

BOARD of SUPERVISORS



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MEMORANDUM

TO: Robert Collins, Executive Director, Rent Board
Olson Lee, Director, Mayor's Office of Housing and Community
Development
Nadia Sesay, Interim Executive Director, Office of Community Investment
and Infrastructure

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: June 16, 2017

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following substitute legislation, introduced by Supervisor Peskin on June 13, 2017:

File No. 170417-3

Ordinance amending the Administrative Code regarding owner and relative move-in ("OMI") evictions to require a landlord seeking to recover possession of a unit for an OMI to provide the tenant with an approved form to advise the Rent Board of address changes; clarify the evidentiary standard for finding that an OMI was performed in good faith; require a landlord to file documentation with the Rent Board regarding the status of the OMI, with a penalty for not filing such documentation, and requiring the Rent Board to transmit a random sampling of such documentation to the District Attorney; extend from three to five years the time period after an OMI during which a landlord who intends to re-rent the unit must first offer the unit to the displaced tenant; authorize a tenant who has been charged excess rent within five years after an OMI to sue for treble damages; as to matters not limited to OMI evictions, provide that a landlord's failure to timely file a copy of the notice to vacate with the Rent Board is a defense in an unlawful detainer proceeding; provide that a tenant waiver of rights in a buyout agreement is not enforceable if the buyout is not timely filed with the Rent Board; extend from one to three years the statute of limitations for wrongful eviction claims; authorize interested non-profit organizations to sue for wrongful eviction and collection of excess rent; and making clarifying changes.

Referral from the Clerk of the Board
File No. 170417-3
Page 2

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: erica.major@sfgov.org.

c: Eugene Flannery, Mayor's Office of Housing and Community Development
Kate Hartley, Mayor's Office of Housing and Community Development
Amy Chan, Mayor's Office of Housing and Community Development

1 [Administrative Code - Owner Move-In Evictions and Other Landlord-Tenant Matters]

2
3 **Ordinance amending the Administrative Code regarding owner and relative move-in**
4 **("OMI") evictions to require a landlord seeking to recover possession of a unit for an**
5 **OMI to provide the tenant with an approved form to advise the Rent Board of address**
6 **changes; clarify the evidentiary standard for finding that an OMI was performed in**
7 **good faith; require a landlord to file documentation with the Rent Board regarding the**
8 **status of the OMI, with a penalty for not filing such documentation, and requiring the**
9 **Rent Board to transmit a random sampling of such documentation to the District**
10 **Attorney; extend from three to five years the time period after an OMI during which a**
11 **landlord who intends to re-rent the unit must first offer the unit to the displaced tenant;**
12 **and authorize a tenant who has been charged excess rent within five years after an OMI**
13 **to sue for treble damages; and, as to matters not limited to OMI evictions, provide that**
14 **a landlord's failure to timely file a copy of the notice to vacate with the Rent Board is a**
15 **defense in an unlawful detainer proceeding; provide that a tenant waiver of rights in a**
16 **buyout agreement is not enforceable if the buyout is not timely filed with the Rent**
17 **Board; extend from one to three years the statute of limitations for wrongful eviction**
18 **claims; and authorize interested non-profit organizations to sue for wrongful eviction**
19 **and collection of excess rent; and making clarifying changes.**

20
21 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
22 **Additions to Codes** are in *single-underline italics Times New Roman font*.
23 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
24 **Board amendment additions** are in double-underlined Arial font.
25 **Board amendment deletions** are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

2
3 Section 1. The Administrative Code is hereby amended by revising Sections 37.6,
4 37.9, 37.9B, 37.9E, 37.10A, and 37.11A, to read as follows:

5
6 **SEC. 37.6. POWERS AND DUTIES.**

7 In addition to other powers and duties set forth in this Chapter, and in addition to
8 powers under the Charter and under other City Codes, including powers and duties under
9 Administrative Code Chapter 49 ("Interest Rates on Security Deposits"), the Rent Board shall
10 have the power to:

11 * * * *

12 (k) ~~Compile a list at random, or~~ On a monthly basis starting January 1, 2018, compile copies
13 at random of 10% percent of the all statements of occupancy filed with the Rent Board pursuant to
14 Section 37.9(a)(8)(vii), and compile a list of all units for which the required statement of occupancy
15 was not filed with the Rent Board notices to vacate filed pursuant to Section 37.9(c) which state on the
16 notice or in any additional written document any causes under Section 37.9(a)(8) as the reason for
17 eviction. Said copies and said list shall be transmitted to the District Attorney on a monthly basis
18 for investigation ~~pursuant to Section 37.9(e).~~ In cases where the District Attorney determines that
19 Section 37.9(a)(8) has been violated, the District Attorney shall take whatever action he or she deems
20 appropriate under this Chapter 37 or under State law.

21 * * * *

22
23 **SEC. 37.9. EVICTIONS**

24 Notwithstanding Section 37.3, this Section 37.9 shall apply as of August 24, 1980, to all
25 landlords and tenants of rental units as defined in Section 37.2(r).

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

2 * * * *

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

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

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

14 * * * *

15 (v) Commencing January 1, 2018, the landlord shall attach to the notice to vacate a form
16 prepared by the Rent Board that the tenant can use to keep the Rent Board apprised of any future
17 change in address. It shall be rebuttably presumed that the landlord has not acted in good faith if
18 Evidence that the landlord has not acted in good faith may include, but is not limited to, any of the
19 following: (1) the landlord or relative for whom the tenant was evicted ~~did~~ does not move into
20 the rental unit within three months after the landlord recovered possession and then occupy said
21 unit as that person's principal residence for a minimum of 36 consecutive months., (2) the
22 landlord or relative for whom the tenant was evicted lacks a legitimate, bona fide reason for not
23 moving into the unit within three months after the recovery of possession and/or then occupying said
24 unit as that person's principal residence for a minimum of 36 consecutive months, (3) the landlord did
25 not file a statement of occupancy with the Rent Board as required by Section 37.9(a)(8)(vii), (4) the

1 landlord violated Section 37.9B by renting the unit to a new tenant at a rent greater than that which
2 would have been the rent had the original tenant remained in continuous occupancy and the rental unit
3 remained subject to this Chapter, and (5) such other factors as a court or the Rent Board may deem
4 relevant.

5 * * * *

6 (vii) A landlord who has served a notice to vacate based on Section 37.9(a)(8) on or
7 after January 1, 2018 must complete a statement of occupancy under penalty of perjury on a form to be
8 prepared by the Rent Board that discloses whether the landlord has recovered possession of the unit.
9 The landlord shall file the statement of occupancy with the Rent Board within 90 days after the date of
10 service, and shall file an updated statement of occupancy every 90 days thereafter, unless the statement
11 of occupancy discloses that the landlord is no longer endeavoring to recover possession of the unit, in
12 which case no further statements of occupancy need be filed. If the statement of occupancy discloses
13 that the landlord has already recovered possession of the unit, the landlord shall file updated
14 statements of occupancy once a year for five years, no later than 12 months, 24 months, 36 months, 48
15 months, and 60 months after the recovery of possession of the unit. Each statement of occupancy filed
16 after the landlord has recovered possession of the unit shall disclose the date of recovery of possession,
17 the number of consecutive months that the landlord or relative for whom the tenant was evicted has
18 been occupying the unit as that person's principal residence, the date such occupancy commenced (or
19 alternatively, the reasons why occupancy has not yet commenced), the rent charged for the unit if any,
20 and such other information and documentation as the Rent Board may require in order to effectuate the
21 purposes of this Section 37.9(a)(8). The Rent Board shall make all reasonable efforts to send the
22 displaced tenant a copy of each statement of occupancy within 30 days of the date of filing, or a notice
23 that the landlord did not file a statement of occupancy if no statement of occupancy was filed. In
24 addition, the Rent Board shall impose an administrative penalty on any landlord who fails to comply
25 with this subsection (a)(8)(vii), in the amount of \$500 for the first violation and \$1,000 for every

1 subsequent violation. The procedure for the imposition, enforcement, collection, and administrative
2 review of the administrative penalty shall be governed by Administrative Code Chapter 100,
3 "Procedures Governing the Imposition of Administrative Fines," which is hereby incorporated in its
4 entirety.

