without ulterior motive and with honest intent; require relocation expenses of $2,000 for each authorized occupant (including any minor child) who has lived in a unit for 12 months as of the time of vacation of the unit, where the unit is to be demolished or otherwise permanently removed from housing use, or where the tenant must relocate due to capital improvements or substantial rehabilitation work or an owner-move-in eviction, with one-half paid upon notice and one-half paid within 72 hours after vacation of the unit, and with these amounts to be increased annually according to the rate of increase in the "Rent of Primary Residence" expenditure category of the Consumer Price Index (CPI); provide that a tenant's civil action against a landlord for abridgement of rights under this Chapter may also be brought against the landlord's successor in interest; certain technical corrections to conform numbering to prior Chapter 37 amendments; and, amending San Francisco Housing Code Chapter 5, Section 503(b) to make a technical correction, and amending San Francisco Housing Code Chapter 5, Section 503(d), to clarify that the protections of that Section extend to all persons by deleting the references to "families," to clarify that the Section promotes affordable housing, and to clarify that the Section protects prospective and current tenants.

Note: Additions are *single-underline italics Times New Roman font*; deletions are ~~*strikethrough italics Times New Roman font*~~. Board amendment additions are double underlined Arial font; Board amendment deletions are ~~strikethrough Arial font~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Administrative Code is hereby amended by amending Section 37.2, to read as follows:

SEC. 37.2. DEFINITIONS.

(a) Base Rent.

(1) That rent which is charged a tenant upon initial occupancy plus any rent increase allowable and imposed under this Chapter; provided, however, that base rent shall not include increases imposed pursuant to Section 37.7 below or utility passthroughs or general obligation passthroughs pursuant to Section 37.2(q) below. Base rent for tenants of RAP rental units in areas designated on or after July 1, 1977, shall be that rent which was established pursuant to Section 32.73-1 of the San Francisco Administrative Code. Rent increases attributable to the City Administrator's amortization of an RAP loan in an area designated on or after July 1, 1977, shall not be included in the base rent.

(2) From and after the effective date of this ordinance, the base rent for tenants occupying rental units which have received certain tenant-based or project-based rental assistance shall be as follows:

(A) With respect to tenant-based rental assistance:

(i) For any tenant receiving tenant-based assistance as of the effective date of this ordinance (except where the rent payable by the tenant is a fixed percentage of the tenant's income, such as in the Section 8 certificate program and the rental subsidy program for the HOPWA program), and continuing to receive tenant-based rental assistance following the effective date of this ordinance, the base rent for each unit occupied by such tenant shall be the rent payable for that unit under the Housing Assistance Payments contract, as amended, between the San Francisco Housing Authority and the landlord (the “HAP contract”) with respect to that unit immediately prior to the effective date of this ordinance (the “HAP” contract rent”).

(ii) For any tenant receiving tenant-based rental assistance (except where the rent payable by the tenant is a fixed percentage of the tenant's income, such as in the Section 8 certificate program and the rental subsidy program for the HOPWA program), and

commencing occupancy of a rental unit following the effective date of this ordinance, the base rent for each unit occupied by such a tenant shall be the HAP contract rent in effect as of the date the tenant commences occupancy of such unit.

(iii) For any tenant whose tenant-based rental assistance terminates or expires, for whatever reason, following the effective date of this ordinance, the base rent for each such unit following expiration or termination shall be the HAP contract rent in effect for that unit immediately prior to the expiration or termination of the tenant-based rental assistance.

(B) For any tenant occupying a unit upon the expiration or termination, for whatever reason, of a project-based HAP contract under Section 8 of the United States Housing Act of 1937 (42 USC Section 1437f, as amended), the base rent for each such unit following expiration or termination shall be the "contract rent" in effect for that unit immediately prior to the expiration or termination of the project-based HAP contract.

(C) For any tenant occupying a unit upon the prepayment or expiration of any mortgage insured by the United States Department of Housing and Urban Development ("HUD"), including but not limited to mortgages provided under Sections 221(d)(3), 221(d)(4) and 236 of the National Housing Act (12 USC Section 1715z-1), the base rent for each such unit shall be the "basic rental charge" (described in 12 USC 1715z-1(f), or successor legislation) in effect for that unit immediately prior to the prepayment of the mortgage, which charge excludes the "interest reduction payment" attributable to that unit prior to the mortgage prepayment or expiration.

(b) Board. The Residential Rent Stabilization and Arbitration Board.

(c) Capital Improvements. Those improvements which materially add to the value of the property, appreciably prolong its useful life, or adapt it to new uses, and which may be amortized over the useful life of the improvement of the building.

(d) CPI. Consumer Price Index for all Urban Consumers for the San Francisco-Oakland Metropolitan Area, U.S. Department of Labor.

(e) Energy Conservation Measures. Work performed pursuant to the requirements of ~~*Article*~~ *Chapter* 12 of the San Francisco Housing Code.

(f) Administrative Law Judge. A person, designated by the Board, who arbitrates and mediates rental increase disputes, and performs other duties as required pursuant to this Chapter 37.

(g) Housing Services. Services provided by the landlord connected with the use or occupancy of a rental unit including, but not limited to: repairs; replacement; maintenance; painting; light; heat; water; elevator service; laundry facilities and privileges; janitor service; refuse removal; furnishings; telephone; parking; rights permitted the tenant by agreement, including the right to have a specific number of occupants, whether express or implied, and whether or not the agreement prohibits subletting and/or assignment; and any other benefits, privileges or facilities.

(h) Landlord. An owner, lessor, sublessor, who receives or is entitled to receive rent for the use and occupancy of any residential rental unit or portion thereof in the City and County of San Francisco, and the agent, representative or successor of any of the foregoing.

(i) Member. A member of the Residential Rent Stabilization and Arbitration Board.

(j) Over FMR Tenancy Program. A regular certificate tenancy program whereby the base rent, together with a utility allowance in an amount determined by HUD, exceeds the fair market rent limitation for a particular unit size as determined by HUD.

(k) Payment Standard. An amount determined by the San Francisco Housing Authority that is used to determine the amount of assistance paid by the San Francisco Housing Authority on behalf of a tenant under the Section 8 Voucher Program (24 CFR Part 887).

(l) RAP. Residential Rehabilitation Loan Program (Chapter 32, San Francisco Administrative Code).

(m) RAP Rental Units. Residential dwelling units subject to RAP loans pursuant to Chapter 32, San Francisco Administrative Code.

(n) Real Estate Department. A city department in the City and County of San Francisco.

(o) Rehabilitation Work. Any rehabilitation or repair work done by the landlord with regard to a rental unit, or to the common areas of the structure containing the rental unit, which work was done in order to be in compliance with State or local law, or was done to repair damage resulting from fire, earthquake or other casualty or natural disaster.

(p) Rent. The consideration, including any bonus, benefits or gratuity, demanded or received by a landlord for or in connection with the use or occupancy of a rental unit, or the assignment of a lease for such a unit, including but not limited to monies demanded or paid for parking, furnishing, food service, housing services of any kind, or subletting.

(q) Rent Increases. Any additional monies demanded or paid for rent as defined in item (p) above, or any reduction in housing services without a corresponding reduction in the monies demanded or paid for rent; provided, however, that (1) where the landlord has been paying the tenant's utilities and cost of those utilities increase, the landlord's passing through to the tenant of such increased costs does not constitute a rent increase; and (2) where there has been a change in the landlord's property tax attributable to a ballot measure approved by the voters between November 1, 1996, and November 30, 1998, the landlord's passing through of such increased costs in accordance with this Chapter does not constitute a rent increase.

(r) Rental Units. All residential dwelling units in the City and County of San Francisco *regardless of zoning or legal status*, together with the land and appurtenant buildings

thereto, and all housing services, privileges, furnishings and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities.

Garage and parking facilities, storage spaces, access to common areas, and any other contiguous or non-contiguous physical spaces and facilities on the same lot may not be severed from the tenancy by the landlord without just cause as required by Section 37.9(a) of this Chapter, unless (A) required by law, or (B) necessitated by serious landlord hardship (such as verifiable disability or illness), or (C) due to circumstances beyond the landlord's control (such as fire or other disaster). The landlord's claim that such a severance, reduction or removal has been so required or necessitated by landlord hardship or circumstances beyond the landlord's control, shall be determined at a hearing upon application by either party to the Rent Board. Upon application for hearing, any proposed decrease shall be stayed pending completion of hearing and decision before the Administrative Law Judge and the Rent Board. At such hearing the landlord shall bear the burden of proof that the severance, reduction or removal has been required,or necessitated by landlord hardship or circumstances beyond the landlord's control. Any severance, reduction or removal permitted under this Section shall be offset by a reduction in rent based upon the current market value of that severed portion of the rental unit, except that the reduction may be less than the current market value as determined by the Administrative Law Judge or the Rent Board upon consideration of the equities of the case. Alternatively, by mutual and voluntary agreement the landlord and the tenant may sever a garage or other parking facility or other physical space or facility from the tenancy.

