

AMENDMENT OF THE WHOLE  
4/30/03

FILE NO. 030689

ORDINANCE NO.

1 [November 2002 Proposition A implementation: Landlords may pass through to residential  
2 tenants 50% of water bill charges attributable to water rate increases resulting from issuance  
3 of PUC water system revenue bonds authorized at the November 2002 election; calculation  
4 methodology; such passthroughs do not become part of a tenant's base rent; tenants may file  
hardship petitions for relief, and if granted the landlord may utilize available PUC low-income  
rate discount programs; tenants may challenge whether a passthrough meets Code  
requirements; technical changes.]

5 **Ordinance amending Administrative Code Chapter 37 (Residential Rent Stabilization**  
6 **and Arbitration Ordinance) by amending Sections 37.2, 37.3, and 37.8, to provide that**  
7 **landlords may pass through to residential tenants fifty percent (50%) of water bill**  
8 **charges attributable to water rate increases resulting from the issuance of any PUC**  
9 **water system revenue bonds authorized at the November 5, 2002 election, where a unit**  
10 **is in compliance with any applicable laws requiring water conservation devices; to**  
11 **provide that landlords give tenants ~~be given~~ notice of any such passthrough on a Rent**  
12 **Board form, and that a tenant is entitled to a copy of the water bill from the landlord**  
13 **upon request; to provide for a line item on each water bill showing the charge per unit**  
14 **of water that is attributable to water rate increases resulting from issuance of such**  
15 **bonds, multiplied by the total units of water used by that customer during the billing**  
16 **cycle; to provide that where one water bill covers multiple units, the permissible**  
17 **passthrough per unit is calculated by dividing 50% of that line item amount by the total**  
18 **number of units covered by the bill (including any commercial units); to provide that**  
19 **any such passthrough does not become part of a tenant's base rent; to provide that a**  
20 **tenant may file a hardship application with the Rent Board for relief from all or part of**  
21 **the cost passthrough, and that if a hardship application is granted the affected landlord**  
22 **may utilize any available Public Utilities Commission low-income rate discount**  
23 **program or similar program for water bill reduction based on the tenant's hardship**  
24 **status; to provide that a tenant may file a petition with the Rent Board within one year**  
25 **of the effective date of a passthrough for determination of whether that passthrough is**

1 in compliance with the Code, and that the landlord bears the burden of proving the  
2 accuracy of the passthrough calculations in such a hearing; clarification of other Rent  
3 Ordinance provisions, in order to distinguish general obligation bonds from water  
4 revenue bonds; and technical changes in order to conform to other recent Rent  
5 Ordinance amendments.

6 Note: Additions are *single-underline italics Times New Roman font*;  
7 deletions are *strikethrough italics Times New Roman font*.  
8 Board amendment additions are double underlined Arial font;  
9 Board amendment deletions are ~~strikethrough Arial font~~.

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

10  
11 Section 1. The San Francisco Administrative Code is hereby amended by amending  
12 Section 37.2, to read as follows:

13 SEC. 37.2. DEFINITIONS.

14 (a) Base Rent.

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

24 (2) From and after the effective date of this ordinance, the base rent for tenants  
25 occupying rental units which have received certain tenant-based or project-based rental

1 assistance shall be as follows:

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

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

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

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

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

1 the expiration or termination of the project-based HAP contract.

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

10 (b) Board. The Residential Rent Stabilization and Arbitration Board.

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

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

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

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

21 (g) Housing Services. Services provided by the landlord connected with the use or  
22 occupancy of a rental unit including, but not limited to: repairs; replacement; maintenance;  
23 painting; light; heat; water; elevator service; laundry facilities and privileges; janitor service;  
24 refuse removal; furnishings; telephone; parking; rights permitted the tenant by agreement,  
25 including the right to have a specific number of occupants, whether express or implied, and

1 whether or not the agreement prohibits subletting and/or assignment; and any other benefits,  
2 privileges or facilities.

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

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

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

10 (k) Payment Standard. An amount determined by the San Francisco Housing  
11 Authority that is used to determine the amount of assistance paid by the San Francisco  
12 Housing Authority on behalf of a tenant under the Section 8 Voucher Program (24 CFR Part  
13 887).

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

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

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

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

24 (p) Rent. The consideration, including any bonus, benefits or gratuity, demanded or  
25 received by a landlord for or in connection with the use or occupancy of a rental unit, or the

1 assignment of a lease for such a unit, including but not limited to monies demanded or paid  
2 for parking, furnishing, food service, housing services of any kind, or subletting.

3 (q) Rent Increases. Any additional monies demanded or paid for rent as defined in  
4 item (p) above, or any reduction in housing services without a corresponding reduction in the  
5 monies demanded or paid for rent; provided, however, that: (1) where the landlord has been  
6 paying the tenant's utilities and the cost of those utilities increases, the landlord's passing  
7 through to the tenant of such increased costs pursuant to this Chapter does not constitute a  
8 rent increase; ~~and~~ (2) where there has been a change in the landlord's property tax  
9 attributable to a ~~ballet measure~~ general obligation bond approved by the voters between  
10 November 1, 1996, and November 30, 1998, or after ~~[May 1, 2002 or 60 days prior to~~  
11 ~~passage of this Ordinance on Second Reading, whichever is later]~~ November 14, 2002, the  
12 landlord's passing through to the tenant of such increased costs in accordance with this  
13 Chapter (see Section 37.3(a)(6)) does not constitute a rent increase; and, (3) where water bill  
14 charges are attributable to water rate increases resulting from issuance of water revenue  
15 bonds authorized at the November 5, 2002 election, the landlord's passing through to the  
16 tenant of such increased costs in accordance with this Chapter (see Section 37.3(a)(5)(B))  
17 does not constitute a rent increase.

