

BOARD of SUPERVISORS



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MEMORANDUM

TO: Eric D. Shaw, Director, Mayor's Office of Housing and Community Development
Christina Varner, Acting Executive Director, Rent Board
Thor Kaslofsky, Executive Director, Office of Community Investment and Infrastructure

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

DATE: June 30, 2023

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Preston on June 27, 2023.

File No. 230770

Ordinance amending the Administrative Code to provide that tenant-occupied units in buildings that will be receiving either low-income housing tax credits or tax-exempt multifamily revenue bonds shall remain subject to the Rent Ordinance, as long as any of the existing tenants continue to reside in the unit, or unless all the tenants in the unit agree otherwise in writing; and for any such units that may have previously become exempt from the Rent Ordinance since 2018, restoring rents to the levels allowed had the Rent Ordinance continuously applied.

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.

cc: Lydia Ely, Mayor's Office of Housing and Community Development
Brian Cheu, Mayor's Office of Housing and Community Development
Maria Benjamin, Mayor's Office of Housing and Community Development
Sheila Nickolopoulos, Mayor's Office of Housing and Community Development
Lucinda Nguyen, Office of Community Investment and Infrastructure

1 [Administrative Code - Government Regulated Rents]

2

3 **Ordinance amending the Administrative Code to provide that tenant-occupied units in**
4 **buildings that will be receiving either low-income housing tax credits or tax-exempt**
5 **multifamily revenue bonds shall remain subject to the Rent Ordinance, as long as any**
6 **of the existing tenants continue to reside in the unit, or unless all the tenants in the unit**
7 **agree otherwise in writing; and for any such units that may have previously become**
8 **exempt from the Rent Ordinance since 2018, restoring rents to the levels allowed had**
9 **the Rent Ordinance continuously applied.**

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

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

18

19 Section 1. The Administrative Code is hereby amended by revising Section 37.2, to
20 read as follows:

21 **SEC. 37.2. DEFINITIONS.**

22 * * * *

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

* * * *

1 The term "rental units" shall not include:

2 * * * *

3 (4) Except as provided in subsections (A)-(E), dwelling units whose rents are
4 controlled or regulated by any government unit, agency, or authority, excepting those
5 unsubsidized and/or unassisted units which are insured by the United States Department of
6 Housing and Urban Development; provided, however, that units in unreinforced masonry
7 buildings which have undergone seismic strengthening in accordance with Building Code
8 Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the
9 ordinance is not in conflict with the seismic strengthening bond program or with the program's
10 loan agreements or with any regulations promulgated thereunder;

11 * * * *

12 (C) The term "rental units" shall include units in a building for which
13 either tax credits are reserved or obtained pursuant to the federal ~~L~~ow-~~I~~ncome ~~H~~ousing ~~T~~ax
14 Credit program ~~under (LIHTC)~~, Section 42 of the Internal Revenue Code, 26 U.S.C. Section 42
15 ("LIHTC"), and/or tax-exempt multifamily revenue bonds are allocated or obtained pursuant to
16 Section 103 of the Internal Revenue Code, 26 U.S.C. Section 103 ("Bonds"), and that were already
17 tenant-occupied and subject to this Chapter 37 at the time the applicable LIHTC regulatory agreement
18 and/or Bond regulatory agreement was recorded, as follows ~~that satisfy the following criteria:~~

19 (i) If ~~Where~~ a tenant's occupancy of the unit began before the
20 applicable LIHTC regulatory agreement ~~and/or Bond regulatory agreement~~ was recorded, ~~then~~
21 subsection (C) shall apply to that unit so long as any of the occupants who resided in the unit at the
22 time of the recording still permanently reside there. If the applicable regulatory agreement(s) were
23 recorded on or after January 1, 2018, then the base rent as of the effective date of the ordinance in
24 Board File No. 230770 shall be equal to the rent that was in effect as of the date the recording plus any
25 annual rent increases that may have been allowed under Sections 37.3(a)(1)-(2). ~~;~~ ~~and,~~

1 _____ (ii) The tenants in a unit described in subsection (C)(i) shall have a one-
2 time option at any time to opt the unit out of subsection (C), and thereby subject the unit going forward
3 to such rent controls and use restrictions as may apply under the applicable LIHTC and/or Bond
4 regulatory agreement(s). All tenants residing in the unit at the time of the opt-out must consent to the
5 opt-out in writing, on a form prepared by the Rent Board, that advises the tenants of the requirements
6 under subsection (C) and that opt-outs may not be withdrawn. Once an opt-out has occurred in a unit,
7 subsection (C) will not apply to that unit and the unit will be exempt from Chapter 37 for the remaining
8 duration of the applicable regulatory agreement(s).

