

[Administrative Code - Temporarily Displaced Tenant Preference in City Affordable Housing - Compliance with Right to Return for Temporarily Displaced Tenants]

Ordinance amending the Administrative Code to add a preference in City affordable housing programs to tenants temporarily evicted from rental units for capital improvements or rehabilitation work; requiring landlords who regain possession of such rental units to provide evidence of complying with a tenant’s right to re-occupy such tenant’s rental unit; and restricting the issuance of a certificate of final completion unless a landlord provides such evidence clarifying that temporary evictions for capital improvements are intended to cover work that would make the unit hazardous, unhealthy, and/or uninhabitable; and modifying the standards that the Rent Board must consider when reviewing a request to authorize a temporary eviction for capital improvements to last more than three months.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font. **Additions to Codes** are in *single-underline italics Times New Roman font*. **Deletions to Codes** are in *strikethrough italics Times New Roman font*. **Board amendment additions** are in double-underlined Arial font. **Board amendment deletions** are in ~~Arial font~~. **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Background and Findings.

(a) Administrative Code Section 37.9(a)(11) allows landlords to evict tenants in order to perform capital improvements or rehabilitation work, if the landlord has obtained all the necessary permits on or before the date upon which notice to vacate is given to the tenant and the landlord acts without ulterior reasons and with honest intent.

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1 (b) Administrative Code Section 37.9(a)(11) further provides that evictions are
2 intended to be temporary and that the tenant is entitled to re-occupy the rental unit when the
3 capital improvements or rehabilitation work are completed. Although this provision ostensibly
4 limits the displacement of tenants to less than three months and provides a relocation
5 assistance payment, landlords are allowed to extend such displacement period without a limit.

6 (c) In some cases, the temporary displacement of households, many of them
7 seniors or families with children, often last for a year or more and without any increase in
8 relocation assistance or offer of actual replacement housing, which can lead to these
9 households being permanently displaced from the City.

10 (d) Given the challenges of finding affordable, temporary housing in the City for
11 even those at the top of the income scale, the Board of Supervisors finds that it is necessary
12 through this ordinance to provide temporary affordable housing to income-qualified tenants
13 within the City's affordable housing.

14
15 Section 2. Chapter 47 of the Administrative Code is hereby amended by revising
16 Sections 47.2 and 47.3, to read as follows:

17 **SEC. 47.2. DEFINITIONS.**

18 * * * *

19 "Rent Ordinance" shall mean the San Francisco Rent Stabilization and Arbitration
20 Ordinance, Administrative Code Chapter 37.

21 "Rental Unit" shall have the meaning set forth in Rent Ordinance Section 37.2(r), as amended
22 from time to time.

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1 "Tax Exempt Bond Development" shall mean any housing development financed
2 through a tax-exempt bond issuance that imposes rent and occupancy restrictions as a
3 condition of the financing.

4 "Temporarily Displaced Tenant" shall mean a tenant who has vacated a Rental Unit pursuant
5 to a notice to vacate based on capital improvements or rehabilitation work set forth in Rent Ordinance
6 Section 37.9(a)(11), as amended from time to time. MOHCD shall establish a process for a tenant to
7 verify his or her status as a "Temporarily Displaced Tenant" that, at a minimum, shall require a tenant
8 to show: (a) the tenant is required to vacate or has vacated the Rental Unit pursuant to a notice to
9 vacate based on Rent Ordinance Section 37.9(a)(11); and (b) the tenant (1) is listed on the notice to
10 vacate, (2) is listed on the lease for the unit in question, or (3) has other evidence sufficient to establish,
11 in MOHCD's reasonable discretion, that the tenant resided in the unit at the time the notice to vacate
12 was received.