18 (r) Rental Units. All residential dwelling units in the City and County of San  
19 Francisco together with the land and appurtenant buildings thereto, and all housing services,  
20 privileges, furnishings and facilities supplied in connection with the use or occupancy thereof,  
21 including garage and parking facilities. The term shall not include:

22 (1) Housing accommodations in hotels, motels, inns, tourist houses, rooming and  
23 boarding houses, provided that at such time as an accommodation has been occupied by a  
24 tenant for 32 continuous days or more, such accommodation shall become a rental unit  
25 subject to the provisions of this Chapter; provided further, no landlord shall bring an action to

1 recover possession of such unit in order to avoid having the unit come within the provisions of  
2 this Chapter. An eviction for a purpose not permitted under Section 37.9(a) shall be deemed  
3 to be an action to recover possession in order to avoid having a unit come within the  
4 provisions of this Chapter;

5 (2) Dwelling units in nonprofit cooperatives owned, occupied and controlled by a  
6 majority of the residents or dwelling units solely owned by a nonprofit public benefit  
7 corporation governed by a board of directors the majority of which are residents of the  
8 dwelling units and where it is required in the corporate by-laws that rent increases be  
9 approved by a majority of the residents;

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

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

23 (A) For purposes of Sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6, 37.9, 37.9A,  
24 37.10A, 37.11A and 37.13, and the arbitration provisions of Sections 37.8 and 37.8A  
25 applicable only to the provisions of Sections 37.3(a)(10)(A), the term "rental units" shall

1 include units occupied by recipients of tenant-based rental assistance where the tenant-based  
2 rental assistance program does not establish the tenant's share of base rent as a fixed  
3 percentage of a tenant's income, such as in the Section 8 voucher program and the "Over-  
4 FMR Tenancy" program defined in 24 CFR Section 982.4;

5 (B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9, 37.9A,  
6 37.10A, 37.11A and 37.13, the term "rental units" shall include units occupied by recipients of  
7 tenant-based rental assistance where the rent payable by the tenant under the tenant-based  
8 rental assistance program is a fixed percentage of the tenant's income; such as in the Section  
9 8 certificate program and the rental subsidy program for the Housing Opportunities for  
10 Persons with Aids ("HOPWA") program (42 U.S.C. Section 12901 et seq., as amended).

11 (5) Rental units located in a structure for which a certificate of occupancy was first  
12 issued after the effective date of this ordinance, except as provided for certain categories of  
13 units and dwellings by Section 37.3(d) and Section 37.9A(b) of this Chapter;

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

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

21 (s) Substantial Rehabilitation. The renovation, alteration or remodeling of residential  
22 units of 50 or more years of age which have been condemned or which do not qualify for  
23 certificates of occupancy or which require substantial renovation in order to conform the  
24 building to contemporary standards for decent, safe and sanitary housing. Substantial  
25 rehabilitation may vary in degree from gutting and extensive reconstruction to extensive



1 improvements that cure substantial deferred maintenance. Cosmetic improvements alone  
2 such as painting, decorating and minor repairs, or other work which can be performed safely  
3 without having the unit vacated do not qualify as substantial rehabilitation.

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

7 (u) Tenant-Based Rental Assistance. Rental assistance provided directly to a tenant  
8 or directly to a landlord on behalf of a particular tenant, which includes but shall not be limited  
9 to certificates and vouchers issued pursuant to Section 8 of the United States Housing Act of  
10 1937, as amended (42 U.S.C. Section 1437f) and the HOPWA program.

11 (v) Utilities. The term "utilities" shall refer to gas and electricity exclusively.  
12  
13

14 Section 2. The San Francisco Administrative Code is hereby amended by amending  
15 Section 37.3, to read as follows:

16 SEC. 37.3. RENT LIMITATIONS.

17 (a) Rent Increase Limitations for Tenants in Occupancy. Landlords may impose  
18 rent increases upon tenants in occupancy only as provided below and as provided by  
19 Subsection 37.3(d):

20 (1) Annual Rent Increase. On March 1st of each year, the Board shall publish the  
21 increase in the CPI for the preceding 12 months, as made available by the U.S. Department of  
22 Labor. A landlord may impose annually a rent increase which does not exceed a tenant's  
23 base rent by more than 60 percent of said published increase. In no event, however, shall the  
24 allowable annual increase be greater than seven percent.

25 (2) Banking. A landlord who refrains from imposing an annual rent increase or any

1 portion thereof may accumulate said increase and impose that amount on the tenant's  
2 subsequent rent increase anniversary dates. A landlord who, between April 1, 1982, and  
3 February 29, 1984, has banked an annual seven percent rent increase (or rent increases) or  
4 any portion thereof may impose the accumulated increase on the tenant's subsequent rent  
5 increase anniversary dates.

6 (3) Capital Improvements, Rehabilitation, Energy Conservation Improvements, and  
7 Renewable Energy Improvements. A landlord may impose rent increases based upon the cost  
8 of capital improvements, rehabilitation, energy conservation improvements, or renewable  
9 energy improvements, provided that such costs are certified pursuant to Sections 37.7 and  
10 37.8B below; provided further that where a landlord has performed seismic strengthening in  
11 accordance with Building Code Chapters 16B and 16C, no increase for capital improvements  
12 (including but not limited to seismic strengthening) shall exceed, in any 12 month period, 10  
13 percent of the tenant's base rent, subject to rules adopted by the Board to prevent landlord  
14 hardship and to permit landlords to continue to maintain their buildings in a decent, safe and  
15 sanitary condition. A landlord may accumulate any certified increase which exceeds this  
16 amount and impose the increase in subsequent years, subject to the 10 percent limitation.  
17 Nothing in this subsection shall be construed to supersede any Board rules or regulations with  
18 respect to limitations on increases based upon capital improvements whether performed  
19 separately or in conjunction with seismic strengthening improvements pursuant to Building  
20 Code Chapters 16B and 16C.

21 (4) Utilities. A landlord may impose increases based upon the cost of utilities as  
22 provided in Section 37.2(q) above.