The term *"rental units"* shall not include:

(1) Housing accommodations in hotels, motels, inns, tourist houses, rooming and boarding houses, provided that at such time as an accommodation has been occupied by a tenant for 32 continuous days or more, such accommodation shall become a rental unit subject to the provisions of this Chapter; provided further, no landlord shall bring an action to recover possession of such unit in order to avoid having the unit come within the provisions of

this Chapter. An eviction for a purpose not permitted under Section 37.9(a) shall be deemed to be an action to recover possession in order to avoid having a unit come within the provisions of this Chapter~~;~~ . *Except that, as defined in Administrative Code Chapter 41, a residential unit in a Residential hotel that is not a tourist unit is a rental unit from the date of a tenant's initial occupancy.*

(2) Dwelling units in nonprofit cooperatives owned, occupied and controlled by a majority of the residents or dwelling units solely owned by a nonprofit public benefit corporation governed by a board of directors the majority of which are residents of the dwelling units and where it is required in the corporate by-laws that rent increases be approved by a majority of the residents;

(3) Housing accommodation in any hospital, convent, monastery, extended care facility, asylum, residential care or adult day health care facility for the elderly which must be operated pursuant to a license issued by the California Department of Social Services, as required by California Health and Safety Chapters 3.2 and 3.3; or in dormitories owned and operated by an institution of higher education, a high school, or an elementary school;

(4) Except as provided in Subsections (A) and (B), dwelling units whose rents are controlled or regulated by any government unit, agency or authority, excepting those unsubsidized and/or unassisted units which are insured by the United States Department of Housing and Urban Development; provided, however, that units in unreinforced masonry buildings which have undergone seismic strengthening in accordance with Building Code Chapters 14 and 15 shall remain subject to the Rent Ordinances to the extent that the ordinance is not in conflict with the seismic strengthening bond program or with the program's loan agreements or with any regulations promulgated thereunder;

(A) For purposes of Sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6, 37.9, 37.9A, 37.10A, 37.11A and 37.13, and the arbitration provisions of Sections 37.8 and 37.8A

applicable only to the provisions of Sections 37.3(a)(10)(A), the term “rental units” shall include units occupied by recipients of tenant-based rental assistance where the tenant-based rental assistance program does not establish the tenant's share of base rent as a fixed percentage of a tenant's income, such as in the Section 8 voucher program and the “Over-FMR Tenancy” program defined in 24 CFR Section 982.4;

(B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9, 37.9A, 37.10A, 37.11A and 37.13, the term “rental units” shall include units occupied by recipients of tenant-based rental assistance where the rent payable by the tenant under the tenant-based rental assistance program is a fixed percentage of the tenant's income; such as in the Section 8 certificate program and the rental subsidy program for the Housing Opportunities for Persons with Aids (“HOPWA”) program (42 U.S.C. Section 12901 et seq., as amended).

(5) Rental units located in a structure for which a certificate of occupancy was first issued after the effective date of this ordinance, except as provided for certain categories of units and dwellings by Section 37.3(d) and Section 37.9A(b) of this Chapter;

(6) Dwelling units in a building which has undergone substantial rehabilitation after the effective date of this ordinance; provided, however, that RAP rental units are not subject to this exemption.

(7) Dwellings or units otherwise subject to this Chapter 37, to the extent such dwellings or units are partially or wholly exempted from rent increase limitations by the Costa-Hawkins Rental Housing Act (California Civil Code Sections 1954.50. et seq.) and/or San Francisco Administrative Code Section 37.3(d).

(s) Substantial Rehabilitation. The renovation, alteration or remodeling of residential units of 50 or more years of age which have been condemned or which do not qualify for certificates of occupancy or which require substantial renovation in order to conform the building to contemporary standards for decent, safe and sanitary housing. Substantial

rehabilitation may vary in degree from gutting and extensive reconstruction to extensive improvements that cure substantial deferred maintenance. Cosmetic improvements alone such as painting, decorating and minor repairs, or other work which can be performed safely without having the unit vacated do not qualify as substantial rehabilitation.

(t) Tenant. A person entitled by written or oral agreement, sub-tenancy approved by the landlord, or by sufferance, to occupy a residential dwelling unit to the exclusion of others.

(u) Tenant-Based Rental Assistance. Rental assistance provided directly to a tenant or directly to a landlord on behalf of a particular tenant, which includes but shall not be limited to certificates and vouchers issued pursuant to Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Section 1437f) and the HOPWA program.

(v) Utilities. The term “utilities” shall refer to gas and electricity exclusively.

Section 2. The San Francisco Administrative Code is hereby amended by amending Section 37.3, to read as follows:

SEC. 37.3. RENT LIMITATIONS.

(a) Rent Increase Limitations for Tenants ~~*in Occupancy*~~. Landlords may impose rent increases upon tenants ~~*in occupancy*~~ only as provided below and as provided by Subsection 37.3(d):

(1) Annual Rent Increase. On March 1st of each year, the Board shall publish the increase in the CPI for the preceding 12 months, as made available by the U.S. Department of Labor. A landlord may impose annually a rent increase which does not exceed a tenant's base rent by more than 60 percent of said published increase. In no event, however, shall the allowable annual increase be greater than seven percent.

(2) Banking. A landlord who refrains from imposing an annual rent increase or any portion thereof may accumulate said increase and impose that amount on *or after* the tenant's subsequent rent increase anniversary dates. ~~*A landlord who, between April 1, 1982, and February 29, 1984, has banked an annual seven percent rent increase (or rent increases) or any portion thereof may impose the accumulated increase on the tenant's subsequent rent increase anniversary dates.*~~ *However, the total of the annual increase plus the banked increase imposed in any one year may not exceed eight percent (8%) of the tenant's base rent. The remainder may be imposed in following years, subject to this eight percent (8%) limitation.*

(3) Capital Improvements, Rehabilitation, and Energy Conservation Measures. A landlord may impose rent increases based upon the cost of capital improvements, rehabilitation or energy conservation measures provided that such costs are certified pursuant to Sections 37.7 and 37.8B below; provided further that where a landlord has performed seismic strengthening in accordance with Building Code Chapters 14 and 15, no increase for capital improvements (including but not limited to seismic strengthening) shall exceed, in any 12 month period, 10 percent of the tenant's base rent, subject to rules adopted by the Board to prevent landlord hardship and to permit landlords to continue to maintain their buildings in a decent, safe and sanitary condition. A landlord may accumulate any certified increase which exceeds this amount and impose the increase in subsequent years, subject to the 10 percent limitation. Nothing in this subsection shall be construed to supersede any Board rules or regulations with respect to limitations on increases based upon capital improvements whether performed separately or in conjunction with seismic strengthening improvements pursuant to Building Code Chapters 14 and 15.

(4) Utilities. A landlord may impose increases based upon the cost of utilities as provided in Section 37.2(q) above.

(5) Charges Related to Excess Water Use. A landlord may impose increases not to exceed 50 percent of the excess use charges (penalties) levied by the San Francisco Water Department on a building for use of water in excess of Water Department allocations under the following conditions:

(A) The landlord provides tenants with written certification that the following have been installed in all units: (1) permanently installed retrofit devices designed to reduce the amount of water used per flush or low-flow toilets (1.6 gallons per flush); (2) low-flow showerheads which allow a flow of no more than 2.5 gallons per minute; and (3) faucet aerators (where installation on current faucets is physically feasible); and

(B) The landlord provides the tenants with written certification that no known plumbing leaks currently exist in the building and that any leaks reported by tenants in the future will be promptly repaired; and

(C) The landlord provides the tenants with a copy of the water bill for the period in which the penalty was charged. Only penalties billed for a service period which begins after the effective date of the ordinance [April 20, 1991] may be passed through to tenants. Where penalties result from an allocation which does not reflect documented changes in occupancy which occurred after March 1, 1991, a landlord must, if requested in writing by a tenant, make a good-faith effort to appeal the allotment. Increases based upon penalties shall be prorated on a per-room basis provided that the tenancy existed during the time the penalty charges accrued. Such charges shall not become part of a tenant's base rent. Where a penalty in any given billing period reflects a 25 percent or more increase in consumption over the prior billing period, and where that increase does not appear to result from increased occupancy or any other known use, a landlord may not impose any increase based upon such penalty unless inspection by a licensed plumber or Water Department inspector fails to reveal a plumbing or

other leak. If the inspection does reveal a leak, no increase based upon penalties may be imposed at any time for the period of the unrepaired leak.

