

1 [Residential Rent Ordinance: Landlord may not sever parking/storage/access to specified
2 common areas without just cause; tenant entitled to rent reduction upon severance.]
3 **Ordinance amending Administrative Code Chapter 37 “Residential Rent Stabilization**
4 **and Arbitration Ordinance” by amending Section 37.2(r) to provide that garage**
5 **facilities, parking facilities, or storage or access to common areas, laundry rooms,**
6 **lobbies, decks, patios, or gardens on the same lot, or kitchen facilities or lobbies in**
7 **single room occupancy (SRO) hotels, supplied in connection with the use or**
8 **occupancy of a unit, or similar facilities or space on the same lot, may not be severed**
9 **from a tenancy by the landlord without just cause; and that where such a severance**
10 **does occur the tenant is entitled to a reduction in rent.**

10 Note: Additions are single-underline italics Times New Roman font;
11 deletions are ~~strikethrough italics Times New Roman font~~.
12 Board amendment additions are double underlined Arial font;
13 Board amendment deletions are ~~strikethrough Arial font~~.

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

14
15 Section 1. The San Francisco Administrative Code is hereby amended by amending
16 Section 37.2, to read as follows:

17 SEC. 37.2. DEFINITIONS.

18 (a) **Base Rent.**

19 (1) That rent which is charged a tenant upon initial occupancy plus any rent increase allowable and
20 imposed under this Chapter; provided, however, that base rent shall not include increases imposed pursuant to
21 Section 37.7, and base rent shall not include utility passthroughs or water revenue bond passthroughs or general
22 obligation bond passthroughs pursuant to Sections 37.2(q), 37.3(a)(5)(B), and 37.3(a)(6). Base rent for tenants
23 of RAP rental units in areas designated on or after July 1, 1977, shall be that rent which was established
24 pursuant to Section 32.73-1 of the San Francisco Administrative Code. Rent increases attributable to the City
25 Administrator's amortization of an RAP loan in an area designated on or after July 1, 1977, shall not be included

1 in the base rent.

2 (2) From and after the effective date of this ordinance, the base rent for tenants occupying rental units
3 which have received certain tenant-based or project-based rental assistance shall be as follows:

4 (A) With respect to tenant-based rental assistance:

5 (i) For any tenant receiving tenant-based assistance as of the effective date of this ordinance (except
6 where the rent payable by the tenant is a fixed percentage of the tenant's income, such as in the Section 8
7 certificate program and the rental subsidy program for the HOPWA program), and continuing to receive tenant-
8 based rental assistance following the effective date of this ordinance, the base rent for each unit occupied by
9 such tenant shall be the rent payable for that unit under the Housing Assistance Payments contract, as
10 amended, between the San Francisco Housing Authority and the landlord (the "HAP contract") with respect to
11 that unit immediately prior to the effective date of this ordinance (the "HAP" contract rent").

12 (ii) For any tenant receiving tenant-based rental assistance (except where the rent payable by the tenant
13 is a fixed percentage of the tenant's income, such as in the Section 8 certificate program and the rental subsidy
14 program for the HOPWA program), and commencing occupancy of a rental unit following the effective date of
15 this ordinance, the base rent for each unit occupied by such a tenant shall be the HAP contract rent in effect as
16 of the date the tenant commences occupancy of such unit.

17 (iii) For any tenant whose tenant-based rental assistance terminates or expires, for whatever reason,
18 following the effective date of this ordinance, the base rent for each such unit following expiration or termination
19 shall be the HAP contract rent in effect for that unit immediately prior to the expiration or termination of the
20 tenant-based rental assistance.

21 (B) For any tenant occupying a unit upon the expiration or termination, for whatever reason, of a project-
22 based HAP contract under Section 8 of the United States Housing Act of 1937 (42 USC Section 1437f, as
23 amended), the base rent for each such unit following expiration or termination shall be the "contract rent" in effect
24 for that unit immediately prior to the expiration or termination of the project-based HAP contract.

25 (C) For any tenant occupying a unit upon the prepayment or expiration of any mortgage insured by the

1 United States Department of Housing and Urban Development (“HUD”), including but not limited to mortgages
2 provided under Sections 221(d)(3), 221(d)(4) and 236 of the National Housing Act (12 USC Section 1715z-1),
3 the base rent for each such unit shall be the “basic rental charge” (described in 12 USC 1715z-1(f), or successor
4 legislation) in effect for that unit immediately prior to the prepayment of the mortgage, which charge excludes the
5 “interest reduction payment” attributable to that unit prior to the mortgage prepayment or expiration.