9 ~~(ii)~~(iii) This exception for tenant-occupied units subject to LIHTC and/or Bond
10 regulatory agreements is not intended to affect the application of Section 37.2(r)(4) to units wWhere
11 the rent is otherwise~~not~~ controlled or regulated by any use restrictions imposed by the City and
12 County of San Francisco, the Office of Community Investment and Infrastructure~~San Francisco~~
13 Redevelopment Agency, the Housing Authority of the City and County of San Francisco, the State of
14 California Office~~Department~~ of Housing and Community Development, or the United States
15 Department of Housing and Urban Development.

16 _____ (iv) Nothing in this ~~S~~subsection 37.2(r)(4)(C) precludes a landlord from
17 seeking an exemption from rent regulation on the basis of substantial rehabilitation under
18 Section 37.3(g).

19 _____ ~~This Section 37.2(r)(4)(C) definition of "rental unit" shall apply to any unit where the~~
20 ~~qualifying tenant (see Section 37.2(r)(4)(C)(i)) is in possession of the unit on or after the effective date~~
21 ~~of this ordinance (Ord. No. 281-06), including but not limited to any unit where the tenant has been~~
22 ~~served with a notice to quit but has not vacated the unit and there is no final judgment against the~~
23 ~~tenant for possession of the unit as of the effective date of this ordinance (Ord. No. 281-06).~~

24 * * * *

1 Section 2. 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 3. 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 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word of
 14 this ordinance, or any application thereof to any person or circumstance, is held to be invalid
 15 or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
 16 affect the validity of the remaining portions or applications of the ordinance. The Board of
 17 Supervisors hereby declares that it would have passed this ordinance and each and every
 18 section, subsection, sentence, clause, phrase, and word not declared invalid or
 19 unconstitutional without regard to whether any other portion of this ordinance or application
 20 thereof would be subsequently declared invalid or unconstitutional.

21
 22 APPROVED AS TO FORM:
 DAVID CHIU, City Attorney

23
 24 By: /s/
 MANU PRADHAN
 Deputy City Attorney
 25 n:\legana\as2023\2200385\01686044.docx

LEGISLATIVE DIGEST

[Administrative Code - Government Regulated Rents]

Ordinance amending the Administrative Code to provide that tenant-occupied units in buildings that will be receiving either low-income housing tax credits or tax-exempt multifamily revenue bonds shall remain subject to the Rent Ordinance, as long as any of the existing tenants continue to reside in the unit, or unless all the tenants in the unit agree otherwise in writing; and for any such units that may have previously become exempt from the Rent Ordinance since 2018, restoring rents to the levels allowed had the Rent Ordinance continuously applied.

Existing Law

The Rent Ordinance does not apply to units that are subject to another government program that regulates rents (“regulated units”). Thus, if a landlord enrolls in a government program for to obtain tax-exempt multifamily revenue bonds, the landlord may follow the rent regulations of that government program instead of the Rent Ordinance.

Amendments to Current Law

Under the proposed ordinance, if a unit was already tenant-occupied and subject to the Rent Ordinance at the time the landlord sought or obtained tax-exempt multifamily revenue bonds, the unit would not be exempt as a “regulated unit.” The ordinance would prevent landlords from removing their units from the Rent Ordinance by obtaining bond financing in the future, and would require landlords to restore rent control to tenants who previously lost it due to past bond financings. For units that became exempt due to a bond financing on after January 1, 2018, the landlord would also have to reset the rent going forward to the amount that would have been allowed had the unit continuously remained under the Rent Ordinance.

The ordinance is meant to protect existing tenants in bond-financed units. Once all the occupants who lived in the unit at the time of the financing ceased to permanently reside there, or if all the remaining tenants in the unit agreed to opt out of the Rent Ordinance in writing, then the unit could become exempt from the Rent Ordinance as a “regulated unit” and the landlord could set the rents set under the applicable government program.

Background

The ordinance is based on an existing provision of the Rent Ordinance that preserves rent control for units participating in the federal low-income housing tax credit (“LIHTC”) program. Tenant-occupied LIHTC units do not qualify as “regulated units” and instead are subject to the Rent Ordinance.

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