23  
24 (5) Water: Charges Related to Excess Water Use, and 50% Passthrough of Water  
25 Bill Charges Attributable to Water Rate Increases Resulting From Issuance of Water System

1 Improvement Revenue Bonds Authorized at the November 2002 Election.

2 (A) Charges Related to Excess Water Use. A landlord may impose increases not to  
3 exceed 50 percent of the excess use charges (penalties) levied by the San Francisco Water  
4 Department on a building for use of water in excess of Water Department allocations under  
5 the following conditions:

6 (A- i) The landlord provides tenants with written certification that the following  
7 have been installed in all units: (1) permanently installed retrofit devices designed to reduce  
8 the amount of water used per flush or low-flow toilets (1.6 gallons per flush); (2) low-flow  
9 showerheads which allow a flow of no more than 2.5 gallons per minute; and (3) faucet  
10 aerators (where installation on current faucets is physically feasible); and

11 (~~B- ii~~) The landlord provides the tenants with written certification that no known  
12 plumbing leaks currently exist in the building and that any leaks reported by tenants in the  
13 future will be promptly repaired; and

14 (~~C- iii~~) The landlord provides the tenants with a copy of the water bill for the  
15 period in which the penalty was charged. Only penalties billed for a service period which  
16 begins after the effective date of the ordinance [April 20, 1991] may be passed through to  
17 tenants. Where penalties result from an allocation which does not reflect documented  
18 changes in occupancy which occurred after March 1, 1991, a landlord must, if requested in  
19 writing by a tenant, make a good-faith effort to appeal the allotment. Increases based upon  
20 penalties shall be prorated on a per-room basis provided that the tenancy existed during the  
21 time the penalty charges accrued. Such charges shall not become part of a tenant's base  
22 rent. Where a penalty in any given billing period reflects a 25 percent or more increase in  
23 consumption over the prior billing period, and where that increase does not appear to result  
24 from increased occupancy or any other known use, a landlord may not impose any increase  
25 based upon such penalty unless inspection by a licensed plumber or Water Department

1 inspector fails to reveal a plumbing or other leak. If the inspection does reveal a leak, no  
2 increase based upon penalties may be imposed at any time for the period of the unrepaired  
3 leak.

4 (B) Fifty Percent (50%) Passthrough of Water Bill Charges Attributable to Water  
5 Rate Increases Resulting From Issuance of Water System Improvement Revenue Bonds  
6 Authorized at the November 2002 Election. A landlord may pass through fifty percent (50%)  
7 of the water bill charges attributable to water rate increases resulting from issuance of Water  
8 System Improvement Revenue Bonds authorized at the November 5, 2002 election  
9 (Proposition A), to any unit that is in compliance with any applicable laws requiring water  
10 conservation devices. The landlord is not required to file a petition with the Board for approval  
11 of such a cost passthrough. Such cost passthroughs are subject to the following:

12 (i) Affected tenants shall be given notice of any such passthrough as provided by  
13 applicable notice of rent increase provisions of this Chapter 37, including but not limited to  
14 Section 37.3(b)(3).

15 (ii) A tenant may file a hardship application with the Board, and be granted relief  
16 from all or part of such a cost passthrough;

17 (iii) If a tenant's hardship application is granted, the tenant's landlord may utilize any  
18 available Public Utilities Commission low-income rate discount program or similar program for  
19 water bill reduction, based on that tenant's hardship status;

20 (iv) A landlord shall not impose a passthrough pursuant to Section 37.3(a)(5)(B) if  
21 the landlord has filed for or received Board approval for a rent increase under Section  
22 37.8(e)(4) for increased operating and maintenance expenses in which the same increase in  
23 water bill charges attributable to water rate increases resulting from issuance of any water  
24 revenue bonds authorized at the November 5, 2002 election was included in the comparison  
25 year cost totals.

1           (v) Where a tenant alleges that a landlord has imposed a water revenue bond  
2 passthrough that is not in compliance with Section 37.3(a)(5)(B), the tenant may petition for a  
3 hearing under the procedures provided by Section 37.8. In such a hearing the landlord shall  
4 have the burden of proving the accuracy of the calculation that is the basis for the increase.  
5 Any tenant petition challenging such a passthrough must be filed within one year of the  
6 effective date of the passthrough.

7           (vi) A tenant who has received a notice of passthrough or a passthrough under this  
8 Section 37.3(a)(5)(B) shall be entitled to receive a copy of the applicable water bill from the  
9 landlord upon request.

10          (vii) The amount of permissible passthrough per unit under this Section 37.3(a)(5)(B)  
11 shall be determined as follows:

12           (1) The San Francisco Public Utilities Commission will determine the charge per unit of  
13 water, if any, that is attributable to water rate increases resulting from issuance of water  
14 system improvement revenue bonds authorized at the November 5, 2002 election.

15           (2) The charge identified in Section 37.3(a)(5)(B)(vii)(1) shall be multiplied by the total  
16 units of water used by each customer, for each water bill. The result is the total dollar amount  
17 of the water bill that is attributable to water rate increases resulting from issuance of water  
18 system improvement revenue bonds authorized at the November 5, 2002 election. That  
19 charge shall be a separate line item on each customer's water bill.

20           (3) The dollar amount calculated under Section 37.3(a)(5)(B)(vii)(2) shall be divided by  
21 two (since a 50% passthrough is permitted), and then divided by the total number of units  
22 covered by the water bill, including commercial units. The resulting dollar figure shall be  
23 divided by the number of months covered by the water bill cycle (most are two-month bill  
24 cycles), to determine the amount of that water bill that may be passed through to each  
25 residential unit for each month covered by that bill.

1           (4) These passthroughs may be imposed on a monthly basis. These passthroughs  
2 shall not become part of a tenant's base rent. The amount of each passthrough may vary  
3 from month to month, depending on the amount calculated under Sections  
4 37.3(a)(5)(B)(vii)(1) through (3).

5           (viii) The Board may amend its rules and regulations as necessary to implement this  
6 Section 37.3(a)(5)(B).

7           (6) Property Tax. A landlord may impose increases based upon a 100%  
8 passthrough of the change in the landlord's property tax resulting from the repayment of  
9 general obligation bonds of the City and County of San Francisco approved by the voters  
10 between November 1, 1996, and November 30, 1998, as provided in Section 37.2(q) above.