13 **SEC. 47.3. APPLICATION OF PREFERENCE.**

14 Except to the extent prohibited by an applicable State or Federal funding source,
15 MOHCD shall give, or require project sponsors or their successors in interest funded through
16 MOHCD to give, preference in occupying units or receiving assistance under all City
17 Affordable Housing Programs. Each preference enumerated below shall be applied as of the
18 effective date of the legislation establishing each preference. The City established preference
19 for holders of Certificates of Preference in Ordinance 232-08, Displaced Tenants, Category 1
20 in Ordinance 277-13, and Displaced Tenants, Category 2 and Neighborhood Residents in
21 legislation adding this Chapter 47. The preference requirements are intended to have
22 prospective effect only, and shall not be interpreted to impair the obligations of any pre-
23 existing contract entered into by the City. Notwithstanding the prior sentence, the preference
24 requirements shall apply to contracts entered into by the City on or after the effective date of
25 the legislation establishing each preference, including contracts materially amended on or

1 after the effective date. Preference shall be given:

2 (a) First, to Residential Certificate of Preference Holders, who meet all of the
3 qualifications for the unit or assistance. Preference under this subsection (a) shall be given in
4 100% of the units in all initial sales, re-sales, initial leases, and subsequent leases.

5 (b) Second, to any Displaced Tenant who meets all of the qualifications for the unit
6 or assistance. For any Displaced Tenant displaced prior to the effective date of this Chapter
7 47, preference under this subsection (b) shall expire six years from the effective date of this
8 Chapter 47. For any Displaced Tenant displaced after the effective date of this Chapter 47,
9 preference under this subsection (b) shall expire, for Category 1, six years from the date the
10 landlord filed with the Rent Board a Notice of Intent to Withdraw, for Category 2, six years
11 from the date the landlord filed with the Rent Board the notice to vacate pursuant to the Rent
12 Ordinance Section 37.9(c), or, for Category 3, three years from the date of the order to
13 vacate. Preference under this subsection (b) shall be applicable to:

14 (1) 20% of the units in any new residential development that is part of a City
15 Affordable Housing Program going through the initial occupancy or sale process; and

16 (2) units in all re-sales and subsequent leases until 20% of all units that are
17 part of a City Affordable Housing Program in a building are occupied by tenants who have
18 exercised this preference.

19 The Displaced Tenant's preference shall still apply even if such Displaced Tenant
20 declines a unit offered through application of the preference, but upon accepting and
21 occupying a unit obtained using the preference, such Displaced Tenant's preference
22 terminates.

23 (c) Third, to a Neighborhood Resident, who meets all of the qualifications for the
24 unit or assistance. Preference under this subsection (c) shall be given:

25 (1) for units located in the same Neighborhood as the person resides;

1 (2) only for any new residential development in that Neighborhood going
2 through the initial occupancy or sale process, and only to 40% of the units in such
3 development.

4 (d) Fourth, to Temporarily Displaced Tenants who meet all of the qualifications for the
5 affordable housing unit. The preference under this subsection (d) shall expire upon the earlier of: (1)
6 the tenant's accepting an offer from the landlord to re-occupy the tenant's Rental Unit pursuant to Rent
7 Ordinance Section 37.9(a)(11), or (2) the tenant's declining or failing to accept an offer to re-occupy
8 the Rental Unit within 30 days of receipt of such an offer. A Temporarily Displaced Tenant may
9 occupy an affordable housing unit until the earlier of: (1) the tenant's re-occupying the tenant's Rental
10 Unit, or (2) the tenant's declining or failing to accept an offer to re-occupy the Rental Unit within 30
11 days of receipt of such an offer. Payments received by the tenant for relocation expenses under Rent
12 Ordinance Section 37.9C shall not be considered as assets in order to determine the tenant's eligibility
13 for a unit, provided however, such payments shall be considered as a rent subsidy in order to meet
14 minimum annual income requirements and demonstrate the tenant's ability to pay affordable rent.
15 Preference under this subsection (d) shall be given for initial leases and subsequent leases of units.

16 (d)(e) ~~Fourth-Fifth~~, to any person who lives or works in San Francisco who meets all of
17 the qualifications for the unit or assistance. Preference under this subsection (d)(e) shall be
18 applicable to:

- 19 (1) any unit in any new residential development that is part of a City
20 Affordable Housing Program going through the initial occupancy or sale process; and
- 21 (2) units in all re-sales and subsequent leases.