6 (b) **Board.** The Residential Rent Stabilization and Arbitration Board.

7 (c) **Capital Improvements.** Those improvements which materially add to the value of the property,
8 appreciably prolong its useful life, or adapt it to new uses, and which may be amortized over the useful life of the
9 improvement of the building.

10 (d) **CPI.** Consumer Price Index for all Urban Consumers for the San Francisco-Oakland Metropolitan
11 Area, U.S. Department of Labor.

12 (e) **Energy Conservation Improvements.** Work performed pursuant to the requirements of Chapter 12
13 of the San Francisco Housing Code.

14 (f) **Administrative Law Judge.** A person, designated by the Board, who arbitrates and mediates rental
15 increase disputes, and performs other duties as required pursuant to this Chapter 37.

16 (g) **Housing Services.** Services provided by the landlord connected with the use or occupancy of a
17 rental unit including, but not limited to: repairs; replacement; maintenance; painting; light; heat; water; elevator
18 service; laundry facilities and privileges; janitor service; refuse removal; furnishings; telephone; parking; rights
19 permitted the tenant by agreement, including the right to have a specific number of occupants, whether express
20 or implied, and whether or not the agreement prohibits subletting and/or assignment; and any other benefits,
21 privileges or facilities.

22 (h) **Landlord.** An owner, lessor, sublessor, who receives or is entitled to receive rent for the use and
23 occupancy of any residential rental unit or portion thereof in the City and County of San Francisco, and the
24 agent, representative or successor of any of the foregoing.

25 (i) **Member.** A member of the Residential Rent Stabilization and Arbitration Board.

1 (j) **Over FMR Tenancy Program.** A regular certificate tenancy program whereby the base rent,
2 together with a utility allowance in an amount determined by HUD, exceeds the fair market rent limitation for a
3 particular unit size as determined by HUD.

4 (k) **Payment Standard.** An amount determined by the San Francisco Housing Authority that is used to
5 determine the amount of assistance paid by the San Francisco Housing Authority on behalf of a tenant under the
6 Section 8 Voucher Program (24 CFR Part 887).

7 (l) **RAP.** Residential Rehabilitation Loan Program (Chapter 32, San Francisco Administrative Code).

8 (m) **RAP Rental Units.** Residential dwelling units subject to RAP loans pursuant to Chapter 32, San
9 Francisco Administrative Code.

10 (n) **Real Estate Department.** A city department in the City and County of San Francisco.

11 (o) **Rehabilitation Work.** Any rehabilitation or repair work done by the landlord with regard to a rental
12 unit, or to the common areas of the structure containing the rental unit, which work was done in order to be in
13 compliance with State or local law, or was done to repair damage resulting from fire, earthquake or other
14 casualty or natural disaster.

15 (p) **Rent.** The consideration, including any bonus, benefits or gratuity, demanded or received by a
16 landlord for or in connection with the use or occupancy of a rental unit, or the assignment of a lease for such a
17 unit, including but not limited to monies demanded or paid for parking, furnishing, food service, housing services
18 of any kind, or subletting.

19 (q) **Rent Increases.** Any additional monies demanded or paid for rent as defined in item (p) above, or
20 any reduction in housing services without a corresponding reduction in the monies demanded or paid for rent;
21 provided, however, that: (1) where the landlord has been paying the tenant's utilities and the cost of those utilities
22 increases, the landlord's passing through to the tenant of such increased costs pursuant to this Chapter does not
23 constitute a rent increase; (2) where there has been a change in the landlord's property tax attributable to a
24 general obligation bond approved by the voters between November 1, 1996 and November 30, 1998, or after
25 November 14, 2002, the landlord's passing through to the tenant of such increased costs in accordance with this

1 Chapter (see Section 37.3(a)(6)) does not constitute a rent increase; and, (3) where water bill charges are
2 attributable to water rate increases resulting from issuance of water revenue bonds authorized at the November
3 5, 2002 election, the landlord's passing through to the tenant of such increased costs in accordance with this
4 Chapter (see Section 37.3(a)(5)(B)) does not constitute a rent increase.