11           A landlord may impose increases based upon a 50% passthrough of the change in the  
12 landlord's property tax resulting from the repayment of general obligation bonds of the City  
13 and County of San Francisco approved by the voters after ~~[May 1, 2002 or 60 days prior to~~  
14 ~~passage of this Ordinance on Second Reading, whichever is later]~~ November 14, 2002, as  
15 provided in Section 37.2(q) above, and subject to the following requirement: Any rent  
16 increase for bonds approved after the effective date of this initiative ordinance [November  
17 2000 Proposition H, effective December 20, 2000] must be disclosed and approved by the  
18 voters.

19           The amount of such increases shall be determined for each tax year as follows:

20           (A) For general obligation bonds approved by the voters between November 1,  
21 1996 and November 30, 1998:

22           (i) The Controller and the Board of Supervisors will determine the percentage of  
23 the property tax rate, if any, in each tax year attributable to general obligation bonds approved  
24 by the voters between November 1, 1996, and November 30, 1998, and repayable within  
25 such tax year.

1 (ii) This percentage shall be multiplied by the total amount of the net taxable value  
2 for the applicable tax year. The result is the dollar amount of property taxes for that tax year  
3 for a particular property attributable to the repayment of general obligation bonds approved by  
4 the voters between November 1, 1996, and November 30, 1998.

5 (iii) The dollar amount calculated under Subsection (ii) shall be divided by the total  
6 number of all units in each property, including commercial units. That figure shall be divided  
7 by 12 months, to determine the monthly per unit costs for that tax year of the repayment of  
8 general obligation bonds approved by the voters between November 1, 1996, and November  
9 30, 1998.

10 (B) For general obligation bonds approved by the voters after ~~[May 1, 2002 or 60~~  
11 ~~days prior to passage of this Ordinance on Second Reading, whichever is later]~~ November 14,  
12 2002 where any rent increase has been disclosed and approved by the voters:

13 (i) The Controller and the Board of Supervisors will determine the percentage of  
14 the property tax rate, if any, in each tax year attributable to general obligation bonds approved  
15 by the voters after ~~[May 1, 2002 or 60 days prior to passage of this Ordinance on Second~~  
16 ~~Reading, whichever is later]~~ November 14, 2002, and repayable within such tax year.

17 (ii) This percentage shall be multiplied by the total amount of the net taxable value  
18 for the applicable tax year. The result is the dollar amount of property taxes for that tax year  
19 for a particular property attributable to the repayment of general obligation bonds approved by  
20 the voters after ~~[May 1, 2002 or 60 days prior to passage of this Ordinance on Second~~  
21 ~~Reading, whichever is later]~~ November 14, 2002.

22 (iii) The dollar amount calculated under Subsection (ii) shall be divided by two, and  
23 then by the total number of all units in each property, including commercial units. That figure  
24 shall be divided by 12 months, to determine the monthly per unit costs for that tax year of the  
25 repayment of general obligation bonds approved by the voters after ~~[May 1, 2002 or 60 days~~

1 ~~prior to passage of this Ordinance on Second Reading, whichever is later] November 14,~~  
2 ~~2002.~~

3 (C) Landlords may pass through to each unit in a particular property the dollar  
4 amounts calculated under these Subsections 37.3(a)(6)(A) and (B). These passthroughs may  
5 be imposed only on the anniversary date of each tenant's occupancy of the property. These  
6 passthroughs shall not become a part of a tenant's base rent. The amount of each annual  
7 passthrough imposed pursuant to this Subsection (6) may vary from year-to-year, depending  
8 on the amount calculated under Subsections (A) and (B). Each annual passthrough shall  
9 apply only for the 12 month period after it is imposed. A landlord may impose the  
10 passthroughs described in this Subsection (6) for a particular tax year only with respect to  
11 those tenants who were residents of a particular property on November 1st of the applicable  
12 tax year. A landlord shall not impose a passthrough pursuant to this Subsection (6) if the  
13 landlord has filed for or received Board approval for a rent increase under Section 37.8(e)(4)  
14 for increased operating and maintenance expenses in which the same increase in property  
15 taxes due to the repayment of general obligation bonds was included in the comparison year  
16 cost totals.

17 (D) The Board will have available a form which explains how to calculate the  
18 passthrough.

19 (E) Landlords must provide to tenants, on or before the date that notice is served on  
20 the tenant of a passthrough permitted under this Subsection (6), a copy of the completed form  
21 described in Subsection (D). This completed form shall be provided in addition to the Notice  
22 of Rent Increase required under Section 37.3(b)(5). ~~A tenant may petition for a hearing under~~  
23 ~~the procedure described in Section 37.8 w~~Where the a tenant alleges that a landlord has  
24 imposed a charge which exceeds the limitations set forth in this Subsection (6), the tenant  
25 may petition for a hearing under the procedures provided by Section 37.8. In such a hearing,



1 ~~the burden of proof shall be on~~ the landlord shall have the burden of proving the accuracy of  
2 the calculation that is the basis for the increase. ~~Any Tenant petitions regarding this~~  
3 challenging such a passthrough must be filed within one year of the effective date of the  
4 passthrough.

5 (F) The Board may amend its rules and regulations as necessary to implement this  
6 Subsection (6).

7 (7) RAP Loans. A landlord may impose rent increases attributable to the City  
8 Administrator's amortization of the RAP loan in an area designated on or after July 1, 1977,  
9 pursuant to Chapter 32 of the San Francisco Administrative Code.

10 (8) Additional Increases. A landlord who seeks to impose any rent increase which  
11 exceeds those permitted above shall petition for a rental arbitration hearing pursuant to  
12 Section 37.8 of this Chapter.

13 (9) A landlord may impose a rent increase to recover costs incurred for the  
14 remediation of lead hazards, as defined in San Francisco Health Code Article 26. Such  
15 increases may be based on changes in operating and maintenance expenses or for capital  
16 improvement expenditures as long as the costs which are the basis of the rent increase are a  
17 substantial portion of the work which abates or remediates a lead hazard, as defined in San  
18 Francisco Health Code Article 26, and provided further that such costs are approved for  
19 operating and maintenance expense increases pursuant to Section 37.8(e)(4)(A) and certified  
20 as capital improvements pursuant to Section 37.7 below.

