1   [Administrative, Municipal Elections Codes - General Obligation Bond Passthroughs]

2

3   **Ordinance amending the Administrative Code to provide that the general obligation**

4   **bond passthrough from landlords to tenants shall be calculated based on the amount**

5   **the property tax rate has increased due to general obligation bonds since the tenant's**

6   **move-in date or 2005, whichever is later; and to allow tenants to seek relief from**

7   **general obligation bond passthroughs based on financial hardship.**

8

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

13

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

15

16   Section 1. Purpose and Findings.

17   (a) City law allows landlords to pass through to residential tenants a portion of any

18   property tax increases that result from the issuance of certain types of general obligation

19   bonds. The purpose of this law has been to reflect a compromise that landlords and tenants

20   should equally share the burden of any property tax increases that result from the issuance of

21   these bonds. And so, except in cases involving certain older general obligation bonds, the

22   general rule is that landlords may pass through to tenants up to 50% of the change in property

23   taxes that landlords may pay as a result of the bonds.

24   (b) Since approximately 2006, the City has followed a general obligation bond debt

25   management policy that seeks to prevent City general obligation bonds from resulting in an

1   increase to the property tax rate from the prior year. By and large this policy has achieved

2   that aim, and yet, the City has been authorizing passthroughs based on the costs of individual

3   bonds in isolation and without regard to the policy and whether those bond issuances actually

4   resulted in any property tax increase. If landlords and tenants are to share the burden of

5   property tax increases that result from general obligation bond debt, so too should they

6   equally benefit from the City's debt management policies.

7   (c)   A further issue is that because landlords have the right to set the initial rent at the

8   start of a new tenancy, landlords already have the opportunity when they set the rent to cover

9   their existing property tax costs. If these costs are priced into the starting rent, then allowing a

10 passthrough of these costs creates a potential for double recovery, and moreover the City's

11 debt management policy has helped keep the property tax rate relatively stable despite

12 subsequent bonds. As a result, it is fair and consistent with the purpose of the passthrough

13 for the passthrough to only cover property tax increases that arose after the tenant's move-in

14 due to general obligation bonds, which are not already included in the rent. In the case of

15 tenants who moved in before the City adopted its debt management policy, it is appropriate to

16 measure the change in property tax rate relative to the property tax rate in 2005.

17   (d)   The City's failure to account for these factors has led to a growing and unintended

18 disparity. As noted above, the intent of the general obligation bond passthrough was to allow

19 landlords to pass through up to 50% of any increases in the property tax rate that resulted

20 from the bonds. But since 2005-2006, the portion of the property tax rate that corresponds to

21 these bonds has risen about 18%, compared to a 216% increase in the tenant passthrough

22 rate. And the passthrough rates consider bonds whose costs may already have been priced

23 into a tenant's starting rent, in any event.

24   (e)   For the foregoing reasons, the Board of Supervisors finds it is necessary and in

25 the public interest to update the Rent Ordinance to ensure it reflects the reality of the City's

1 debt management policy and the true intent of the general obligation bond passthrough. To

2 ensure fairness, the Board finds that this update should occur prospectively as of July 1,

3 2024, without affecting or impairing the validity of any passthroughs imposed prior to that

4 date.

5

6   Section 2. Article VII of Chapter 2 of the Administrative Code is hereby amended by

7 revising Section 2.40, to read as follows:

8   **SEC. 2.40. INCLUSION OF LANDLORD PASSTHROUGH LANGUAGE.**

9   Any proposal for bonded indebtedness submitted pursuant to this Article _VII_ shall

10 include, as a provision of the ordinance submitting such proposal to the voters, language

11 incorporating and authorizing the ~~50 percent~~ passthrough of the change in a landlord's property

12 tax resulting from the repayment of such indebtedness as provided in Administrative Code

13 Section 37.3(a)(6).

14   * * * *

15

16   Section 3. Article V of the Municipal Elections Code is hereby amended by revising

17 Section 520, to read as follows:

18   **SEC. 520. CONTROLLER'S FINANCIAL ANALYSIS.**

19   (a)   The Controller shall prepare an impartial financial analysis of each measure

20 submitted to the voters. The Controller's financial analysis shall include the amount of any

21 increase or decrease in the cost of City and County government. The Controller's financial

22 analysis shall also include the effect of the measure upon the tax rate.