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

9 * * * *

10 (c) A landlord shall not endeavor to recover possession of a rental unit unless at
11 least one of the grounds enumerated in Section 37.9(a) or (b) above is (1) the landlord's
12 dominant motive for recovering possession and (2) unless the landlord informs the tenant in
13 writing on or before the date upon which notice to vacate is given of the grounds under which
14 possession is sought, and for notices to vacate under Sections 37.9(a)(8), (9), (10), (11), and
15 (14), state in the notice to vacate the lawful rent for the unit at the time the notice is issued,
16 before endeavoring to recover possession. The Board shall prepare a written form that (1)
17 states that a tenant's failure to timely act in response to a notice to vacate may result in a
18 lawsuit by the landlord to evict the tenant, and that advice regarding the notice to vacate is
19 available from the Board; and (2) includes information provided by the Mayor's Office of
20 Housing and Community Development regarding eligibility for affordable housing programs.
21 The Board shall prepare the form in English, Chinese, Spanish, Vietnamese, Tagalog, and
22 Russian and make the form available to the public on its website and in its office. A landlord
23 shall attach a copy of the form that is in the primary language of the tenant to a notice to
24 vacate before serving the notice, except that if the tenant's primary language is not English,
25 Chinese, Spanish, Vietnamese, Tagalog, or Russian, the landlord shall attach a copy of the

1 form that is in English to the notice. A copy of all notices to vacate except three-day notices to
2 ~~vacate or~~ pay rent or quit and a copy of any additional written documents informing the tenant
3 of the grounds under which possession is sought shall be filed with the Board within 10 days
4 following service of the notice to vacate. Failure to file such notice with the Rent Board within 10
5 days of service shall be a defense to any unlawful detainer action. The District Attorney shall
6 determine whether the units set forth on the list compiled in accordance with Section 37.6(k) are still
7 being occupied by the tenant who succeeded the tenant upon whom the notice was served. In cases
8 where the District Attorney determines that Section 37.9(a)(8) has been violated, the District Attorney
9 shall take whatever action he deems appropriate under this Chapter or under State law. In any action
10 to recover possession of the rental unit under Section 37.9, the landlord must plead and prove
11 that at least one of the grounds enumerated in Section 37.9(a) or (b) and also stated in the
12 notice to vacate is the dominant motive for recovering possession. Tenants may rebut the
13 allegation that any of the grounds stated in the notice to vacate is the dominant motive.

14 * * * *

15 (f) Whenever a landlord wrongfully endeavors to recover possession or recovers
16 possession of a rental unit in violation of Sections 37.9 and/or 37.10A as enacted herein, the
17 tenant, or the Rent Board, may institute a civil proceeding for injunctive relief, money damages
18 of not less than three times actual damages, (including damages for mental or emotional
19 distress as specified below), and whatever other relief the court deems appropriate. Such action
20 shall be commenced within three years after the plaintiff knew, or through the exercise of reasonable
21 diligence should have known, of the facts constituting the violation. In the case of an award of
22 damages for mental or emotional distress, said award shall only be trebled if the trier of fact
23 finds that the landlord acted in knowing violation of or in reckless disregard of Section 37.9 or
24 37.10A herein. The prevailing party shall be entitled to reasonable attorney's fees and costs

1 pursuant to order of the court. The remedy available under this Section 37.9(f) shall be in
2 addition to any other existing remedies which may be available ~~to the tenant or the Board.~~