21 When rent increases are authorized by this Subsection 37.3(a)(9), the total rent  
22 increase for both operating and maintenance expenses and capital improvements shall not  
23 exceed 10 percent in any 12 month period. If allowable rent increases due to the costs of  
24 lead remediation and abatement work exceed 10 percent in any 12 month period, an  
25 Administrative Law Judge shall apply a portion of such excess to approved operating and

1 maintenance expenses for lead remediation work, and the balance, if any, to certified capital  
2 improvements, provided, however, that such increase shall not exceed 10 percent. A landlord  
3 may accumulate any approved or certified increase which exceeds this amount, subject to the  
4 10 percent limit.

5 (10) With respect to units occupied by recipients of tenant-based rental assistance:

6 (A) If the tenant's share of the base rent is not calculated as a fixed percentage of  
7 the tenant's income, such as in the Section 8 voucher program and the Over-FMR Tenancy  
8 Program, then:

9 (i) If the base rent is equal to or greater than the payment standard, the rent  
10 increase limitations in Sections 37.3(a)(1) and (2) shall apply to the entire base rent, and the  
11 arbitration procedures for those increases set forth in Section 37.8 and 37.8A shall apply.

12 (ii) If the base rent is less than the payment standard, the rent increase limitations  
13 of this Chapter shall not apply; provided, however, that any rent increase which would result in  
14 the base rent being equal to or greater than the payment standard shall not result in a new  
15 base rent that exceeds the payment standard plus the increase allowable under Section  
16 37.3(a)(1).

17 (B) If the tenant's share of the base rent is calculated as a fixed percentage of the  
18 tenant's income, such as in the Section 8 certificate program and the rental subsidy program  
19 for the HOPWA program, the rent increase limitations in Section 37.3(a)(1) and (2) shall not  
20 apply. In such circumstances, adjustments in rent shall be made solely according to the  
21 requirements of the tenant-based rental assistance program.

22 (b) Notice of Rent Increase for Tenants in Occupancy. On or before the date upon  
23 which a landlord gives a tenant legal notice of a rent increase, the landlord shall inform the  
24 tenant, in writing, of the following:

25 (1) Which portion of the rent increase reflects the annual increase, and/or a banked

1 amount, if any;

2 (2) Which portion of the rent increase reflects costs for increased operating and  
3 maintenance expenses, rents for comparable units, and/or capital improvements,  
4 rehabilitation, energy conservation improvements, or renewable energy improvements  
5 certified pursuant to Section 37.7. Any rent increase certified due to increases in operating  
6 and maintenance costs shall not exceed seven percent;

7 (3) Which portion of the rent increase reflects the passthrough of charges for: gas  
8 and electricity; or the passthrough of increased water bill charges attributable to water rate  
9 increases resulting from issuance of water revenue bonds authorized at the November 2002  
10 election as provided by Section 37.3(a)(5)(B) ), which charges and calculations of charges  
11 shall be explained in writing on a form provided by the Board; or the passthrough of general  
12 obligation bond measure costs ~~described in as provided by~~ Section 37.3(a)(6) ~~above~~, which  
13 charges shall be explained in writing on a form provided by the Board as described in Section  
14 37.3(a)(6)(E);

15 (4) Which portion of the rent increase reflects the amortization of the RAP loan, as  
16 described in Section 37.3(a)(7) above.

17 (5) Nonconforming Rent Increases. Any rent increase which does not conform with  
18 the provisions of this Section shall be null and void.

19 (6) With respect to rental units occupied by recipients of tenant-based rental  
20 assistance, the notice requirements of this Subsection (b) shall be required in addition to any  
21 notice required as part of the tenant-based rental assistance program.

22 (c) Initial Rent Limitation for Subtenants. A tenant who subleases his or her rental  
23 unit may charge no more rent upon initial occupancy of the subtenant or subtenants than that  
24 rent which the tenant is currently paying to the landlord.

25

1 (d) Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.)  
2 Consistent with the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.)  
3 and regardless of whether otherwise provided under Chapter 37:

4 (1) Property Owner Rights to Establish Initial and All Subsequent Rental Rates for  
5 Separately Alienable Parcels.

6 (A) An owner or residential real property may establish the initial and all subsequent  
7 rental rates for a dwelling or a unit which is alienable separate from the title to any other  
8 dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b), (d), or  
9 (f) of Section 11004.5 of the California Business and Professions Code. The owner's right to  
10 establish subsequent rental rates under this paragraph shall not apply to a dwelling or unit  
11 where the preceding tenancy has been terminated by the owner by notice pursuant to  
12 California Civil Code Section 1946 or has been terminated upon a change in the terms of the  
13 tenancy noticed pursuant to California Civil Code Section 827; in such instances, the rent  
14 increase limitation provisions of Chapter 37 shall continue to apply for the duration of the new  
15 tenancy in that dwelling or unit.

16 (B) Where the initial or subsequent rental rates of a Subsection 37.3(d)(1)(A)  
17 dwelling or unit were controlled by the provisions of Chapter 37 on January 1, 1995, the  
18 following shall apply:

19 (i) A tenancy that was in effect on December 31, 1995, remains subject to the rent  
20 control provisions of this Chapter 37, and the owner may not otherwise establish the  
21 subsequent rental rates for that tenancy.

22 (ii) On or after January 1, 1999, an owner may establish the initial and all  
23 subsequent rental rates for any tenancy created on or after January 1, 1996.

24 (C) An owner's right to establish subsequent rental rates under Subsection  
25 37.3(d)(1) shall not apply to a dwelling or unit which contains serious health, safety, fire or

1 building code violations, excluding those caused by disasters, for which a citation has been  
2 issued by the appropriate governmental agency and which has remained unabated for six  
3 months or longer preceding the vacancy.

4 (2) Conditions for Establishing the Initial Rental Rate Upon Sublet or Assignment.