23   For any general obligation bond measure placed on the ballot, the Controller's

24 financial analysis shall include an explanation of the City's legal debt limit, as well as the

25 impact of the proposed bond measure on that limit. The Controller's financial analysis for a

1 general obligation bond measure placed on the ballot, including general obligation bond

2 measures submitted by the San Francisco Unified School District or San Francisco

3 Community College District, also shall include an explanation of the ~~50 percent~~ passthrough of

4 the change in a landlord's property tax resulting from the repayment of such indebtedness

5 provided in Administrative Code Section 37.3(a)(6), and an *explanation*~~estimate~~ of the impact of

6 that passthrough *as it relates to*~~under~~ the proposed bond measure.

7   * * * *

8

9   Section 4. Chapter 37 of the Administrative Code is hereby amended by revising

10 Sections 37.2. and 37.3, to read as follows:

11   **SEC. 37.2. DEFINITIONS.**

12   * * * *

13   (q) **Rent Increases.** Any additional monies demanded or paid for rent as defined in

14 item (p) above, or any reduction in housing services without a corresponding reduction in the

15 monies demanded or paid for rent; provided, however, that *passthroughs of the following cost*

16 *increases* pursuant to this Chapter 37 *do not constitute rent increases*: (1) where the landlord has

17 been paying the tenant's utilities and the cost of those utilities increases, ~~*the landlord's passing*~~

18 ~~*through to the tenant of such increased costs pursuant to this Chapter does not constitute a rent*~~

19 ~~*increase*~~; (2) where *the landlord is passing through to the tenant the* ~~there has been a~~ change in the

20 landlord's property tax attributable to a general obligation bond ~~*approved by the voters between*~~

21 ~~*November 1, 1996 and November 30, 1998, or after November 14, 2002, the landlord's passing through*~~

22 ~~*to the tenant of such increased costs*~~ in accordance with ~~*this Chapter (see as*~~ Section 37.3(a)(6)~~*)*~~

23 ~~*does not constitute a rent increase; (3) where there has been a change in the landlord's property tax*~~

24 ~~*attributable to a San Francisco Unified School District or San Francisco Community College District*~~

25 ~~*general obligation bond approved by the voters after November 1, 2006, the landlord's passing through*~~

1 *to the tenant of such increased costs in accordance with this Chapter (see Section 37.3(a)(6)) does not*

2 *constitute a rent increase; and, (4)*; and (3) where the landlord is passing through to the tenant *where*

3 *water bill charges are attributable to* water rate increases resulting from issuance of water

4 revenue bonds authorized at the November 5, 2002 election*, the landlord's passing through to*

5 *the tenant of such increased costs* in accordance with *this Chapter (see* Section 37.3(a)(5)(B)*) does*

6 *not constitute a rent increase*.

7   * * * *

8

9 **SEC. 37.3. RENT LIMITATIONS.**

10   (a)   **Rent Increase Limitations for Tenants in Occupancy.** Landlords may impose

11 rent increases upon tenants in occupancy only as provided below and as provided by

12 subsections 37.3(d) and 37.3(g):

13   * * * *

14   (6)   **Property Tax.**

15   *(A) Effective July 1, 2024, a*A landlord may impose increases based upon a

16 100% passthrough of the change in the landlord's property tax resulting from the repayment of

17 general obligation bonds of the City and County of San Francisco approved by the voters

18 between November 1, 1996, and November 30, 1998*; a 50% passthrough of the change in the*

19 *landlord's property tax resulting from the repayment of general obligation bonds of the City and*

20 *County of San Francisco approved by the voters after November 14, 2002; and* as provided in Section

21 *37.2(q)*.

