

BOARD of SUPERVISORS



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MEMORANDUM

TO: Dan Adams, Acting Director, Mayor's Office of Housing and Community Development
Barbara Smith, Executive Director, Housing Authority
Robert Collins, Executive Director, Rent Board
Theo Miller, Director, HOPE SF
Jeff Kositsky, Director, Department of Homelessness and Supportive Housing

FROM: Victor Young, Assistant Clerk *Victor Young*
Rules Committee

DATE: November 6, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed substitute legislation on November 12, 2019:

File No. 191105

Ordinance amending the Administrative Code to apply eviction controls to units that are exempt from rent increase limitations because they first received a certificate of occupancy after June 13, 1979, or have undergone a substantial rehabilitation; clarifying the law's application to units with pending notices to vacate; extending the City's current residential rental unit fee to these units; making non-substantive, technical changes; and making findings as required by the Tenant Protection Act of 2019.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

c: Eugene Flannery, MOHCD
Cindy Game, Housing Authority
Dariush Kayhan, Housing Authority
Linda Martin-Mason, Housing Authority
Barbara Amaro, HOPE SF
Dylan Schneider, Department of Homelessness and Supportive Housing
Abigail Stewart-Kahn, Department of Homelessness and Supportive Housing

1 [Administrative Code - Extending Eviction Control to Units Constructed After 1979]

2
3 **Ordinance amending the Administrative Code to apply eviction controls to units that**
4 **are exempt from rent increase limitations because they first received a certificate of**
5 **occupancy after June 13, 1979, or have undergone a substantial rehabilitation;**
6 **clarifying the law's application to units with pending notices to vacate; extending the**
7 **City's current residential rental unit fee to these units; making non-substantive,**
8 **technical changes; and making findings as required by the Tenant Protection Act of**
9 **2019.**

10
11 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
12 **Additions to Codes** are in *single-underline italics Times New Roman font*.
13 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
14 **Board amendment additions** are in double-underlined Arial font.
15 **Board amendment deletions** are in ~~strikethrough Arial font~~.
16 **Asterisks (* * * *)** indicate the omission of unchanged Code
17 subsections or parts of tables.

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

19 Section 1. Findings.

20 (a) This ordinance is intended to bring units with a certificate of occupancy after June
21 13, 1979, under the eviction protections of the City's Residential Rent Stabilization and
22 Arbitration Ordinance (the "Rent Ordinance"). As compared to the Tenant Protection Act of
23 2019 (Assembly Bill No. 26 (Chiu), hereafter "AB 1482"), the Rent Ordinance further limits the
24 reasons for termination of a residential tenancy, provides for higher relocation assistance
25 amounts, and provides additional tenant protections. The Board of Supervisors therefore

1 finds that this ordinance is more protective than AB 1482, and intends that the Rent
2 Ordinance (as hereby amended) shall apply to these units rather than AB 1482.

3 (b) The eviction protections of the Rent Ordinance are intended to keep families with a
4 roof over their heads and are an important tool to combat the City's affordable housing crisis.
5 However, community members and tenant advocates have seen a sudden increase in no-
6 cause eviction notices to tenants living in units with a certificate of occupancy after June 13,
7 1979. In many cases, it appears these eviction notices were triggered by the adoption of AB
8 1482, and that these landlords are trying to evict simply in order to evade tenant protections
9 before they go into effect. Arbitrary evictions severely and irreparably harm tenants, and also
10 worsen the City's housing crisis, so there is an compelling need to ensure that the tenant
11 protections of the Rent Ordinance apply to these units.

12
13 Section 2. The Administrative Code is hereby amended by revising Sections 37.2,
14 37.3, 37.9A, 37.9D, 37.10A, and 37.10B, to read as follows:

15 **SEC. 37.2. DEFINITIONS.**

16 * * * *

17 (r) **Rental Units.** All residential dwelling units in the City and County of San Francisco
18 together with the land and appurtenant buildings thereto, and all housing services, privileges,
19 furnishings and facilities supplied in connection with the use or occupancy thereof, including
20 garage and parking facilities.