5 Except as identified in this Subsection 37.3(d)(2), nothing in this Subsection or any other  
6 provision of law of the City and County of San Francisco shall be construed to preclude  
7 express establishment in a lease or rental agreement of the rental rates to be applicable in the  
8 event the rental unit subject thereto is sublet, and nothing in this Subsection shall be  
9 construed to impair the obligations of contracts entered into prior to January 1, 1996, subject  
10 to the following:

11 (A) Where the original occupant or occupants who took possession of the dwelling  
12 or unit pursuant to the rental agreement with the owner no longer permanently reside there,  
13 an owner may increase the rent by any amount allowed by this Subsection to a lawful  
14 sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996.  
15 However, such a rent increase shall not be permitted while:

16 (i) The dwelling or unit has been cited in an inspection report by the appropriate  
17 governmental agency as containing serious health, safety, fire, or building code violations, as  
18 defined by Section 17920.3 of the California Health and Safety Code, excluding any violation  
19 caused by a disaster; and,

20 (ii) The citation was issued at least 60 days prior to the date of the vacancy: and,

21 (iii) The cited violation had not been abated when the prior tenant vacated and had  
22 remained unabated for 60 days or for a longer period of time. However, the 60-day time  
23 period may be extended by the appropriate governmental agency that issued the citation.

24 (B) This Subsection 37.3(d)(2) shall not apply to partial changes in occupancy of a  
25 dwelling or unit where one or more of the occupants of the premises, pursuant to the

1 agreement with the owner provided for above (37.3(d)(2)), remains an occupant in lawful  
2 possession of the dwellings or unit, or where a lawful sublessee or assignee who resided at  
3 the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit.  
4 Nothing contained in this Subsection 37.3(d)(2) shall be construed to enlarge or diminish an  
5 owner's right to withhold consent to a sublease or assignment.

6 (C) Acceptance of rent by the owner shall not operate as a waiver or otherwise  
7 prevent enforcement of a covenant prohibiting sublease or assignment or as a waiver of an  
8 owner's rights to establish the initial rental rate unless the owner has received written notice  
9 from the tenant that is party to the agreement and thereafter accepted rent.

10 (3) Termination or Nonrenewal of a Contract or Recorded Agreement with a  
11 Government Agency Limiting Rent. An owner who terminates or fails to renew a contract or  
12 recorded agreement with a governmental agency that provides for a rent limitation to a  
13 qualified tenant, shall be subject to the following:

14 (A) The tenant(s) who were beneficiaries of the contract or recorded agreement  
15 shall be given at least 90 days' written notice of the effective date of the termination and shall  
16 not be obligated to pay more than the tenant's portion of the rent, as calculated under that  
17 contract or recorded agreement, for 90 days following receipt of the notice of termination or  
18 nonrenewal.

19 (B) The owner shall not be eligible to set an initial rent for three years following the  
20 date of the termination or nonrenewal of the contract or agreement.

21 (C) The rental rate for any new tenancy established during the three-year period in  
22 that vacated dwelling or unit shall be at the same rate as the rent under the terminated or  
23 nonrenewed contract or recorded agreement, plus any increases authorized under this  
24 Chapter 37 after the date of termination/non renewal.

25

1 (D) The provisions of Subsections 37.3(d)(3)(B) and (C) shall not apply to any new  
2 tenancy of 12 months or more duration established after January 1, 2000, pursuant to the  
3 owner's contract or recorded agreement with a governmental agency that provides for a rent  
4 limitation to a qualified tenant unless the prior vacancy in that dwelling or unit was pursuant to  
5 a nonrenewed or canceled contract or recorded agreement with a governmental agency that  
6 provides for a rent limitation to a qualified tenant.

7 (4) Subsection 37.3(d) does not affect the authority of the City and County of San  
8 Francisco to regulate or monitor the basis or grounds for eviction.

9 (5) This Subsection 37.3(d) is intended to be and shall be construed to be  
10 consistent with the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.)

11 (e) Effect of Deferred Maintenance on Passthroughs for Lead Remediation  
12 Techniques.

13 (1) When lead hazards, which have been remediated or abated pursuant to San  
14 Francisco Health Code Article 26, are also violations of State or local housing health and  
15 safety laws, the costs of such work shall not be passed through to tenants as either a capital  
16 improvement or an operating and maintenance expense if the Administrative Law Judge finds  
17 that the deferred maintenance, as defined herein, of the current or previous landlord caused  
18 or contributed to the existence of the violation of law.

19 (2) In any unit occupied by a lead-poisoned child and in which there exists a lead  
20 hazard, as defined in San Francisco Health Code Article 26, there shall be a rebuttable  
21 presumption that violations of State or local housing health and safety laws caused or created  
22 by deferred maintenance, caused or contributed to the presence of the lead hazards. If the  
23 landlord fails to rebut the presumption, that portion of the petition seeking a rent increase for  
24 the costs of lead hazard remediation or abatement shall be denied. If the presumption is  
25

1 rebutted, the landlord shall be entitled to a rent increase if otherwise justified by the standards  
2 set forth in this Chapter.

3 (3) For purposes of the evaluation of petitions for rent increases for lead  
4 remediation work, maintenance is deferred if a reasonable landlord under the circumstances  
5 would have performed, on a regular basis, the maintenance work required to keep the  
6 premises from being in violation of housing safety and habitability standards set forth in  
7 California Civil Code Section 1941 and the San Francisco Municipal Code. In order to prevail  
8 on a deferred maintenance defense, a tenant must show that the level of repair or remediation  
9 currently required would have been lessened had maintenance been performed in a more  
10 timely manner.

11  
12 Section 3. The San Francisco Administrative Code is hereby amended by amending  
13 Section 37.8, to read as follows:

14 SEC. 37.8. ARBITRATION OF RENTAL INCREASE ADJUSTMENTS.

15 (a) Authority of Board and Administrative Law Judge. In accordance with such  
16 guidelines as the Board shall establish, the Board and designated Administrative Law Judges  
17 shall have the authority to arbitrate rental increase adjustments, and to administer the rent  
18 increase protest procedures with respect to RAP rental units as set forth in Chapter 32 of the  
19 San Francisco Administrative Code.

20 (b) Request for Arbitration.

21 (1) Landlords. Landlords who seek to impose rent increases which exceed the  
22 limitations set forth in Section 37.3(a) above must request an arbitration hearing as set forth in  
23 this Section. The burden of proof is on the landlord.

24 (2) Tenants.