3 * * * *

4
5 **SEC. 37.9B. TENANT RIGHTS IN EVICTIONS UNDER SECTION 37.9(a)(8).**

6 (a) Any rental unit which a tenant vacates after receiving a notice to quit based on
7 Section 37.9(a)(8), and which is subsequently no longer occupied as a principal residence by
8 the landlord or the landlord's grandparent, parent, child, grandchild, brother, sister, or the
9 landlord's spouse, or the spouses of such relations must, if offered for rent during the ~~five~~^{three}-
10 year period following service of the notice to quit under Section 37.9(a)(8), be rented in good
11 faith at a rent not greater than that which would have been the rent had the tenant who had
12 been required to vacate remained in continuous occupancy and the rental unit remained
13 subject to this Chapter 37. If it is asserted that a rent increase could have taken place during
14 the occupancy of the rental unit by the landlord if the rental unit had been subjected to this
15 Chapter, the landlord shall bear the burden of proving that the rent could have been legally
16 increased during the period. If it is asserted that the increase is based in whole or in part upon
17 any grounds other than that set forth in Section 37.3(a)(1), the landlord must petition the Rent
18 Board pursuant to the procedures of this Chapter. Displaced tenants shall be entitled to
19 participate in and present evidence at any hearing held on such a petition. Tenants displaced
20 pursuant to Section 37.9(a)(8) shall make all reasonable efforts to keep the Rent Board
21 apprised of their current address. The Rent Board shall provide notice of any proceedings
22 before the Rent Board to the displaced tenant at the last address provided by the tenant. No
23 increase shall be allowed on account of any expense incurred in connection with the
24 displacement of the tenant.

1 (b) (1) For notices to vacate served before January 1, 2018, any ~~Any~~ landlord who, within
2 three years of the date of service of the notice to quit, offers for rent or lease any unit in which
3 the possession was recovered pursuant to Section 37.9(a)(8) shall first offer the unit for rent
4 or lease to the tenants displaced, in the same manner as provided for in Sections 37.9A(c)
5 and (d).

6 (2) For notices to vacate served on or after January 1, 2018, any landlord who, within five
7 years of the date of service of the notice to quit, offers for rent or lease any unit in which the possession
8 was recovered pursuant to Section 37.9(a)(8) shall first offer the unit for rent or lease to the tenants
9 displaced, by mailing a written offer to the address that the tenant has provided to the landlord. If the
10 tenant has not provided the landlord a mailing address, the landlord shall mail the offer to the address
11 on file with the Rent Board, and if the Rent Board does not have an address on file, then to the unit
12 from which the tenant was displaced and to any other physical or electronic address of the tenant of
13 which the landlord has actual knowledge. The landlord shall file a copy of the offer with the Rent
14 Board within 15 days of the offer. The tenant shall have 30 days from receipt of the offer to notify the
15 landlord of acceptance or rejection of the offer and, if accepted, shall reoccupy the unit within 45 days
16 of receipt of the offer.

17 * * * *

18 (e) Within 30 days after the effective date of a written notice to vacate that is filed with
19 the Rent Board under Section 37.9B(c) the Rent Board shall record a notice of constraints with
20 the County Recorder identifying each unit on the property that is the subject of the Section
21 37.9B(c) notice to vacate, stating the nature and dates of applicable restrictions under
22 Sections 37.9(a)(8) and 37.9B. For notices to vacate filed under Section 37.9B(c) on or after
23 January 1, 2018, the Rent Board shall send a notice to the unit 30 days after the effective date of the
24 notice to vacate that states the maximum rent for that unit under Sections 37.9(a)(8) and 37.9B, and
25 shall send an updated notice to the unit 12 months, 24 months, 36 months, 48 months, and 60 months

1 thereafter, or within 30 days of such date. If a notice of constraints is recorded but the tenant
2 does not vacate the unit, the landlord may apply to the Rent Board for a rescission of the
3 recorded notice of constraints. The Rent Board shall not be required to send any further notices to
4 the unit pursuant to this subsection (e) if the notice of constraints on the unit is rescinded.