(6) Property Tax. A landlord may impose increases based upon a change in the landlord's property tax resulting from the repayment of general obligation bonds of the City and County of San Francisco approved by the voters between November 1, 1996, and November 30, 1998 as provided in Section 37.2(q) above. Any rent increase for bonds approved after the effective date of this initiative ordinance must be disclosed and approved by the voters. The amount of such increase shall be determined for each tax year as follows:

(A) The Controller and the Board of Supervisors will determine the percentage of the property tax rate, if any, in each tax year attributable to general obligation bonds approved by the voters between November 1, 1996, and November 30, 1998, and repayable within such tax year.

(B) This percentage shall be multiplied by the total amount of the net taxable value for the applicable tax year. The result is the dollar amount of property taxes for that tax year for a particular property attributable to the repayment of general obligation bonds approved by the voters between November 1, 1996, and November 30, 1998.

(C) The dollar amount calculated under Subsection (B) shall be divided by the total number of all units in each property, including commercial units. That figure shall be divided by 12 months, to determine the monthly per unit costs for that tax year of the repayment of general obligation bonds approved by the voters between November 1, 1996, and November 30, 1998.

(D) Landlords may pass through to each unit in a particular property the dollar amount calculated under this Subsection (6). This passthrough may be imposed only on the anniversary date of each tenant's occupancy of the property. This passthrough shall not become a part of a tenant's base rent. The amount of each annual passthrough imposed

pursuant to this Subsection (6) may vary from year-to-year, depending on the amount calculated under Subsections (A) through (C). Each annual passthrough shall apply only for the 12 month period after it is imposed. A landlord may impose the passthrough described in this Subsection (6) for a particular tax year only with respect to those tenants who were residents of a particular property on November 1st of the applicable tax year. A landlord shall not impose a passthrough pursuant to this Subsection (6) if the landlord has filed for or received Board approval for a rent increase under Section 37.8(e)(4) for increased operating and maintenance expenses in which the same increase in property taxes due to the repayment of general obligation bonds was included in the comparison year cost totals.

(E) The Board will have available a form which explains how to calculate the passthrough.

(F) Landlords must provide to tenants, at least 30 days prior to the imposition of the passthrough permitted under this Subsection (6), a copy of the completed form described in Subsection (E). This completed form shall be provided in addition to the Notice of Rent Increase required under Section 37.3(b)(5). A tenants may petition for a hearing under the procedure described in Section 37.8 where the tenant alleges that a landlord has imposed a charge which exceeds the limitations set forth in this Subsection (6). In such a hearing, the burden of proof shall be on the landlord. Tenant petitions regarding this passthrough must be filed within one year of the effective date of the passthrough.

(G) The Board may amend its rules and regulations as necessary to implement this Subsection (6).

(7) RAP Loans. A landlord may impose rent increases attributable to the City Administrator's amortization of the RAP loan in an area designated on or after July 1, 1977, pursuant to Chapter 32 of the San Francisco Administrative Code.

(8) Additional Increases. A landlord who seeks to impose any rent increase which exceeds those permitted above shall petition for a rental arbitration hearing pursuant to Section 37.8 of this Chapter*; provided further that a landlord who seeks to impose any rent increase based upon the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50 et seq, "Costa-Hawkins"), Section 37.3(d) of this Chapter, or any Rent Board Rules and Regulations intended to implement Subsection 37.3(d), shall serve notice on the affected tenant(s) on a form developed for this purpose by the Rent Board, and file the notice with a proof of service signed under penalty of perjury with the Rent Board: the form shall include notice that Costa-Hawkins applies, a statement that there is no disqualifying 30-day eviction notice or unsatisfied 90-day code violation, and information explaining that a tenant may file a petition for hearing on the proposed increase under Section 37.8. Provided further that where the rent increase is not authorized under the Costa-Hawkins Act, a landlord who has given timely notice to a subtenant or subtenants that a new tenancy is created once the last original tenant no longer permanently resides in the unit, and seeks to impose a rent increase based on the departure of the last original tenant on the lease, shall first petition for a rent arbitration hearing pursuant to Section 37.8 of this Chapter.*

(9) A landlord may impose a rent increase to recover costs incurred for the remediation of lead hazards, as defined in San Francisco Health Code Article 26. Such increases may be based on changes in operating and maintenance expenses or for capital improvement expenditures as long as the costs which are the basis of the rent increase are a substantial portion of the work which abates or remediates a lead hazard, as defined in San Francisco Health Code Article 26, and provided further that such costs are approved for operating and maintenance expense increases pursuant to Section 37.8(e)(4)(A) and certified as capital improvements pursuant to Section 37.7 below.

When rent increases are authorized by this Subsection 37.3(a)(9), the total rent increase for both operating and maintenance expenses and capital improvements shall not

exceed 10 percent in any 12 month period. If allowable rent increases due to the costs of lead remediation and abatement work exceed 10 percent in any 12 month period, an Administrative Law Judge shall apply a portion of such excess to approved operating and maintenance expenses for lead remediation work, and the balance, if any, to certified capital improvements, provided, however, that such increase shall not exceed 10 percent. A landlord may accumulate any approved or certified increase which exceeds this amount, subject to the 10 percent limit.

(10) With respect to units occupied by recipients of tenant-based rental assistance:

(A) If the tenant's share of the base rent is not calculated as a fixed percentage of the tenant's income, such as in the Section 8 voucher program and the Over-FMR Tenancy Program, then:

(i) If the base rent is equal to or greater than the payment standard, the rent increase limitations in Sections 37.3(a)(1) and (2) shall apply to the entire base rent, and the arbitration procedures for those increases set forth in Section 37.8 and 37.8A shall apply.

(ii) If the base rent is less than the payment standard, the rent increase limitations of this Chapter shall not apply; provided, however, that any rent increase which would result in the base rent being equal to or greater than the payment standard shall not result in a new base rent that exceeds the payment standard plus the increase allowable under Section 37.3(a)(1).

(B) If the tenant's share of the base rent is calculated as a fixed percentage of the tenant's income, such as in the Section 8 certificate program and the rental subsidy program for the HOPWA program, the rent increase limitations in Section 37.3(a)(1) and (2) shall not apply. In such circumstances, adjustments in rent shall be made solely according to the requirements of the tenant-based rental assistance program.

(11) No extra rent may be charged solely for an additional occupant to an existing tenancy (including, but not limited to, a newborn child or family member as defined by Section 401 of the Housing Code), notwithstanding a rental agreement or lease that specifically permits a rent increase for additional tenants, so long as one or more of the occupants of the unit pursuant to the agreement with the owner remains an occupant in lawful possession of the unit, or so long as a lawful sublessee or assignee who resided in the unit prior to January 1, 1996 remains in possession of the unit. Such "extra rent" provisions in written or oral rental agreements or leases are deemed to be contrary to public policy.

(b) Notice of Rent Increase for Tenants ~~*in Occupancy*~~. On or before the date upon which a landlord gives a tenant legal notice of a rent increase, the landlord shall inform the tenant, in writing, of the following:

(1) Which portion of the rent increase reflects the annual increase, and/or a banked amount, if any*; provided further, that in order to impose a banked rent increase the landlord shall inform the tenant in writing, on or before the date upon which the landlord gives the tenant legal notice of a banked rent increase, the dates upon which said banked increase is based. The landlord shall bear the burden of producing evidence that the landlord is entitled to any banked rent increase(s)*;

(2) Which portion of the rent increase reflects costs for increased operating and maintenance expenses, rents for comparable units, and/or capital improvements, rehabilitation, or energy conservation measures certified pursuant to Section 37.7. Any rent increase certified due to increases in operating and maintenance costs shall not exceed seven percent;

(3) Which portion of the rent increase reflects the passthrough of charges for gas and electricity, or bond measure costs described in Section 37.3(a)(6) above, which charges shall be explained in writing on a form provided by the Board as described in Section 37.3(a)(6)(E);

(4) Which portion of the rent increase reflects the amortization of the RAP loan, as described in Section 37.3(a)(7) above.

(5) Nonconforming Rent Increases. Any rent increase which does not conform with the provisions of this Section shall be null and void.

(6) With respect to rental units occupied by recipients of tenant-based rental assistance, the notice requirements of this Subsection (b) shall be required in addition to any notice required as part of the tenant-based rental assistance program.

(c) Initial Rent Limitation for Subtenants. A tenant who subleases his or her rental unit may charge no more rent upon initial occupancy of the subtenant or subtenants than that rent which the tenant is currently paying to the landlord.