21 * * * *

22 The term "rental units" shall not include:

23 * * * *

24 (4) Except as provided in subsections (A), (B) and (C), dwelling units whose rents
25 are controlled or regulated by any government unit, agency or authority, excepting those

1 unsubsidized and/or unassisted units which are insured by the United States Department of
2 Housing and Urban Development; provided, however, that units in unreinforced masonry
3 buildings which have undergone seismic strengthening in accordance with Building Code
4 Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the
5 ordinance is not in conflict with the seismic strengthening bond program or with the program's
6 loan agreements or with any regulations promulgated thereunder;

7 * * * *

8 (C) The term "rental units" shall include units in a building for which tax credits are
9 reserved or obtained pursuant to the federal low income housing tax credit program (LIHTC,
10 Section 42 of the Internal Revenue Code, 26 U.S.C. Section 42), that satisfy the following
11 criteria:

12 (i) Where a tenant's occupancy of the unit began before the applicable LIHTC
13 regulatory agreement was recorded; and,

14 (ii) Where the rent is not controlled or regulated by any use restrictions
15 imposed by the City and County of San Francisco, the San Francisco Redevelopment
16 Agency, the State of California Office of Housing and Community Development, or the United
17 States Department of Housing and Urban Development.

18 Nothing in this Section 37.2(r)(4)(C) precludes a landlord from seeking an
19 exemption from rent regulation on the basis of substantial rehabilitation under Section
20 ~~37.2(r)(6)~~ 37.3(g).

21 * * * *

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

1 ~~development agreement entered into by the City under San Francisco Administrative Code Chapter 56;~~
2 ~~and (C) except as provided for foreclosed units and dwellings by Section 37.9D.~~

3 ~~—(6) Dwelling units in a building which has undergone substantial rehabilitation after the~~
4 ~~effective date of this ordinance; provided, however, that RAP rental units are not subject to this~~
5 ~~exemption; and except as provided for foreclosed units and dwellings by Section 37.9D.~~

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

10 * * * *

11
12 **SEC. 37.3. RENT LIMITATIONS.**

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

16 * * * *

17 **(g) New Construction and Substantial Rehabilitation.**

18 (1) An owner of a residential dwelling or unit which is newly constructed and first
19 received a certificate of occupancy after the effective date of Ordinance No. 276-79 (June 13, 1979), or
20 which the Rent Board has certified has undergone a substantial rehabilitation, may establish the initial
21 and all subsequent rental rates for that dwelling or unit, except:

22 (A) where rent restrictions apply to the dwelling or unit under Sections 37.3(d) or
23 37.3(f);

24 (B) where the dwelling or unit is a replacement unit under Section 37.9A(b);
25

1 (C) as provided for certain categories of Accessory Dwelling Units under Section
2 37.2(r)(4)(D); and

3 (D) as provided in a development agreement entered into by the City under
4 Administrative Code Chapter 56.

5
6 **SEC. 37.9A. TENANT RIGHTS IN CERTAIN DISPLACEMENTS UNDER SECTION**
7 **37.9(a)(13).**

8 This Section 37.9A applies to certain tenant displacements under Section 37.9(a)(13),
9 as specified.

10 * * * *

11 (b) **Treatment of Replacement Units.** If one or more units covered by Subsection (a)
12 is demolished, and one or more new units qualifying as rental units under this Chapter but for
13 the date on which they first receive a certificate of final completion and occupancy are
14 constructed on the same property, and offered for rent or lease within five years of the date
15 the last of the original units became vacant, the newly constructed units shall be offered at
16 rents not greater than those reasonably calculated to produce a fair and reasonable return on
17 the newly constructed units, notwithstanding Section ~~37.2(r)(5)~~ 37.3(g) or any other provision of
18 this Chapter. The provisions of this Chapter shall thereafter apply. The Board shall adopt rules
19 for determining the rents necessary to provide a fair and reasonable return.

20 * * * *

21
22 **SEC. 37.9D. FORECLOSURE EVICTIONS.**

23 * * * *

24 (b) Any residential tenant who was in possession of a rental unit at the time of
25 foreclosure, ~~where that dwelling or unit is otherwise exempted from the eviction control provisions of~~

1 ~~Chapter 37 by Sections 37.2(r)(5), (6) or (7)~~, may not be evicted by the person or entity who took
2 title through foreclosure (see Section 37.9D(a)), except for just cause as provided in Section
3 37.9 and related provisions of Chapter 37, or at the end of the tenant's existing lease,
4 whichever occurs later.

5 * * * *

6
7 **SEC. 37.10A. MISDEMEANORS, AND OTHER ENFORCEMENT PROVISIONS.**

8 * * * *

9 (i) It shall be unlawful for a landlord to endeavor to recover possession of a rental unit
10 that is exempt from rent increase limitations under Section 37.3(d) or Section 37.3(g) as defined in
11 Section 37.2(r)(7) by means of a rent increase that is imposed in bad faith with an intent to
12 defraud, intimidate, or coerce the tenant into vacating the rental unit in circumvention of
13 Section 37.9(a), 37.9A, 37.9B, or 37.9C. Evidence of bad faith may include but is not limited to
14 the following: (1) the rent increase was substantially in excess of market rates for comparable
15 units; (2) the rent increase was within six months after an attempt to recover possession of the
16 unit; and (3) such other factors as a court or the Rent Board may deem relevant.