5
6 **SEC. 37.9E. TENANT BUYOUT AGREEMENTS.**

7 * * * *

8 (h) **Filing of Buyout Agreements.** The landlord shall file a copy of the Buyout
9 Agreement with the Rent Board no sooner than the 46th day after the Buyout Agreement is
10 executed by all parties, and no more than 59 days after the agreement is executed by all
11 parties. Any waiver of rights by a tenant in a Buyout Agreement executed on or after January 1, 2018,
12 that is not filed with the Rent Board within 59 days after execution shall not be enforceable. Buyout
13 agreements rescinded under subsection (g) need not be filed with the Rent Board.

14 * * * *

15
16 **SEC. 37.10A. MISDEMEANORS, AND OTHER ENFORCEMENT PROVISIONS.**

17 * * * *

18 ~~(c) It shall be unlawful for a landlord or for any person who willfully assists a landlord to~~
19 ~~request that a tenant move from a rental unit or to threaten to recover possession of a rental unit, either~~
20 ~~verbally or in writing, unless:~~

21 ~~-(1) The landlord in good faith intends to recover said unit under one of the grounds~~
22 ~~enumerated in Section 37.9(a) or (b); and~~

23 ~~-(2) Within five days of any such request or threat the landlord serves the tenant with a written~~
24 ~~notice stating the particular ground under Section 37.9(a) or (b) that is the basis for the landlord's~~
25 ~~intended recovery of possession of the unit.~~

1 ~~(c)(d)~~ It shall be unlawful for a landlord or for any person who willfully assists a
2 landlord to recover possession of a rental unit unless, prior to recovery of possession of the
3 unit:

4 ~~(1) The landlord files a copy of the written notice required under Section 37.10A(c) with the~~
5 ~~Board together with any preceding warning or threat to recover possession, unless the particular~~
6 ~~ground for recovery is non-payment of rent; and~~

7 ~~(2) The the landlord satisfies all requirements for recovery of the unit under Section~~
8 ~~37.9(a) or (b).~~

9 ~~(d)(e)~~ In any criminal or civil proceeding based on a violation of Section ~~37.10A(c) or~~
10 ~~37.10A(c)(d)~~, the landlord's failure to use a recovered unit for the Section 37.9(a) or (b) ground
11 stated verbally or in writing to the tenant from whom the unit was recovered shall give rise to a
12 presumption that the landlord did not have a good faith intention to recover the unit for the
13 stated ground.

14 ~~(e)(f)~~ If possession of a rental unit is recovered as the result of any written or verbal
15 statement to the tenant that the landlord intends to recover the unit under one of the grounds
16 enumerated in Section 37.9(a) or (b), the unit shall be subject to all restrictions set forth under
17 this Chapter on units recovered for such stated purpose regardless of any agreement made
18 between the landlord or the landlord's agent and the tenant who vacated the recovered unit.
19 Any unit vacated by a tenant within 120 days after receiving any written or verbal statement
20 from the landlord stating that the landlord intends to recover the unit under Section 37.9(a) or
21 (b), shall be rebuttably presumed to have been recovered by the landlord pursuant to the
22 grounds identified in that written or verbal statement.

23 ~~(g) Except as provided in this subsection, it shall be unlawful for a landlord, or for any person~~
24 ~~who willfully assists a landlord, including the landlord's attorney or legal representative, to seek or~~
25 ~~obtain a tenant's agreement not to cooperate with any investigation or proceeding by any~~

1 ~~administrative or law enforcement or other governmental agency under this Chapter, or to otherwise~~
2 ~~seek or obtain a tenant's waiver of rights under this Chapter. Any waiver of rights by a tenant under~~
3 ~~this Chapter shall be void as contrary to public policy unless the tenant is represented by independent~~
4 ~~counsel and the waiver is approved in a Court supervised settlement agreement, or by a retired judge~~
5 ~~of the California Superior Court sitting as a mediator or arbitrator by mutual agreement of the tenant~~
6 ~~represented by independent counsel and the landlord. Any settlement agreement shall identify the~~
7 ~~judge, mediator, or arbitrator reviewing the settlement, all counsel representing the parties, and any~~
8 ~~other information as required by the Board. The landlord shall file a signed copy of the settlement~~
9 ~~agreement with the Board within ten days of execution. Unless otherwise required by the Board, the~~
10 ~~copy of the agreement filed with the Board shall redact the amount of payments to be made to tenants.~~