22   *A landlord may impose increases based upon* a 50% passthrough of the change in the

23 landlord's property tax resulting from the repayment of San Francisco Unified School District

24 or San Francisco Community College District general obligation bonds approved by the voters

25 after November 1, 2006. *General obligation bonds that meet the criteria set forth in the previous*

1 *sentence are referred to herein as "Eligible Bonds;" provided, however, that a general obligation bond*

2 *approved after December 20, 2000 may qualify as an Eligible Bond only if the passthrough was*

3 *disclosed and approved by the voters. The City and County of San Francisco, San Francisco Unified*

4 *School District, and San Francisco Community College District are referred to collectively as "the*

5 *Issuing Entities."*

6 *To pass through the change in property tax resulting from the repayment of Eligible Bonds, the*

7 *landlord shall calculate said change relative to the amount that the property tax rate increased due to*

8 *the repayment of Eligible Bonds since each tenancy commenced, or 2005, whichever is later ("the Base*

9 *Year"), as set forth in subsection (a)(6)(B). ~~The amount of such increases shall be determined for each~~*

10 *~~tax year as follows:~~*

11 *(B)~~(A)~~* The Controller ~~and the Board of Supervisors~~ will *first* determine the

12 percentage of the property tax rate, if any, ~~in each tax year~~ attributable to ~~the~~ general obligation

13 bonds *of any of the Issuing Entities ("the General Obligation Bond Factor") for each~~and repayable~~*

14 *~~within such~~* tax year. *The passthrough rate for an individual tenant (the "Tenant Passthrough Rate")*

15 *shall be based on the amount that the General Obligation Bond Factor for the current year has*

16 *increased since the tenant's Base Year; and the degree to which said increase, if any, is attributable to*

17 *Eligible Bonds, as measured by the ratio of debt service for the Eligible Bonds compared to the total*

18 *debt service attributable to general obligation bonds of the Issuing Entities. The resulting figure shall*

19 *then be discounted to reflect the specific percentage passthroughs for each of the Eligible Bonds as*

20 *specified in subsection (A). The Controller shall prepare and annually update a form to help landlords*

21 *and tenants calculate the Tenant Passthrough Rates. The Controller's authority to interpret and*

22 *administer this calculation shall be liberally construed to further the purposes of this subsection (a)(6).*

23 *(C)~~(B)~~*   *To calculate the amount of increased property tax that the landlord*

24 *can pass through to a tenant in any given year, the landlord shall divide ~~This percentage shall be~~*

25 *~~multiplied by~~* the total amount of the net taxable value as of November 1 of the applicable tax

1   year *by the total number of all units in the property, including commercial units; and shall multiply the*

2   *resulting figure by the applicable Tenant Passthrough Rate*. The result is the dollar amount of

3   *increased* property taxes for that tax year for a particular property attributable to the repayment

4   of *the general obligation bonds Eligible Bonds that the landlord may pass through to the tenant*.

5   *(D)(C)* The dollar amount calculated under subsection (a)(6)*(C)(B) shall*

6   *be divided by the total number of all units in each property, including commercial units. That figure*

7   *shall also be discounted to reflect the percentage passthrough that the voters authorized, as applicable:*

8   *specifically, in the case of the 50% passthroughs authorized for general obligation bonds of the City*

9   *and County of San Francisco approved by the voters after November 14, 2002 and general obligation*

10   *bonds of the San Francisco Unified School District or San Francisco Community College District*

11   *approved by the voters after November 1, 2006, the figure shall be divided by two. The figure* shall

12   then be divided by the total number of months that the passthrough may apply pursuant to

13   subsection (a)(6)*(E)(D)*(i), to determine the monthly per unit costs for that tax year of the

14   repayment of general obligation bonds.

15   *(E)(D)* Landlords may pass through to each unit in a particular property

16   the dollar amount calculated under subsections (a)(6)(A)*-(D), (B), and (C)*, as provided in this

17   subsection (a)(6)*(E)(D)*.