(d) Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.) Consistent with the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.) and regardless of whether otherwise provided under Chapter 37:

(1) Property Owner Rights to Establish Initial and All Subsequent Rental Rates for Separately Alienable Parcels.

(A) An owner or residential real property may establish the initial and all subsequent rental rates for a dwelling or a unit which is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b), (d), or (f) of Section 11004.5 of the California Business and Professions Code. The owner's right to establish subsequent rental rates under this paragraph shall not apply to a dwelling or unit where the preceding tenancy has been terminated by the owner by notice pursuant to California Civil Code Section 1946 or has been terminated upon a change in the terms of the tenancy noticed pursuant to California Civil Code Section 827; in such instances, the rent increase limitation provisions of Chapter 37 shall continue to apply for the duration of the new tenancy in that dwelling or unit.

(B) Where the initial or subsequent rental rates of a Subsection 37.3(d)(1)(A) dwelling or unit were controlled by the provisions of Chapter 37 on January 1, 1995, the following shall apply:

(i) A tenancy that was in effect on December 31, 1995, remains subject to the rent control provisions of this Chapter 37, and the owner may not otherwise establish the subsequent rental rates for that tenancy.

(ii) On or after January 1, 1999, an owner may establish the initial and all subsequent rental rates for any tenancy created on or after January 1, 1996.

(C) An owner's right to establish subsequent rental rates under Subsection 37.3(d)(1) shall not apply to a dwelling or unit which contains serious health, safety, fire or building code violations, excluding those caused by disasters, for which a citation has been issued by the appropriate governmental agency and which has remained unabated for six months or longer preceding the vacancy.

(2) Conditions for Establishing the Initial Rental Rate Upon Sublet or Assignment. Except as identified in this Subsection 37.3(d)(2), nothing in this Subsection or any other provision of law of the City and County of San Francisco shall be construed to preclude express establishment in a lease or rental agreement of the rental rates to be applicable in the event the rental unit subject thereto is sublet, and nothing in this Subsection shall be construed to impair the obligations of contracts entered into prior to January 1, 1996, subject to the following:

(A) Where the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this Subsection to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996. However, such a rent increase shall not be permitted while:

(i) The dwelling or unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations, as defined by Section 17920.3 of the California Health and Safety Code, excluding any violation caused by a disaster; and,

(ii) The citation was issued at least 60 days prior to the date of the vacancy: and,

(iii) The cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time. However, the 60-day time period may be extended by the appropriate governmental agency that issued the citation.

(B) This Subsection 37.3(d)(2) shall not apply to partial changes in occupancy of a dwelling or unit where one or more of the occupants of the premises, pursuant to the agreement with the owner provided for above (37.3(d)(2)), remains an occupant in lawful possession of the dwellings or unit, or where a lawful sublessee or assignee who resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit. Nothing contained in this Subsection 37.3(d)(2) shall be construed to enlarge or diminish an owner's right to withhold consent to a sublease or assignment.

(C) Acceptance of rent by the owner shall not operate as a waiver or otherwise prevent enforcement of a covenant prohibiting sublease or assignment or as a waiver of an owner's rights to establish the initial rental rate unless the owner has received written notice from the tenant that is party to the agreement and thereafter accepted rent.

(3) Termination or Nonrenewal of a Contract or Recorded Agreement with a Government Agency Limiting Rent. An owner who terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant, shall be subject to the following:

(A) The tenant(s) who were beneficiaries of the contract or recorded agreement shall be given at least 90 days' written notice of the effective date of the termination and shall

not be obligated to pay more than the tenant's portion of the rent, as calculated under that contract or recorded agreement, for 90 days following receipt of the notice of termination or nonrenewal.

(B) The owner shall not be eligible to set an initial rent for three years following the date of the termination or nonrenewal of the contract or agreement.

(C) The rental rate for any new tenancy established during the three-year period in that vacated dwelling or unit shall be at the same rate as the rent under the terminated or nonrenewed contract or recorded agreement, plus any increases authorized under this Chapter 37 after the date of termination/non renewal.

(D) The provisions of Subsections 37.3(d)(3)(B) and (C) shall not apply to any new tenancy of 12 months or more duration established after January 1, 2000, pursuant to the owner's contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant unless the prior vacancy in that dwelling or unit was pursuant to a nonrenewed or canceled contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant.

(4) Subsection 37.3(d) does not affect the authority of the City and County of San Francisco to regulate or monitor the basis or grounds for eviction.

(5) This Subsection 37.3(d) is intended to be and shall be construed to be consistent with the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.).

(e) Effect of Deferred Maintenance on Passthroughs for Lead Remediation Techniques.

(1) When lead hazards, which have been remediated or abated pursuant to San Francisco Health Code Article 26, are also violations of State or local housing health and safety laws, the costs of such work shall not be passed through to tenants as either a capital improvement or an operating and maintenance expense if the Administrative Law Judge finds

that the deferred maintenance, as defined herein, of the current or previous landlord caused or contributed to the existence of the violation of law.

(2) In any unit occupied by a lead-poisoned child and in which there exists a lead hazard, as defined in San Francisco Health Code Article 26, there shall be a rebuttable presumption that violations of State or local housing health and safety laws caused or created by deferred maintenance, caused or contributed to the presence of the lead hazards. If the landlord fails to rebut the presumption, that portion of the petition seeking a rent increase for the costs of lead hazard remediation or abatement shall be denied. If the presumption is rebutted, the landlord shall be entitled to a rent increase if otherwise justified by the standards set forth in this Chapter.

(3) For purposes of the evaluation of petitions for rent increases for lead remediation work, maintenance is deferred if a reasonable landlord under the circumstances would have performed, on a regular basis, the maintenance work required to keep the premises from being in violation of housing safety and habitability standards set forth in California Civil Code Section 1941 and the San Francisco Municipal Code. In order to prevail on a deferred maintenance defense, a tenant must show that the level of repair or remediation currently required would have been lessened had maintenance been performed in a more timely manner.

Section 3. The San Francisco Administrative Code is hereby amended by amending Section 37.8, to read as follows:

SEC. 37.8. ARBITRATION OF RENTAL INCREASE ADJUSTMENTS.

(a) Authority of Board and Administrative Law Judge. In accordance with such guidelines as the Board shall establish, the Board and designated Administrative Law Judges

shall have the authority to arbitrate rental increase adjustments, and to administer the rent increase protest procedures with respect to RAP rental units as set forth in Chapter 32 of the San Francisco Administrative Code.

(b) Request for Arbitration.

(1) Landlords. Landlords who seek to impose rent increases which exceed the limitations set forth in Section 37.3(a) above must request an arbitration hearing as set forth in this Section. The burden of proof is on the landlord.

(2) Tenants.

(A) Notwithstanding Section 37.3, tenants of non-RAP rental units and tenants of RAP rental units in areas designated on or after July 1, 1977, may request arbitration hearings where a landlord has substantially decreased services without a corresponding reduction in rent and/or has failed to perform ordinary repair and maintenance under State or local law and/or has failed to provide the tenant with a clear explanation of the current charges for gas and electricity or bond measure costs passed through to the tenant and/or imposed a nonconforming rent increase which is null and void. The burden of proof is on the tenant.

(B) Tenants of RAP rental units in areas designated prior to July 1, 1977, may petition for a hearing where the landlord has noticed an increase which exceeds the limitations set forth in Section 32.73 of the San Francisco Administrative Code. After a vacancy has occurred in a RAP rental unit in said areas, a new tenant of said unit may petition for a hearing where the landlord has demanded and/or received a rent for that unit which exceeds the rent increase limitations set forth in Section 32.73 of the San Francisco Administrative Code. The burden of proof is on the landlord.

(c) Procedure for Landlord Petitioners.

(1) Filing. The request for arbitration must be filed on a petition form prescribed by the Board and shall be accompanied by such supporting material as the Board shall

prescribe, including but not limited to, justification for the proposed rental increase.

(2) Filing Date. The petition must be filed prior to the mailing or delivering to the tenant or tenants legal notice of the rental increase exceeding the limitations as defined in Section 37.3.

(3) Effect of Timely Filing of Petition. Provided a completed petition is timely filed, that portion of the requested rental increase which exceeds the limitations set forth in Section 37.3 and has not been certified as a justifiable increase in accordance with Section 37.7 is inoperative until such time as the Administrative Law Judge makes findings of fact at the conclusion of the arbitration hearing.

(4) Notice to Parties. The Board shall calendar the petition for hearing before a designated Administrative Law Judge and shall give written notice of the date to the parties at least 10 days prior to the hearing.

(d) Procedure for Tenant Petitioners.