11 (f)(h) It shall be unlawful for a landlord to knowingly fail to disclose in writing to the
12 buyer, prior to entering into a contract for the sale of any property consisting of two or more
13 residential units, the specific legal ground(s) for the termination of the tenancy of each
14 residential unit to be delivered vacant at the close of escrow.

15 (g)(i) It shall be unlawful for a landlord/owner, when offering a property for sale in the
16 City and County of San Francisco that includes two or more residential units, to knowingly fail
17 to disclose in writing to any prospective purchaser:

18 (1) The specific legal ground(s) for the termination of the tenancy of each residential
19 unit to be delivered vacant at the close of escrow; and,

20 (2) Whether the unit was occupied by an elderly or disabled tenant at the time the
21 tenancy was terminated. For purposes of this ~~s~~Section 37.10A(g)(i), "elderly" means a tenant
22 defined as elderly by ~~San Francisco~~ Administrative Code ~~s~~Section ~~s~~ 37.9(i)(1)(A),
23 37.9A(e)(1)(C), 37.9A(e)(2)(D), or 37.9A(e)(3)(C), or a tenant defined as "senior" by San
24 Francisco Subdivision Code ~~s~~Section 1359(d). For purposes of this ~~s~~Section 37.10A(g)(i),
25 "disabled" means a tenant defined as disabled by ~~San Francisco~~ Administrative Code ~~s~~Section ~~s~~

1 37.9(i)(1)(B)(i), 37.9A(e)(1)(C), 37.9A(e)(2)(D), or 37.9A(e)(3)(C), or by San Francisco
2 Subdivision Code Section 1359(d).

3 Any disclosure required by this Subsection ~~(g)(i)~~ that is made on a flier or other
4 document describing the property which is made available to prospective purchasers at each
5 open house and at any tour through the property will constitute compliance with the disclosure
6 requirements of this Subsection ~~(g)(i)~~.

7 ~~(h)(j)~~ Any person who violates Section 37.10A(a), (b), ~~(c), (d), (e), (g), or (h), or (f)~~ is
8 guilty of a misdemeanor and shall be punished by a mandatory fine of ~~one thousand dollars~~
9 ~~(\$1,000)~~, and in addition to such fine may be punished by imprisonment in the County Jail for
10 a period of not more than six months. Each violation shall constitute a separate offense.

11 12 **SEC. 37.11A. CIVIL ACTIONS,**

13 (a) Whenever a landlord charges a tenant a rent which exceeds the limitations set forth
14 in this Chapter, retaliates against a tenant for the exercise of any rights under this Chapter, or
15 attempts to prevent a tenant from acquiring any rights under this Chapter 37, the tenant may
16 institute a civil proceeding for injunctive relief and/or money damages, and in cases where the
17 landlord has charged an excessive rent in violation of Section 37.9B(a), injunctive relief and/or money
18 damages of up to three times the amount of excess rent collected; provided, however, that any
19 monetary award for rent overpayments resulting from a rent increase which is null and void
20 pursuant to Section 37.3(b)(5) shall be limited to a refund of rent overpayments made during
21 the three-year period preceding the month of filing of the action, plus the period between the
22 month of filing and the date of the court's order. In any case, calculation of rent overpayments
23 and re-setting of the lawful base rent shall be based on a determination of the validity of all
24 rent increases imposed since April 1, 1982, in accordance with Sections 37.3(b)(5) and
25 37.3(a)(2) above.