22
23 Section 3. Chapter 37 of the Administrative Code is hereby amended by revising
24 Section 37.9(a)(11), to read as follows:

25 **SEC. 37.9. EVICTIONS.**

1 * * * *

2 (a) A landlord shall not endeavor to recover possession of a rental unit unless:

3 * * * *

4 (11) The landlord seeks in good faith to remove temporarily the unit from
5 housing use in order to be able to carry out capital improvements or rehabilitation work that
6 would make the unit hazardous, unhealthy, and/or uninhabitable while work is in progress,
7 and has obtained all the necessary permits on or before the date upon which notice to vacate
8 is given, and does so without ulterior reasons and with honest intent. Any tenant who vacates
9 the unit under such circumstances shall have the right to reoccupy the unit at the prior rent
10 adjusted in accordance with the provisions of this Chapter 37. The landlord will only require
11 the tenant to vacate the unit only for the minimum time required to do the work.

12 (A) On or before the date upon which notice to vacate is given, the
13 landlord shall: ~~(A)~~ (i) advise the tenant in writing that the rehabilitation or capital improvement
14 plans are on file with the Central Permit Bureau of the Department of Building Inspection and
15 that arrangements for reviewing such plans can be made with the Central Permit Bureau, and
16 ~~(B)~~ (ii) provide the tenant a disclosure form prepared by the Board that advises the tenant of the
17 tenant's right to return and opportunity to obtain temporary rental housing through the Mayor's Office
18 of Housing and Community Development; and (iii) provide the tenant a form prepared by the Rent
19 Board that the tenant can use to keep the Rent Board apprised of any future change in
20 address.

21 (B) ~~In addition to the above, n~~ No landlord shall endeavor to recover
22 possession of any unit subject to a RAP loan as set forth in Section 37.2(m) of this Chapter
23 except as provided in Section 32.69 of the *San Francisco* Administrative Code.

24 (C) The tenant shall not be required to vacate pursuant to this Section
25 37.9(a)(11), for a period in excess of three months; provided, however, that such time period

1 may be extended by the Board or its Administrative Law Judges upon application by the
2 landlord. In reviewing an application for an extension of time, the Board or its Administrative
3 Law Judge shall consider whether the landlord has delayed in seeking the extension; the
4 reasonableness of the landlord's time estimate; whether the work is reasonable and
5 necessary to meet state or local requirements concerning the safety or habitability of the
6 building or the unit; whether any tenants have objected that the cost of securing alternative
7 housing during the time extension would cause them a financial hardship; and any other
8 extraordinary circumstances. The Board or its Administrative Law Judge may grant or deny
9 an application or may approve a shorter period of time, based upon the consideration of the
10 facts of the case. The Board shall adopt rules and regulations to implement the application
11 procedure.

12 _____ (D) Any landlord who seeks to recover possession under this Section
13 37.9(a)(11) shall pay relocation expenses as provided in Section 37.9C.

14 _____ (E) *Immediately upon completion of the capital improvements or*
15 *rehabilitation work, the landlord shall advise the tenant, in writing, and allow the tenant to reoccupy*
16 *the tenant's unit. The tenant shall have 30 days from receipt of the landlord's offer of reoccupancy to*
17 *notify the landlord of acceptance or rejection of the offer, and if accepted, the tenant shall reoccupy the*
18 *unit within 45 days of receipt of the landlord's offer. The landlord shall file a copy of the offer with the*
19 *Rent Board within 15 days of the offer.* ~~No certificate of final completion for the capital~~
20 ~~improvement or rehabilitation work under this Section 37.9(a)(11) shall be approved by the~~
21 ~~Department of Building Inspection unless and until the Board verifies to the Department of~~
22 ~~Building Inspection that the landlord has provided the tenant an offer to re-occupy the unit~~
23 ~~under this Section 37.9(a)(11); or~~

24 * * * *

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1 Section 4. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

5
6 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
7 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
8 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
9 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
10 additions, and Board amendment deletions in accordance with the "Note" that appears under
11 the official title of the ordinance.

12
13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15
16 By: _____
17 KEITH NAGAYAMA
18 Deputy City Attorney
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