(1) Filing; Limitation. The request for arbitration must be filed on a petition form prescribed by the Board and must be accompanied by such supporting material as the Board shall prescribe, including but not limited to, a copy of the landlord's notice of rent increase. If the tenant petitioner has received certification findings regarding his rental unit in accordance with Section 37.7, such findings must accompany the petition. If the tenant petitioner has received a notification from the Chief Administrative Officer with respect to base rent and amortization of a RAP loan, such notification must accompany the petition. Tenant petitions regarding the gas and electricity passthrough must be filed within one year of the effective date of the pass-through or within one year of the date the passthrough was required to be recalculated pursuant to rules and regulations promulgated by the Board. Tenant petitions regarding the bond passthrough described in Section 37.3(a)(6) must be filed within one year of the effective date of the passthrough.

(2) Notice to Parties. The Board shall calendar the petition for hearing before a designated Administrative Law Judge and shall give written notice of the date to the parties at least 10 days prior to the hearing. Responses to a petition for hearing may be submitted in writing.

(e) Hearings.

(1) Time of Hearing. The hearing shall be held within 45 days of the filing of the petition. The level of housing services provided to tenants' rental units shall not be decreased during the period between the filing of the petition and the conclusion of the hearing.

(2) Consolidation. To the greatest extent possible, hearings with respect to a given building shall be consolidated.

(3) Conduct of Hearing. The hearing shall be conducted by an Administrative Law Judge designated by the Board. Both parties may offer such documents, testimony, written declarations or other evidence as may be pertinent to the proceedings. A record of the proceedings must be maintained for purposes of appeal.

(4) Determination of the Administrative Law Judge: Rental Units. Based upon the evidence presented at the hearing and upon such relevant factors as the Board shall determine, the Administrative Law Judge shall make findings as to whether or not the landlord's proposed rental increase exceeding the limitations set forth in Section 37.3 is justified or whether or not the landlord has effected a rent increase through a reduction in services or has failed to perform ordinary repair and maintenance as required by State or local law; and provided further that, where a landlord has imposed a passthrough for property taxes pursuant to Section 37.3(6)(D), the same increase in property taxes shall not be included in the calculation of increased operating and maintenance expenses pursuant to this Subsection (4). In making such findings, the Administrative Law Judge shall take into consideration the following factors:

(A) Increases or decreases in operating and maintenance expenses, including, but not limited to, real estate taxes, sewer service charges, janitorial service, refuse removal, elevator service, security system, and debt service; provided, however, when a unit is purchased after the effective date of this ordinance, and this purchase occurs within two years of the date of the previous purchase, consideration shall not be given to that portion of increased debt service which has resulted from a selling price which exceeds the seller's purchase price by more than the percentage increase in the “Consumer Price Index for All Urban Consumers for the San Francisco-Oakland Metropolitan Area, U.S. Department of Labor” between the date of previous purchase and the date of the current sale, plus the cost of capital improvements or rehabilitation work made or performed by the seller.

(B) The past history of increases in the rent for the unit and the comparison of the rent for the unit with rents for comparable units in the same general area.

(C) Any findings which have been made pursuant to Section 37.7 with respect to the unit.

(D) Failure to perform ordinary repair, replacement and maintenance in compliance with applicable State and local law.

(E) Any other such relevant factors as the Board shall specify in rules and regulations.

(5) Determination of the Administrative Law Judge: RAP Rental Units.

(A) RAP Rental Units in RAP Areas Designated Prior to July 1, 1977. The Administrative Law Judge shall make findings as to whether or not the noticed or proposed rental increase exceeds the rent increase limitations set forth in Section 32.73 of the San Francisco Administrative Code. In making such findings, the Administrative Law Judge shall apply the rent increase limitations set forth in Chapter 32 of the San Francisco Administrative Code and all rules and regulations promulgated pursuant thereto. The Administrative Law

Judge shall consider the evidence presented at the hearing. The burden of proof shall be on the landlord.

(B) RAP Rental Units in RAP Areas Designated On or After July 1, 1977. The Administrative Law Judge shall make findings with respect to rent increases exceeding the limitations as set forth in Section 37.3 of this Chapter. In making such findings, the Administrative Law Judge shall take into consideration the factors set forth in Subsection (4) above and shall consider evidence presented at the hearing. The burden of proof is on the landlord.

(6) Findings of Fact. The Administrative Law Judge shall make written findings of fact, copies of which shall be mailed to the parties within 30 days of the hearing.

(7) Payment or Refund of Rents to Implement Arbitration Decision. Upon finding that all or any portion of the rent increase is or is not justified, or that any nonconforming rent increase is null and void, the Administrative Law Judge may order payment or refund of all or a portion of that cumulative amount within 15 days of the mailing of the findings of fact or may order the amount added to or offset against future rents; provided, however, that any such order shall be stayed if an appeal is timely filed by the aggrieved party. The Administrative Law Judge may order refunds of rent overpayments resulting from rent increases which are null and void for no more than the ~~*three*~~ *five*-year period *preceding discovery of the overpayment* *plus* the month of the filing of a landlord or tenant petition~~*, plus*~~ *and* the period between the month of filing and the date of the Administrative Law Judge's decision. In any case, calculation of rent overpayments and re-setting of the lawful base rent shall be based on a determination of the validity of all rent increases imposed since April 1, 1982, in accordance with Sections 37.3(b)(5) and 37.3(a)(2) above.

(8) Finality of Administrative Law Judge's Decision. The decision of the Administrative Law Judge shall be final unless the Board vacates his decision on appeal.

(f) Appeals.

(1) Time and Manner. Any appeal to the Board from the determination of the Administrative Law Judge must be made within 15 calendar days of the mailing of the findings of fact unless such time limit is extended by the Board upon a showing of good cause. If the fifteenth day falls on a Saturday, Sunday or legal holiday, the appeal may be filed with the Board on the next business day. The appeal shall be in writing and must state why appellant believes there was either error or abuse of discretion on the part of the Administrative Law Judge. The filing of an appeal will stay only that portion of any Administrative Law Judge's decision which permits payment, refund, offsetting or adding rent.

(2) Record on Appeal. Upon receipt of an appeal, the entire administrative record of the matter, including the appeal, shall be filed with the Board.

(3) Appeals. The Board shall, in its discretion, hear appeals. In deciding whether or not to hear a given appeal, the Board shall consider, among other factors, fairness to the parties, hardship to either party, and promoting the policies and purposes of this Chapter, in addition to any written comments submitted by the Administrative Law Judge whose decision is being challenged. The Board may also review other material from the administrative record of the matter as it deems necessary. A vote of three members shall be required in order for an appeal to be heard.

(4) Remand to Administrative Law Judge Without Appeal Hearing. In those cases where the Board is able to determine on the basis of the documents before it that the Administrative Law Judge has erred, the Board may remand the case for further hearing in accordance with its instructions without conducting an appeal hearing. Both parties shall be notified as to the time of the re-hearing, which shall be conducted within 30 days of remanding by the Board. In those cases where the Board is able to determine on the basis of the documents before it that the Administrative Law Judge's findings contain numerical or clerical

inaccuracies, or require clarification, the Board may continue the hearing for purposes of re-referring the case to said Administrative Law Judge in order to correct the findings.

(5) Time of Appeal Hearing; Notice to Parties. Appeals accepted by the Board shall be heard within 45 days of the filing of an appeal. Within 30 days of the filing of an appeal, both parties shall be notified in writing as to whether or not the appeal has been accepted. If the appeal has been accepted, the notice shall state the time of the hearing and the nature of the hearing. Such notice must be mailed at least 10 days prior to the hearing.

(6) Appeal Hearing; Decision of the Board. At the appeal hearing, both appellant and respondent shall have an opportunity to present oral testimony and written documents in support of their positions. After such hearing and after any further investigation which the Board may deem necessary the Board may, upon hearing the appeal, affirm, reverse or modify the Administrative Law Judge's decision or may remand the case for further hearing in accordance with its findings. The Board's decision must be rendered within 45 days of the hearing and the parties must be notified of such decision.

(7) Notification of the Parties. In accordance with item (6) above, parties shall receive written notice of the decision. The notice shall state that this decision is final.

(8) Effective Date of Appeal Decisions. Appeal decisions are effective on the date mailed to the parties; provided, however, that that portion of any decision which orders payment, refund, offsetting or adding rent shall become effective 30 calendar days after it is mailed to the parties unless a stay of execution is granted by a court of competent jurisdiction.

(9) Limitation of Actions. A landlord or tenant aggrieved by any decision of the Board must seek judicial review within 90 calendar days of the date of mailing of the decision.

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Section 4. The San Francisco Administrative Code is hereby amended by amending Section 37.9, to read as follows:

SEC. 37.9. EVICTIONS.