1 **(b) Any organization with tax exempt status under 26 United States Code Section 501(c)(3) or**
2 **501(c)(4) that has a primary mission of protecting the rights of tenants in San Francisco may bring a**
3 **civil action for injunctive relief and/or damages against a landlord who has wrongfully endeavored to**
4 **recover, or has recovered, possession of a rental unit in violation of Section 37.9 and/or Section**
5 **37.10A, or who has collected excess rent in violation of Section 37.3(f). Before filing any action under**
6 **this Section 37.11A(b), the organization shall make all reasonable efforts to inform the tenant(s) of the**
7 **proposed action in writing. Such action shall be filed within three years after an affected tenant knew,**
8 **or through the exercise of reasonable diligence should have known, of the facts constituting the**
9 **violation. Any monetary award for rent overpayments shall be for two times any excess amounts of**
10 **rent charged, as well as any other sums reasonably expended to investigate and prosecute the claim,**
11 **and shall be limited to the three-year period preceding the month of filing of the action, plus the period**
12 **between the month of filing and the date of the court's order.**

13 **(c)** The prevailing party in any civil action brought under this Section 37.11A shall be
14 entitled to recover reasonable attorneys' fees and costs. The remedy available under this
15 Section 37.11A shall be in addition to any other existing remedies which may be available ~~to~~
16 ~~the tenant~~.

17
18 Section 2. Effective Date. This ordinance shall become effective 30 days after
19 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
20 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
21 of Supervisors overrides the Mayor's veto of the ordinance.

22
23 Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word
24 of this ordinance, or any application thereof to any person or circumstance, is held to be
25 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision

1 shall not affect the validity of the remaining portions or applications of the ordinance. The
2 Board of Supervisors hereby declares that it would have passed this ordinance and each and
3 every 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 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
8 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
9 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
10 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
11 additions, and Board amendment deletions in accordance with the "Note" that appears under
12 the official title of the ordinance.

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

16
17 By: 
18 MANU PRADHAN
Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Substituted, 6/13/2017)

[Administrative Code - Owner Move-In Evictions and Other Landlord-Tenant Matters]

Ordinance amending the Administrative Code regarding owner and relative move-in (“OMI”) evictions to require a landlord seeking to recover possession of a unit for an OMI to provide the tenant with an approved form to advise the Rent Board of address changes; clarify the evidentiary standard for finding that an OMI was performed in good faith; require a landlord to file documentation with the Rent Board regarding the status of the OMI, with a penalty for not filing such documentation, and requiring the Rent Board to transmit a random sampling of such documentation to the District Attorney; extend from three to five years the time period after an OMI during which a landlord who intends to re-rent the unit must first offer the unit to the displaced tenant; and authorize a tenant who has been charged excess rent within five years after an OMI to sue for treble damages; and, as to matters not limited to OMI evictions, provide that a landlord’s failure to timely file a copy of the notice to vacate with the Rent Board is a defense in an unlawful detainer proceeding; provide that a tenant waiver of rights in a buyout agreement is not enforceable if the buyout is not timely filed with the Rent Board; extend from one to three years the statute of limitations for wrongful eviction claims; and authorize interested non-profit organizations to sue for wrongful eviction and collection of excess rent; and making clarifying changes.

Existing Law

The City’s Residential Rent Stabilization and Arbitration Ordinance allows a landlord to perform an owner move-in (“OMI”) to recover possession of a rental unit if the landlord has a good faith intent to occupy the rental unit as his or her principal residence for a period of at least 36 continuous months. (A landlord can also perform an OMI on behalf of a relative, under certain conditions.)

A landlord formally initiates the eviction process by serving the tenant a notice to vacate. A landlord must file a copy of the notice to vacate with the Rent Board within 10 days of service (unless the notice is based on the tenant’s failure to pay rent). For OMIs, the Rent Board is required on a monthly basis to compile a list at random of 10 percent of all notices to vacate filed with the Rent Board, and transmit that list to the District Attorney for investigation. The Rent Board must also record a notice of constraints on a unit whose occupant received an OMI notice, within 30 days of the notice’s effective date. If the landlord offers the unit for rent during the three-year period after service of the OMI notice, the landlord must first offer the unit to the original tenant. And the landlord may not charge the original tenant (or any other tenant) a rent higher than what the original tenant would have been required to pay had the original tenant remained in the unit, for a period of five years after service of the notice. See Admin. Code § 37.3(f)(1).