25 (A) Notwithstanding Section 37.3, tenants of non-RAP rental units and tenants of



1 RAP rental units in areas designated on or after July 1, 1977, may request arbitration hearings  
2 where a landlord has substantially decreased services without a corresponding reduction in  
3 rent and/or has failed to perform ordinary repair and maintenance under State or local law  
4 and/or has failed to provide the tenant with a clear explanation of the current charges for gas  
5 and electricity or bond measure costs passed through to the tenant and/or imposed a  
6 nonconforming rent increase which is null and void. The burden of proof is on the tenant.

7 (B) Tenants of RAP rental units in areas designated prior to July 1, 1977, may  
8 petition for a hearing where the landlord has noticed an increase which exceeds the  
9 limitations set forth in Section 32.73 of the San Francisco Administrative Code. After a  
10 vacancy has occurred in a RAP rental unit in said areas, a new tenant of said unit may petition  
11 for a hearing where the landlord has demanded and/or received a rent for that unit which  
12 exceeds the rent increase limitations set forth in Section 32.73 of the San Francisco  
13 Administrative Code. The burden of proof is on the landlord.

14 (c) Procedure for Landlord Petitioners.

15 (1) Filing. The request for arbitration must be filed on a petition form prescribed by  
16 the Board and shall be accompanied by such supporting material as the Board shall  
17 prescribe, including but not limited to, justification for the proposed rental increase.

18 (2) Filing Date. The petition must be filed prior to the mailing or delivering to the  
19 tenant or tenants legal notice of the rental increase exceeding the limitations as defined in  
20 Section 37.3.

21 (3) Effect of Timely Filing of Petition. Provided a completed petition is timely filed,  
22 that portion of the requested rental increase which exceeds the limitations set forth in Section  
23 37.3 and has not been certified as a justifiable increase in accordance with Section 37.7 is  
24 inoperative until such time as the Administrative Law Judge makes findings of fact at the  
25 conclusion of the arbitration hearing.

1 (4) Notice to Parties. The Board shall calendar the petition for hearing before a  
2 designated Administrative Law Judge and shall give written notice of the date to the parties at  
3 least 10 days prior to the hearing.

4 (d) Procedure for Tenant Petitioners.

5 (1) Filing; Limitation. The request for arbitration must be filed on a petition form  
6 prescribed by the Board and must be accompanied by such supporting material as the Board  
7 shall prescribe, including but not limited to, a copy of the landlord's notice of rent increase. If  
8 the tenant petitioner has received certification findings regarding his rental unit in accordance  
9 with Section 37.7, such findings must accompany the petition. If the tenant petitioner has  
10 received a notification from the Chief Administrative Officer with respect to base rent and  
11 amortization of a RAP loan, such notification must accompany the petition. ~~A Tenant~~  
12 ~~petitions regarding the a~~ gas and electricity passthrough must be filed within one year of the  
13 effective date of the ~~pass-through~~ passthrough or within one year of the date the passthrough  
14 was required to be recalculated pursuant to rules and regulations promulgated by the Board.  
15 A tenant petition regarding a water revenue bond passthrough under Section 37.3(a)(5)(B)  
16 must be filed within one year of the effective date of the passthrough. ~~A Tenant~~ petitions  
17 regarding ~~the a~~ general obligation bond cost passthrough ~~described in under~~ Section  
18 37.3(a)(6) must be filed within one year of the effective date of the passthrough.

19 (2) Notice to Parties. The Board shall calendar the petition for hearing before a  
20 designated Administrative Law Judge and shall give written notice of the date to the parties at  
21 least 10 days prior to the hearing. Responses to a petition for hearing may be submitted in  
22 writing.

23 (e) Hearings.

24 (1) Time of Hearing. The hearing shall be held within 45 days of the filing of the  
25 petition. The level of housing services provided to tenants' rental units shall not be decreased

1 during the period between the filing of the petition and the conclusion of the hearing.

2 (2) Consolidation. To the greatest extent possible, hearings with respect to a given  
3 building shall be consolidated.

4 (3) Conduct of Hearing. The hearing shall be conducted by an Administrative Law  
5 Judge designated by the Board. Both parties may offer such documents, testimony, written  
6 declarations or other evidence as may be pertinent to the proceedings. A record of the  
7 proceedings must be maintained for purposes of appeal.

8 (4) Determination of the Administrative Law Judge: Rental Units. Based upon the  
9 evidence presented at the hearing and upon such relevant factors as the Board shall  
10 determine, the Administrative Law Judge shall make findings as to whether or not the  
11 landlord's proposed rental increase exceeding the limitations set forth in Section 37.3 is  
12 justified or whether or not the landlord has effected a rent increase through a reduction in  
13 services or has failed to perform ordinary repair and maintenance as required by State or local  
14 law; and provided further that, where a landlord has imposed a passthrough for property taxes  
15 pursuant to Section 37.3(6)(D), the same increase in property taxes shall not be included in  
16 the calculation of increased operating and maintenance expenses pursuant to this Subsection  
17 (4). In making such findings, the Administrative Law Judge shall take into consideration the  
18 following factors:

19 (A) Increases or decreases in operating and maintenance expenses, including, but  
20 not limited to, real estate taxes, sewer service charges, janitorial service, refuse removal,  
21 elevator service, security system, and debt service; provided, however, when a unit is  
22 purchased after the effective date of this ordinance, and this purchase occurs within two years  
23 of the date of the previous purchase, consideration shall not be given to that portion of  
24 increased debt service which has resulted from a selling price which exceeds the seller's  
25 purchase price by more than the percentage increase in the "Consumer Price Index for All

1 Urban Consumers for the San Francisco-Oakland Metropolitan Area, U.S. Department of  
2 Labor” between the date of previous purchase and the date of the current sale, plus the cost  
3 of capital improvements or rehabilitation work made or performed by the seller.

4 (B) The past history of increases in the rent for the unit and the comparison of the  
5 rent for the unit with rents for comparable units in the same general area.

6 (C) Any findings which have been made pursuant to Section 37.7 with respect to the  
7 unit.

8 (D) Failure to perform ordinary repair, replacement and maintenance in compliance  
9 with applicable State and local law.

10 (E) Any other such relevant factors as the Board shall specify in rules and  
11 regulations.