Notwithstanding Section 37.3, this Section shall apply as of August 24, 1980, to all landlords and tenants of rental units as defined in Section 37.2(r).

(a) A landlord shall not endeavor to recover possession of a rental unit unless *the landlord acts in good faith, without ulterior motive and with honest intent, and unless*:

(1) The tenant:

(A) Has failed to pay the rent to which the landlord is lawfully entitled under the oral or written agreement between the tenant and landlord:

(i) Except that a tenant's nonpayment of a charge prohibited by Section 919.1 of the Police Code shall not constitute a failure to pay rent; and

(ii) Except that, commencing August 10, 2001, to and including February 10, 2003, a landlord shall not endeavor to recover or recover possession of a rental unit for failure of a tenant to pay that portion of rent attributable to a capital improvement passthrough certified pursuant to a decision issued after April 10, 2000, where the capital improvement passthrough petition was filed prior to August 10, 2001, and a landlord shall not impose any late fee(s) upon the tenant for such non-payment of capital improvement costs; or

(B) Habitually pays the rent late; or

(C) Gives checks which are frequently returned because there are insufficient funds in the checking account; or

(2) The tenant has violated a lawful obligation or covenant of tenancy other than the obligation to surrender possession upon proper notice or other than an obligation to pay a charge prohibited by Police Code Section 919.1, and failure to cure such violation after having received written notice thereof from the landlord, provided further that notwithstanding any

lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit as a result of subletting of the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet following a written request by the tenant, so long as the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord. *In addition, a landlord shall not endeavor to recover possession of a rental unit as a result of the addition by the tenant of additional occupants to the rental unit, if the total number of occupants occupying a room for sleeping purposes does not violate the superficial floor area standards prescribed in Subsection (b) of Housing Code Section 503*; or

(3) The tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the rental unit, or is creating a substantial interference with the comfort, safety or enjoyment of the landlord or tenants in the building, and the nature of such nuisance, damage or interference is specifically stated by the landlord in writing as required by Section 37.9(c); or

(4) The tenant is using or permitting a rental unit to be used for any illegal purpose; or

(5) The tenant, who had an oral or written agreement with the landlord which has terminated, has refused after written request or demand by the landlord to execute a written extension or renewal thereof for a further term of like duration and under such terms which are materially the same as in the previous agreement; provided, that such terms do not conflict with any of the provisions of this Chapter; or

(6) The tenant has, after written notice to cease, refused the landlord access to the rental unit as required by State or local law; or

(7) The tenant holding at the end of the term of the oral or written agreement is a subtenant not approved by the landlord; or

(8) The landlord seeks to recover possession ~~*in good faith, without ulterior reasons and with honest intent*~~:

(i) For the landlord's use or occupancy as his or her principal residence for a period of at least 36 continuous months;

(ii) For the use or occupancy of the landlord's grandparents, grandchildren, parents, children, brother or sister, or the landlord's spouse, or the spouses of such relations, as their principal place of residency for a period of at least 36 months, in the same building in which the landlord resides as his or her principal place of residency, or in a building in which the landlord is simultaneously seeking possession of a rental unit under Section 37.9(a)(8)(i). For purposes of this Section 37.9(a)(8)(ii), the term spouse shall include domestic partners as defined in San Francisco Administrative Code Sections 62.1 through 62.8.

(iii) For purposes of this Section 37.9(a)(8) only, as to landlords who become owners of record of the rental unit on or before February 21, 1991, the term “landlord” shall be defined as an owner of record of at least 10 percent interest in the property or, for Section 37.9(a)(8)(i) only, two individuals registered as domestic partners as defined in San Francisco Administrative Code Sections 62.1 through 62.8 whose combined ownership of record is at least 10 percent. For purposes of this Section 37.9(a)(8) only, as to landlords who become owners of record of the rental unit after February 21, 1991, the term “landlord” shall be defined as an owner of record of at least 25 percent interest in the property or, for Section 37.9(a)(8)(i) only, two individuals registered as domestic partners as defined in San Francisco Administrative Code Sections 62.1 through 62.8 whose combined ownership of record is at least 25 percent.

(iv) A landlord may not recover possession under this Section 37.9(a)(8) if a comparable unit owned by the landlord is already vacant and is available, or if such a unit becomes vacant and available before the recovery of possession of the unit. If a comparable unit does become vacant and available before the recovery of possession, the landlord shall rescind the notice to vacate and dismiss any action filed to recover possession of the premises. Provided further, if a noncomparable unit becomes available before the recovery of possession, the landlord shall offer that unit to the tenant at a rent based on the rent that the tenant is paying, with upward or downward adjustments allowed based upon the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board. It shall be evidence of a lack of good faith if a landlord times the service of the notice, or the filing of an action to recover possession, so as to avoid moving into a comparable unit, or to avoid offering a tenant a replacement unit.

(v) It shall be rebuttably presumed that the landlord has not acted in good faith if the landlord or relative for whom the tenant was evicted does not move into the rental unit within three months and occupy said unit as that person's principal residence for a minimum of 36 continuous months.

(vi) Once a landlord has successfully recovered possession of a rental unit pursuant to Section 37.9(a)(8)(i), then no other current or future landlords may recover possession of any other rental unit in the building under Section 37.9(a)(8)(i). It is the intention of this Section that only one specific unit per building may be used for such occupancy under Section 37.9(a)(8)(i) and that once a unit is used for such occupancy, all future occupancies under Section 37.9(a)(8)(i) must be of that same unit, provided that a landlord may file a petition with the Rent Board, or at the landlord's option, commence eviction proceedings, claiming that

disability or other similar hardship prevents him or her from occupying a unit which was previously occupied by the landlord.

(vii) If any provision or clause of this amendment to Section 37.9(a)(8) or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other chapter provisions, and clauses of this Chapter are held to be severable; or

(9) The landlord seeks to recover possession ~~*in good faith*~~ in order to sell the unit in accordance with a condominium conversion approved under the San Francisco subdivision ordinance and does so without ulterior reasons and with honest intent; or

(10) The landlord seeks to recover possession ~~*in good faith*~~ in order to demolish or to otherwise permanently remove the rental unit from housing use and has obtained all the necessary permits ~~*on or*~~ before the date upon which notice to vacate is given~~*, and does so without ulterior reasons and with honest intent;*~~ provided that a landlord who seeks to demolish an unreinforced masonry building pursuant to Building Code Chapters 14 and 15 must provide the tenant with the relocation assistance specified in Section 37.9A(~~*f*~~ *e*) below prior to the tenant's vacating the premises*; where the landlord seeks to demolish or otherwise permanently remove a unit from rental housing use, regardless of the unit's zoning or legal status, each authorized occupant of the unit (including any minor child) who has resided in the unit for 12 or more months as of the time the unit is vacated pursuant to notice shall be entitled to receive relocation expenses of $2,000, in addition to all rights under any other provision of law. One-half of the relocation assistance payment shall be provided to each such authorized occupant at the time of service of the notice to vacate, and the remaining one-half payment shall be paid within 72 hours after vacating the premises. A landlord who pays relocation costs as required by this subsection in conjunction with a notice to quit need not pay relocation costs with any further notices to quit for the same unit that are served within 180 days of the notice that included the required relocation payment. Commencing March 1, 2003,*

these relocation expenses shall increase annually at the rate of increase in the "rent of primary residence" expenditure category of the Consumer Price Index (CPI) for the preceding 12 months, as that data is made available by the United States Department of Labor. The remedies available under this Subsection 37.9(a)(10) shall be in addition to any other remedies that may be available to a tenant.; or

(11) The landlord seeks ~~*in good faith*~~ to remove temporarily the unit from housing use in order to be able to carry out capital improvements or rehabilitation work and has obtained all the necessary permits ~~*on or*~~ before the date upon which notice to vacate is given, ~~*and does so without ulterior reasons and with honest intent*~~. Any ~~*tenant*~~ *authorized occupant (including any minor child)* who vacates the unit under such circumstances shall have the right to reoccupy the unit at the prior rent adjusted in accordance with the provisions of this Chapter. The tenant will vacate the unit only for the minimum time required to do the work. On or before the date upon which notice to vacate is given, the landlord shall advise ~~*the tenant*~~ *said occupant(s)* in writing that the rehabilitation or capital improvement plans are on file with the Central Permit Bureau of the Department of Building Inspection and that arrangements for reviewing such plans can be made with the Central Permit Bureau. In addition to the above, no landlord shall endeavor to recover possession of any unit subject to a RAP loan as set forth in Section 37.2(m) of this Chapter except as provided in Section 32.69 of the San Francisco Administrative Code. ~~*The tenant*~~ *Said occupant(s)* shall not be required to vacate pursuant to this Section 37.9(a)(11), for a period in excess of three months; provided, however, that such time period may be extended by the Board or its Administrative Law Judges upon application by the landlord. The Board shall adopt rules and regulations to implement the application procedure. Any landlord who seeks to recover possession under this Section 37.9(a)(11) shall pay ~~*the tenant actual costs up to $1,000*~~ *each authorized occupant (including any minor child) $2,000* for ~~*moving and*~~ relocation expenses ~~*not less than 10 days prior to recovery of possession*~~ *, one-half*

of which shall be paid at the time of the service of the notice to vacate and one-half of which shall be paid within 72 hours after vacating the premises. A landlord who pays relocation costs as required by this subsection in conjunction with a notice to quit need not pay relocation costs with any further notices to quit for the same unit that are served within 180 days of the notice that included the required relocation payment. Commencing March 1, 2003, these relocation expenses shall increase annually at the rate of increase in the "rent of primary residence" expenditure category of the Consumer Price Index (CPI) for the preceding 12 months, as that data is made available by the United States Department of Labor; or