17 * * * *

18
19 **SEC. 37.10B. TENANT HARASSMENT.**

20 (a) No landlord, and no agent, contractor, subcontractor or employee of the landlord,
21 shall do any of the following, in bad faith or with ulterior motive or without honest intent:

22 * * * *

23 (5) Influence or attempt to influence a tenant to vacate a rental housing unit
24 through fraud, intimidation or coercion; for example and without limitation, by endeavoring to
25 recover possession of a rental unit that is exempt from rent increase limitations under Section

1 ~~37.3(d) or Section 37.3(g) as defined in Section 37.2(r)(7)~~ by means of a rent increase that is
2 imposed with an intent to defraud, intimidate, or coerce the tenant into vacating the rental unit
3 in circumvention of Section 37.9(a), 37.9A, 37.9B, or 37.9C, in which case evidence of bad
4 faith may include but is not limited to the following: (1) the rent increase was substantially in
5 excess of market rates for comparable units; (2) the rent increase was within six months after
6 an attempt to recover possession of the unit; and (3) such other factors as a court or the Rent
7 Board may deem relevant.

8 * * * *

9
10 Section 3. The Administrative Code is hereby amended by revising Section 37A.1, to
11 read as follows:

12 **SEC. 37A.1. SCOPE.**

13 This Chapter is applicable to all residential units in the City and County of San
14 Francisco, including residential units which are exempt from the rent increase limitation
15 provisions (but not other provisions) of Chapter 37 pursuant to the Costa-Hawkins Rental
16 Housing Act (Civil Code §§ 1954.50. et seq.) and/or San Francisco Administrative Code
17 Section 37.3(d). For purposes of this Chapter, "residential units" are dwelling units and guest
18 rooms as those terms are defined in Sections 400 and 401 of the San Francisco Housing
19 Code. The term shall not include:

20 * * * *

21 (f) Any dwelling unit which is occupied by an owner of record on either a full-time or
22 part-time basis and which is not rented at any time, provided that the owner file with the Tax
23 Collector an affidavit so stating;

24 ~~(g) Dwelling units located in a structure for which a certificate of final completion and~~
25 ~~occupancy was first issued by the Bureau of Building Inspection after June 13, 1979, except that any~~

1 ~~such units shall be subject to this Chapter 37A if so designated in a development agreement entered~~
2 ~~into by the City under Chapter 56 of the San Francisco Administrative Code;~~

3 ~~(h) Dwelling units in a building which, after June 13, 1979, has undergone substantial~~
4 ~~rehabilitation as that term is defined in Chapter 37 of this Code.~~

5
6 Section 4. Effective Date. This ordinance shall become effective 30 days after
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
8 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
9 of Supervisors overrides the Mayor's veto of the ordinance.


10
11 Section 5. Applicability. The provisions of Section 2 of this ordinance that extend just
12 cause requirements to dwelling units that were previously exempt from such requirements
13 under Administrative Code Sections 37.2(r)(5) and 37.2(r)(6) are intended to apply as of the
14 ordinance's effective date to all such units, including those units where a notice to vacate or
15 quit has been served as of the effective date but where the unit has not yet been vacated or
16 an unlawful detainer has not yet been issued. The sole intent is to regulate the substantive
17 bases for eviction from these units. This ordinance shall not be construed as having any
18 effect on the unlawful detainer process, or as affecting the validity of a notice to vacate or quit
19 that a landlord may have served prior to the effective date, or as giving a tenant a procedural
20 defense in an unlawful detainer proceeding.

21
22 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
23 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
24 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
25 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

1 additions, and Board amendment deletions in accordance with the "Note" that appears under
2 the official title of the ordinance.

3
4 Section 7. Severability. If any section, subsection, sentence, clause, phrase, or word
5 of this ordinance, or any application thereof to any person or circumstance, is held to be
6 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
7 shall not affect the validity of the remaining portions or applications of the ordinance. The
8 Board of Supervisors hereby declares that it would have passed this ordinance and each and
9 every section, subsection, sentence, clause, phrase, and word not declared invalid or
10 unconstitutional without regard to whether any other portion of this ordinance or application
11 thereof would be subsequently declared invalid or unconstitutional.

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

15 By: 
16 MANU PRADHAN
17 Deputy City Attorney
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