If the OMI leads to an unlawful detainer action, it falls to a court to determine issues such as whether the landlord served a proper notice to vacate, and whether the landlord satisfies the underlying requirement of having a good faith intent to occupy the unit as the landlord or the relative's principal residence for a period of 36 continuous months. Landlords are not currently required to report to the Rent Board regarding the use of a unit following an OMI.

If the OMI leads to a buyout agreement, the landlord must wait 45 days so that the tenant has the opportunity to rescind, and must then file the buyout agreement with the Rent Board before the 60th day.

A landlord can be sued by a tenant for wrongful eviction but such suit is subject to a one-year statute of limitations. A landlord who charges excess rent can be liable to affected tenant for damages and/or be liable for a misdemeanor.

Amendments to Current Law

The proposed ordinance would give the tenant a defense to an action for unlawful detainer if the landlord did not file the notice to vacate with the Rent Board within 10 days. In addition, when serving an OMI notice on the tenant, the landlord would be required to attach a Rent Board form that the tenant could use to advise the Rent Board of any change in address. The ordinance would also (1) clarify that existing law limits the initial rent that a landlord may charge a new tenant for a period of five years after service of an OMI notice; and (2) extend from three years to five years the time period during which a landlord who intends to re-rent the unit must first offer the unit to the displaced tenant.

The legislation would create a reporting obligation by requiring a landlord to file a "statement of occupancy" under penalty of perjury with the Rent Board. Initially, the landlord would only have to disclose whether he or she was still endeavoring to recover possession of the unit. The first disclosure would be due within 90 days after service of the notice and an update would be due every 90 days thereafter. Once a landlord reported that he or she had recovered possession of the unit, updates would be due only once a year, but would have to include additional information regarding the date of recovery of possession, the date of move-in (or reasons for not moving in), the current use of the unit, the rent charged if any, and such other information and documentation as required by the Rent Board. The Rent Board would be required to send a copy of the statement of occupancy to the displaced tenant; transmit a random sampling of statements of occupancy to the District Attorney on a monthly basis; and assess a \$500 administrative penalty on any landlord for a first failure to file a required statement of occupancy and a \$1,000 administrative penalty for every subsequent failure.

The proposed ordinance would also clarify what kind of evidence is relevant towards proving that the landlord did not perform the OMI in good faith. Such evidence could include, but would not be limited to, the following: (1) the landlord or relative did not move into the unit within three months after the recovery of possession and then occupy the unit as their principal residence for at least 36 continuous months; (2) the landlord or relative lack a

legitimate, bona fide reason for not moving in within three months after recovery of possession and/or maintaining a principal residence in the unit for 36 continuous months; (3) the landlord did not file a statement of occupancy with the Rent Board; (4) the landlord charged excessive rent during the five-year period following the service of the OMI notice; or (5) such other factors as a court or the Rent Board may deem relevant.

To secure compliance with existing law that requires the timely filing of buyout agreements with the Rent Board, the proposed ordinance would provide that a tenant waiver contained in buyout agreement that is not timely filed is unenforceable.

The proposed ordinance would extend the statute of limitations for wrongful eviction actions from one year to three years, and would authorize local nonprofits whose mission is to protect tenants to sue for wrongful eviction and/or collection of excess rent. In addition, a tenant who was charged excess rent during the five-year period after an OMI could sue the landlord for treble damages.

Finally, the proposed ordinance deletes portions of Section 37.10A that were invalidated by the decision of the Court of Appeal in *Baba v. Bd. of Sup'rs of City & County of San Francisco* (2004) 124 Cal. App. 4th 504.

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