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

8 Garage facilities, and parking facilities, driveways, storage spaces, laundry rooms, lobbies,
9 decks, patios, or gardens access to common areas, and any other contiguous or non-
10 contiguous physical spaces and facilities on the same lot, or kitchen facilities or lobbies in single
11 room occupancy (SRO) hotels, supplied in connection with the use or occupancy of a unit,
12 may not be severed from the tenancy by the landlord without just cause as required by Section 37.9(a).
13 Any severance, reduction or removal permitted under this Section 37.2(r) shall be offset by a
14 corresponding reduction in rent. Either a landlord or a tenant may file a petition with the Rent Board
15 to determine the amount of the rent reduction.

16 The term "rental units" shall not include:

17 (1) Housing accommodations in hotels, motels, inns, tourist houses, rooming and boarding houses,
18 provided that at such time as an accommodation has been occupied by a tenant for 32 continuous days or more,
19 such accommodation shall become a rental unit subject to the provisions of this Chapter; provided further, no
20 landlord shall bring an action to recover possession of such unit in order to avoid having the unit come within the
21 provisions of this Chapter. An eviction for a purpose not permitted under Section 37.9(a) shall be deemed to be
22 an action to recover possession in order to avoid having a unit come within the provisions of this Chapter;

23 (2) Dwelling units in nonprofit cooperatives owned, occupied and controlled by a majority of the
24 residents or dwelling units solely owned by a nonprofit public benefit corporation governed by a board of
25 directors the majority of which are residents of the dwelling units and where it is required in the corporate by-laws

1 that rent increases be approved by a majority of the residents;

2 (3) Housing accommodation in any hospital, convent, monastery, extended care facility, asylum,
3 residential care or adult day health care facility for the elderly which must be operated pursuant to a license
4 issued by the California Department of Social Services, as required by California Health and Safety Chapters 3.2
5 and 3.3; or in dormitories owned and operated by an institution of higher education, a high school, or an
6 elementary school;

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

14 (A) For purposes of Sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6, 37.9, 37.9A, 37.10A, 37.11A and
15 37.13, and the arbitration provisions of Sections 37.8 and 37.8A applicable only to the provisions of Sections
16 37.3(a)(10)(A), the term "rental units" *shall* include units occupied by recipients of tenant-based rental assistance
17 where the tenant-based rental assistance program does not establish the tenant's share of base rent as a fixed
18 percentage of a tenant's income, such as in the Section 8 voucher program and the "Over- FMR Tenancy"
19 program defined in 24 CFR Section 982.4;

20 (B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9, 37.9A, 37.10A, 37.11A and
21 37.13, the term "rental units" *shall* include units occupied by recipients of tenant-based rental assistance where
22 the rent payable by the tenant under the tenant-based rental assistance program is a fixed percentage of the
23 tenant's income; such as in the Section 8 certificate program and the rental subsidy program for the Housing
24 Opportunities for Persons with Aids ("HOPWA") program (42 U.S.C. Section 12901 et seq., as amended).

25 (5) Rental units located in a structure for which a certificate of occupancy was first issued after the

1 effective date of this ordinance, except as provided for certain categories of units and dwellings by Section
2 37.3(d) and Section 37.9A(b) of this Chapter;

3 (6) Dwelling units in a building which has undergone substantial rehabilitation after the effective date of
4 this ordinance; provided, however, that RAP rental units are not subject to this exemption.

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

9 (s) **Substantial Rehabilitation.** The renovation, alteration or remodeling of residential units of 50 or
10 more years of age which have been condemned or which do not qualify for certificates of occupancy or which
11 require substantial renovation in order to conform the building to contemporary standards for decent, safe and
12 sanitary housing. Substantial rehabilitation may vary in degree from gutting and extensive reconstruction to
13 extensive improvements that cure substantial deferred maintenance. Cosmetic improvements alone such as
14 painting, decorating and minor repairs, or other work which can be performed safely without having the unit
15 vacated do not qualify as substantial rehabilitation.

16 (t) **Tenant.** A person entitled by written or oral agreement, sub-tenancy approved by the landlord, or by
17 sufferance, to occupy a residential dwelling unit to the exclusion of others.

18 (u) **Tenant-Based Rental Assistance.** Rental assistance provided directly to a tenant or directly to a
19 landlord on behalf of a particular tenant, which includes but shall not be limited to certificates and vouchers
20 issued pursuant to Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Section 1437f)
21 and the HOPWA program.

22 (v) **Utilities.** The term "utilities" shall refer to gas and electricity exclusively.

23
24 APPROVED AS TO FORM:
25 DENNIS J. HERRERA, City Attorney

By: MARIE CORLETT BLITS, Deputy City Attorney

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