(12) The landlord seeks to recover possession ~~*in good faith*~~ in order to carry out substantial rehabilitation, as defined in Section 37.2(s), and has obtained all the necessary permits ~~*on or*~~ before the date upon which notice to vacate is given~~*, and does so without ulterior reasons and with honest intent*~~. Notwithstanding the above, no landlord shall endeavor to recover possession of any unit subject to a RAP loan as set forth in Section 37.2(m) of this Chapter except as provided in Section 32.69 of the San Francisco Administrative Code. *Any landlord who seeks to recover possession under this Section 37.9(a)(12) shall pay each authorized occupant (including any minor child) a minimum of $2,000 for moving, relocation and other consequential expenses, one-half of which shall be paid at the time of the service of notice to vacate, and one-half of which shall be paid within 72 hours after vacating the premises. A landlord who pays relocation costs as required by this subsection in conjunction with a notice to quit need not pay relocation costs with any further notices to quit for the same unit that are served within 180 days of the notice that included the required relocation payment. Commencing March 1, 2003, these relocation expenses shall increase annually at the rate of increase in the "rent of primary residence" expenditure category of the Consumer Price Index (CPI) for the preceding 12 months, as that data is made available by the United States Department of Labor.*; or

(13) The landlord wishes to withdraw from rent or lease all rental units within any detached physical structure and, in addition, in the case of any detached physical structure containing three or fewer rental units, any other rental units on the same lot, and complies in full with Section 37.9A with respect to each such unit; provided, however, that a unit classified as a residential unit under Chapter 41 of this Code which is vacated under this Section 37.9(a)(13) may not be put to any use other than that of a residential hotel unit without compliance with the provisions of Section 41.9 of this Code; or

(14) The landlord seeks ~~*in good faith*~~ to temporarily recover possession of the unit for less than 30 days solely for the purpose of effecting lead remediation or abatement work, as required by San Francisco Health Code Article 26. The relocation rights and remediies, established by San Francisco Administrative Code Chapter 72, including but not limited to, the payment of financial relocation assistance, shall apply to evictions under this Section 37.9(a)(14).

(b) A landlord who resides in the same rental unit with his or her tenant may evict said tenant without just cause as required under Section 37.9(a) above.

(c) A landlord shall not endeavor to recover possession of a rental unit unless at least one of the grounds enumerated in Section 37.9(a) or (b) above is the landlord's dominant motive for recovering possession *and the landlord is acting in good faith, with honest intent, without ulterior motive in all actions precedent to recovery of possession;* and unless the landlord informs the tenant in writing on or before the date upon which notice to vacate is given of the grounds under which possession is sought and that advice regarding the notice to vacate is available from the Residential Rent Stabilization and Arbitration Board, before endeavoring to recover possession. A copy of all notices to vacate except three-day notices to vacate or pay rent and a copy of any additional written documents informing the tenant of the grounds under which possession is sought shall be filed with the Board within 10 days

following service of the notice to vacate. The District Attorney shall determine whether the units set forth on the list compiled in accordance with Section 37.6(k) are still being occupied by the tenant who succeeded the tenant upon whom the notice was served. In cases where the District Attorney determines that Section 37.9(a)(8) has been violated, the District Attorney shall take whatever action he deems appropriate under this Chapter or under State law.

(d) No landlord may cause a tenant to quit involuntarily or threaten to bring any action to recover possession, or decrease any services, or increase the rent, or take any other action where the landlord's dominant motive is retaliation for the tenant's exercise of any rights under the law. Such retaliation shall be a defense to any action to recover possession. In an action to recover possession of a rental unit, proof of the exercise by the tenant of rights under the law within six months prior to the alleged act of retaliation shall create a rebuttable presumption that the landlord's act was retaliatory.

(e) It shall be unlawful for a landlord or any other person who wilfully assists the landlord to endeavor to recover possession or to evict a tenant except as provided in Section 37.9(a) and (b). Any person endeavoring to recover possession of a rental unit from a tenant or evicting a tenant in a manner not provided for in Section 37.9(a) or (b) without having a substantial basis in fact for the eviction as provided for in Section 37.9(a) shall be guilty of a misdemeanor and shall be subject, upon conviction, to the fines and penalties set forth in Section 37.10. Any waiver by a tenant of rights under this Chapter shall be void as contrary to public policy.

(f) Whenever a landlord wrongfully endeavors to recover possession or recovers possession of a rental unit in violation of Sections 37.9 and/or 37.10 as enacted herein, the tenant or Board may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages, (including damages for mental or emotional distress), and whatever other relief the court deems appropriate. In the case of an award of damages

for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of Section 37.9 or 37.10A herein. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court. The remedy available under this Section 37.9(f) shall be in addition to any other existing remedies which may be available to the tenant or the Board.

(g) The provisions of this Section 37.9 shall apply to any rental unit as defined in Sections 37.2(r)(4)(A) and 37.2(r)(4)(B), including where a notice to vacate/quit any such rental unit has been served as of the effective date of this Ordinance No. 250-98 but where any such rental unit has not yet been vacated or an unlawful detainer judgment has not been issued as of the effective date of this Ordinance No. 250-98.

(h) With respect to rental units occupied by recipients of tenant-based rental assistance, the notice requirements of this Section 37.9 shall be required in addition to any notice required as part of the tenant-based rental assistance program, including but not limited to the notice required under 24 CFR Section 982.310(e)(2)(ii).

(i) The following additional provisions shall apply to a landlord who seeks to recover a rental unit by utilizing the grounds enumerated in Section 37.9(a)(8):

(1) A landlord may not recover possession of a unit from a tenant under Section 37.9(a)(8) if the landlord has or receives notice, any time before recovery of possession, that any tenant in the rental unit:

(A) Is 60 years of age or older and has been residing in the unit for 10 years or more; or

(B) Is disabled within the meaning of Section 37.9(i)(1)(B)(i) and has been residing in the unit for 10 years or more, or is catastrophically ill within the meaning of Section 37.9(i)(1)(B)(ii) and has been residing in the unit for five years or more:

(i) A “disabled” tenant is defined for purposes of this Section 37.9(i)(1)(B) as a person who is disabled or blind within the meaning of the federal Supplemental Security Income/California State Supplemental Program (SSI/SSP), and who is determined by SSI/SSP to qualify for that program or who satisfies such requirements through any other method of determination as approved by the Rent Board;

(ii) A “catastrophically ill” tenant is defined for purposes of this Section 37.9(i)(1)(B) as a person who is disabled as defined by Section 37.9(i)(1)(B)(i), and who is suffering from a life threatening illness as certified by his or her primary care physician.

(2) The foregoing provisions of Sections 37.9(i)(1)(A) and (B) shall not apply where there is only one rental unit owned by the landlord in the building, or where each of the rental units owned by the landlord in the same building where the landlord resides (except the unit actually occupied by the landlord) is occupied by a tenant otherwise protected from eviction by Sections 37.9(i)(1)(A) or (B) and where the landlord's qualified relative who will move into the unit pursuant to Section 37.9(a)(8) is 60 years of age or older.

(3) The provisions established by this Section 37.9(i) include, but are not limited to, any rental unit where a notice to vacate/quit has been served as of the date this amendment takes effect but where the rental unit has not yet been vacated or an unlawful detainer judgment has not been issued.

(4) Within 30 days of personal service by the landlord of a written request, or, at the landlord's option, a notice of termination of tenancy under Section 37.9(a)(8), the tenant must submit a statement, with supporting evidence, to the landlord if the tenant claims to be a member of one of the classes protected by Section 37.9(i). The written request or notice shall contain a warning that a tenant's failure to submit a statement within the 30 day period shall be deemed an admission that the tenant is not protected by Section 37.9(i). The landlord shall file a copy of the request or notice with the Rent Board within 10 days of service on the tenant.