12 (5) Determination of the Administrative Law Judge: RAP Rental Units.

13 (A) RAP Rental Units in RAP Areas Designated Prior to July 1, 1977. The  
14 Administrative Law Judge shall make findings as to whether or not the noticed or proposed  
15 rental increase exceeds the rent increase limitations set forth in Section 32.73 of the San  
16 Francisco Administrative Code. In making such findings, the Administrative Law Judge shall  
17 apply the rent increase limitations set forth in Chapter 32 of the San Francisco Administrative  
18 Code and all rules and regulations promulgated pursuant thereto. The Administrative Law  
19 Judge shall consider the evidence presented at the hearing. The burden of proof shall be on  
20 the landlord.

21 (B) RAP Rental Units in RAP Areas Designated On or After July 1, 1977. The  
22 Administrative Law Judge shall make findings with respect to rent increases exceeding the  
23 limitations as set forth in Section 37.3 of this Chapter. In making such findings, the  
24 Administrative Law Judge shall take into consideration the factors set forth in Subsection (4)  
25

1 above and shall consider evidence presented at the hearing. The burden of proof is on the  
2 landlord.

3 (6) Findings of Fact. The Administrative Law Judge shall make written findings of  
4 fact, copies of which shall be mailed to the parties within 30 days of the hearing.

5 (7) Payment or Refund of Rents to Implement Arbitration Decision. Upon finding  
6 that all or any portion of the rent increase is or is not justified, or that any nonconforming rent  
7 increase is null and void, the Administrative Law Judge may order payment or refund of all or  
8 a portion of that cumulative amount within 15 days of the mailing of the findings of fact or may  
9 order the amount added to or offset against future rents; provided, however, that any such  
10 order shall be stayed if an appeal is timely filed by the aggrieved party. The Administrative  
11 Law Judge may order refunds of rent overpayments resulting from rent increases which are  
12 null and void for no more than the three-year period preceding the month of the filing of a  
13 landlord or tenant petition, plus the period between the month of filing and the date of the  
14 Administrative Law Judge's decision. In any case, calculation of rent overpayments and re-  
15 setting of the lawful base rent shall be based on a determination of the validity of all rent  
16 increases imposed since April 1, 1982, in accordance with Sections 37.3(b)(5) and 37.3(a)(2)  
17 above.

18 (8) Finality of Administrative Law Judge's Decision. The decision of the  
19 Administrative Law Judge shall be final unless the Board vacates his decision on appeal.

20 (f) Appeals.

21 (1) Time and Manner. Any appeal to the Board from the determination of the  
22 Administrative Law Judge must be made within 15 calendar days of the mailing of the findings  
23 of fact unless such time limit is extended by the Board upon a showing of good cause. If the  
24 fifteenth day falls on a Saturday, Sunday or legal holiday, the appeal may be filed with the  
25 Board on the next business day. The appeal shall be in writing and must state why appellant

1 believes there was either error or abuse of discretion on the part of the Administrative Law  
2 Judge. The filing of an appeal will stay only that portion of any Administrative Law Judge's  
3 decision which permits payment, refund, offsetting or adding rent.

4 (2) Record on Appeal. Upon receipt of an appeal, the entire administrative record of  
5 the matter, including the appeal, shall be filed with the Board.

6 (3) Appeals. The Board shall, in its discretion, hear appeals. In deciding whether or  
7 not to hear a given appeal, the Board shall consider, among other factors, fairness to the  
8 parties, hardship to either party, and promoting the policies and purposes of this Chapter, in  
9 addition to any written comments submitted by the Administrative Law Judge whose decision  
10 is being challenged. The Board may also review other material from the administrative record  
11 of the matter as it deems necessary. A vote of three members shall be required in order for an  
12 appeal to be heard.

13 (4) Remand to Administrative Law Judge Without Appeal Hearing. In those cases  
14 where the Board is able to determine on the basis of the documents before it that the  
15 Administrative Law Judge has erred, the Board may remand the case for further hearing in  
16 accordance with its instructions without conducting an appeal hearing. Both parties shall be  
17 notified as to the time of the re-hearing, which shall be conducted within 30 days of remanding  
18 by the Board. In those cases where the Board is able to determine on the basis of the  
19 documents before it that the Administrative Law Judge's findings contain numerical or clerical  
20 inaccuracies, or require clarification, the Board may continue the hearing for purposes of re-  
21 referring the case to said Administrative Law Judge in order to correct the findings.

22 (5) Time of Appeal Hearing; Notice to Parties. Appeals accepted by the Board shall  
23 be heard within 45 days of the filing of an appeal. Within 30 days of the filing of an appeal,  
24 both parties shall be notified in writing as to whether or not the appeal has been accepted. If  
25 the appeal has been accepted, the notice shall state the time of the hearing and the nature of

1 the hearing. Such notice must be mailed at least 10 days prior to the hearing.

2 (6) Appeal Hearing; Decision of the Board. At the appeal hearing, both appellant  
3 and respondent shall have an opportunity to present oral testimony and written documents in  
4 support of their positions. After such hearing and after any further investigation which the  
5 Board may deem necessary the Board may, upon hearing the appeal, affirm, reverse or  
6 modify the Administrative Law Judge's decision or may remand the case for further hearing in  
7 accordance with its findings. The Board's decision must be rendered within 45 days of the  
8 hearing and the parties must be notified of such decision.

9 (7) Notification of the Parties. In accordance with item (6) above, parties shall  
10 receive written notice of the decision. The notice shall state that this decision is final.

11 (8) Effective Date of Appeal Decisions. Appeal decisions are effective on the date  
12 mailed to the parties; provided, however, that that portion of any decision which orders  
13 payment, refund, offsetting or adding rent shall become effective 30 calendar days after it is  
14 mailed to the parties unless a stay of execution is granted by a court of competent jurisdiction.

15 (9) Limitation of Actions. A landlord or tenant aggrieved by any decision of the  
16 Board must seek judicial review within 90 calendar days of the date of mailing of the decision.

17

18

19 APPROVED AS TO FORM:  
20 DENNIS J. HERRERA, City Attorney

21 By: MARIE CORLETT BLITS  
22 Deputy City Attorney

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