18   (i) *If a passthrough is imposed on or before December 31, 2020, it shall*

19   *apply only for the 12-month period after it is imposed. Starting January 1, 2021, a*All passthroughs

20   shall apply for the same number of months covered by the property tax bills used in the

21   passthrough calculation, and the calculation may not be based on tax bills issued more than

22   three years prior to the year in which the passthrough was imposed.

23   (ii) The landlord shall give affected tenants notice of the

24   passthrough as provided by applicable notice of rent increase provisions of this Chapter 37,

25   including but not limited to Section 37.3(b)(3). The passthroughs may be imposed at any time

1 in the calendar year, provided that the landlord serves notice of such passthrough to be

2 effective on the anniversary date of each tenant's occupancy of the property. The

3 passthroughs shall not become a part of a tenant's base rent. The amount of each

4 passthrough imposed pursuant to this subsection (a)(6) may vary from year-to-year,

5 depending on the amount calculated _by the Controller_~~under subsections (a)(6)(A), (B), and (C)~~. A

6 landlord may impose the passthroughs described in this subsection (a)(6) for a particular tax

7 year only with respect to those tenants who were residents of a particular property on

8 November 1 of the applicable tax year. A landlord shall not impose a passthrough pursuant to

9 this subsection (a)(6) if the landlord has filed for or received Board approval for a rent

10 increase under Section 37.8(e)(4) for increased operating and maintenance expenses in

11 which the same increase in property taxes due to the repayment of general obligation bonds

12 was included in the comparison year cost totals.

13   _(F)_~~(E)~~   A tenant who has received a passthrough under this subsection

14 (a)(6) may file a financial hardship application with the Board, and the Board may grant the

15 tenant complete or partial relief from ~~that part of~~ the passthrough ~~that is attributable to general~~

16 ~~obligation bonds approved by the voters on or after November 5, 2019~~. The standards and

17 procedures for the financial hardship application shall be as set forth in Sections 37.7(h)-(i).

18   _(G)_~~(F)~~   The Board will have available a form which explains how to

19 calculate the passthrough. Landlords must provide to tenants, on or before the date that

20 notice is served on the tenant of a passthrough permitted under this subsection (a)(6), a copy

21 of the completed form. _Landlords shall provide their tenants the_ ~~This~~ completed form_s_ ~~shall be~~

22 ~~provided~~ in addition to the Notice of Rent Increase required under Section 37.3(b)_, and shall file_

23 _copies of the completed forms with the Board_. Where a tenant alleges that a landlord has imposed

24 a charge which exceeds the limitations set forth in this subsection (a)(6), the tenant may

25 petition for a hearing under the procedures provided by Section 37.8. In such a hearing, the

1   landlord shall have the burden of proving the accuracy of the calculation that is the basis for

2   the increase. Any tenant petitions challenging such a passthrough must be filed within one

3   year of the effective date of the passthrough.

4   *(H)(G)* The Board *and the Controller* may amend *their*~~its~~ rules and

5   regulations as necessary to implement this *S*subsection (a)(6).

6   * * * *

7

8   Section 5. Effective and Operative Dates.

9   (a) This ordinance shall become effective 30 days after enactment. Enactment occurs

10   when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not

11   sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the

12   Mayor's veto of the ordinance.

13   (b) This ordinance shall become operative on its effective date or on July 1, 2024,

14   whichever is later.

15

16   Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors

17   intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

18   numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

19   Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

20   additions, and Board amendment deletions in accordance with the "Note" that appears under

21   the official title of the ordinance.

22

23   Section 7. Severability. If any section, subsection, sentence, clause, phrase, or word of

24   this ordinance, or any application thereof to any person or circumstance, is held to be invalid

25   or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not

1   affect the validity of the remaining portions or applications of the ordinance. The Board of

2   Supervisors hereby declares that it would have passed this ordinance and each and every

3   section, subsection, sentence, clause, phrase, and word not declared invalid or

4   unconstitutional without regard to whether any other portion of this ordinance or application

5   thereof would be subsequently declared invalid or unconstitutional

6

7   APPROVED AS TO FORM:
DAVID CHIU, City Attorney

8

9   By: /s/ _____
MANU PRADHAN

10   Deputy City Attorney

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