A tenant's failure to submit a statement within the 30 day period shall be deemed an admission that the tenant is not protected by Section 37.9(i). A landlord may challenge a tenant's claim of protected status either by requesting a hearing with the Rent Board or, at the landlord's option, through commencement of eviction proceedings, including service of a notice of termination of tenancy. In the Rent Board hearing or the eviction action, the tenant shall have the burden of proof to show protected status. No civil or criminal liability under Section 37.9(e) or (f) shall be imposed upon a landlord for either requesting or challenging a tenant's claim of protected status.

(5) This Section 37.9(i) is severable from all other sections and shall be of no force or effect if any temporary moratorium on owner/relative evictions adopted by the Board of Supervisors after June 1, 1998 and before October 31, 1998 has been invalidated by the courts in a final decision.

Section 5. The San Francisco Administrative Code is hereby amended by amending Section 37.9B, to read as follows:

SEC. 37.9B. TENANT RIGHTS IN EVICTIONS UNDER SECTION 37.9(a)(8).

(a) Any rental unit which a tenant vacates after receiving a notice to quit based on Section 37.9(a)(8), and which is subsequently no longer occupied as a principal residence by the landlord or the landlord's grandparent, parent, child, grandchild, brother, sister, or the landlord's spouse, or the spouses of such relations must, if offered for rent during the three-year period following service of the notice to quit under Section 37.9(a)(8), be rented in good faith at a rent not greater than at which would have been the rent had the tenant who had been required to vacate remained in continuous occupancy and the rental unit remained subject to this Chapter. If it is asserted that a rent increase could have taken place during the

occupancy of the rental unit by the landlord if the rental unit had been subjected to this Chapter, the landlord shall bear the burden of proving that the rent could have been legally increased during the period. If it is asserted that the increase is based in whole or in part upon any grounds other than that set forth in Section 37.3(a)(1), the landlord must petition the Rent Board pursuant to the procedures of this Chapter. Displaced tenants shall be entitled to participate in and present evidence at any hearing held on such a petition. Tenants displaced pursuant to Section 37.9(a)(8) shall make all reasonable efforts to keep the Rent Board apprised of their current address. The Rent Board shall provide notice of any proceedings before the Rent Board to the displaced tenant at the last address provided by the tenant. No increase shall be allowed on account of any expense incurred in connection with the displacement of the tenant.

(b) Any landlord who, within three years of the date of service of the notice to quit, offers for rent or lease any unit in which the possession was recovered pursuant to Section 37.9(a)(8) shall first offer the unit for rent or lease to the tenants displaced in the same manner as provided for in Sections 37.9A(c) and (d).

(c) An owner who endeavors to recover possession under Section 37.9(a)(8) shall, in addition to complying with the requirements of Section 37.9(c), inform the tenant in writing of the following and file any written documents informing the tenant of the following with the Rent Board within 10 days after service of the notice to vacate;

(1) The identity and percentage of ownership of all persons holding a full or partial percentage ownership in the property;

(2) The dates the percentages of ownership were recorded;

(3) The name(s) of the landlord endeavoring to recover possession and, if applicable, the name(s) and relationship of the relative(s) for whom possession is being sought and a description of the current residence of the landlord or relative(s);

(4) A description of all residential properties owned, in whole or in part, by the landlord and, if applicable, a description of all residential properties owned, in whole or in part, by the landlord's grandparent, parent, child, grandchild, brother, or sister for whom possession is being sought;

(5) The current rent for the unit and a statement that the tenant has the right to re-rent the unit at the same rent, as adjusted by Section 37.9B(a) above;

(6) The contents of Section 37.9B, by providing a copy of same; and

(7) The right the tenant(s) may have to relocation costs and the amount of those relocation costs.

(d) Each ~~*individual tenant*~~ *authorized occupant (including any minor child)* of any rental unit ~~*in a building containing two or more units*~~ who receives a notice to quit based upon Section 37.9(a)(8), and who has resided in the unit for 12 or more months *at the time the unit is vacated pursuant to notice* in addition to all rights under any other provision of law, shall be entitled to receive relocation expenses of ~~*$1,000*~~ *$2000* from the owner, ~~*$500*~~ *one-half* of which shall be paid at the time of the service of the notice to vacate, and ~~*$500*~~ *one-half* of which shall be paid ~~*when the tenant vacates*~~ *within 72 hours after vacating the premises. A landlord who pays relocation costs as required by this subsection in conjunction with a notice to quit need not pay relocation costs with any further notices to quit for the same unit that are served within 180 days of the notice that included the required relocation payment. Commencing March 1, 2003, these relocation expenses shall increase annually at the rate of increase in the "rent of primary residence" expenditure category of the Consumer Price Index (CPI) for the preceding 12 months, as that data is made available by the United States Department of Labor.* An owner who pays relocation costs as required by this subsection in conjunction with a notice to quit need not pay relocation costs with any further notices to quit for the same unit that are served within 180 days of the notice that included the required relocation payment. The relocation costs contained herein are separate from any

security or other refundable deposits as defined in California Code Section 1950.5. Further, payment or acceptance of relocation costs shall not waive any other rights a tenant may have under law.

Section 6. The San Francisco Administrative Code is hereby amended by amending Section 37.11A, to read as follows:

SEC. 37.11A. CIVIL ACTIONS.

Whenever a landlord charges a tenant a rent which exceeds the limitations set forth in this Chapter, retaliates against a tenant for the exercise of any rights under this Chapter, or attempts to prevent a tenant from acquiring any rights under this Chapter, the tenant may institute a civil proceeding for money damages *against the landlord, the landlord's successor in interest, or both*; ~~*provided, however, that*~~ any monetary award for rent overpayments ~~*resulting from a rent increase which is null and void pursuant to Section 37.3(b)(5) shall be limited to*~~ *shall include* a refund of rent overpayments made during the ~~*three-year period preceding the*~~ month of filing of the action~~,~~ plus the period between the month of filing and the date of the court's order. In any case, calculation of rent overpayments and re-setting of the lawful base rent shall be based on a determination of the validity of all rent increases imposed since April 1, 1982, in accordance with Sections 37.3(b)(5) and 37.3(a)(2) above. The prevailing party in any civil action brought under this Section 37.11A shall be entitled to recover reasonable attorneys' fees and costs. The remedy available under this Section shall be in addition to any other existing remedies which may be available to the tenant.

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Section 7. The San Francisco Housing Code is hereby amended by amending Section 503, to read as follows:

SEC. 503. ROOM DIMENSIONS.

(a) Ceiling Heights. Unless legally constructed as such, no habitable room shall have a ceiling height less than seven feet six inches. Any room, other than a habitable room, shall have a ceiling height of not less than seven feet.

(b) Superficial Floor Area. Every dwelling unit and congregate residence shall have at least one room which shall have not less than 120 square feet of superficial floor area. Every room which is used for both cooking and living or both living and sleeping purposes shall have not less than 144 square feet of superficial floor area. Every room used for sleeping purposes shall have not less than 70 square feet of superficial floor area. When more than two persons occupy a room used for sleeping purposes the required superficial floor area shall be increased at the rate of 50 square feet for each occupant in excess of two. Guest rooms with cooking shall contain the combined required superficial areas of a sleeping *room* and a kitchen, but not less than 144 square feet. Other habitable rooms shall be not less than 70 square feet. Notwithstanding any provision of this Section, children under the age of six shall not be counted for purposes of determining whether a family with minor children complies with the provisions of this Code.

(c) Width. No habitable room except a kitchen shall be less than seven feet in width. Rooms used as guest rooms with cooking shall have a 10-foot minimum width.

(d) Housing Access. To promote access to *affordable* housing ~~*by families*~~, it shall be unlawful for the owner, lessor, lessee, sublessee, real estate broker, assignee, or other person having the rights of ownership, the right of possession, or other right to rent or lease any dwelling unit or any agent or employee of such person to refuse to rent or lease, or otherwise deny, a dwelling unit to ~~*a family, as defined in Section 401 of this Code,*~~ *any person* on

the basis of the actual or potential number of occupants if the total number of persons occupying a room for sleeping purposes does not violate the minimum superficial floor area standards prescribed in Subsection (b) of this Section. *The protections of this subsection shall apply to prospective tenants at the commencement of a lease or other rental agreement, and to current tenants under an existing lease or other rental agreement who seek to share the leased premises with an additional occupant or occupants.*

(e) Remedies. A violation of Subsection (d) of this Section shall be subject to civil remedies specified in Section 204 (e) of this Code.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By:
MARIE CORLETT BLITS
Deputy City Attorney