

File No. 200518

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Government Audit and Oversight

Date: October 1, 2020

Board of Supervisors Meeting:

Date: _____

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Prepared by: John Carroll

Date: Sept. 25, 2020

Prepared by: John Carroll

Date: _____

1 [Administrative Code - Rent Control at Midtown Park Apartments]

2

3 **Ordinance amending the Administrative Code to adopt rent increase limitations for**
4 **subject dwelling units at Midtown Park Apartments, a residential development owned**
5 **by the City and County of San Francisco, to the Residential Rent Stabilization and**
6 **Arbitration Ordinance; and making findings as required by the California Tenant**
7 **Protection Act of 2019; and expanding the Rent Board fee to cover those dwelling**
8 **units.**

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

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

17 Section 1. The Administrative Code is hereby amended by revising Sections 37.2 and
18 ~~37.3~~37.6, to read as follows:

19 **SEC. 37.2. DEFINITIONS.**

20 * * * *

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

25 * * * *

The term "rental units" shall not include:

1 * * * *

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

10 * * * *

11 ~~_____ (E) The term "rental units" shall include dwelling units at Midtown Park~~
12 ~~Apartments, as set forth in Section 37.12A.~~

13 * * * *

14
15 **SEC. 37.3. RENT LIMITATIONS.**

16 (a) **Rent Increase Limitations for Tenants in Occupancy.** Landlords may impose
17 rent increases upon tenants in occupancy only as provided below and as provided by
18 subsections 37.3(d), ~~and~~ and 37.3(g), ~~and 37.12A(c)~~:

19 * * * *

20
21 **SEC. 37.6. POWERS AND DUTIES.**

22 In addition to other powers and duties set forth in this Chapter 37, and in addition to
23 powers under the Charter and under other City Codes, including powers and duties under
24 Administrative Code Chapter 49 ("Interest Rates on Security Deposits"), the Board shall have
25 the power to:

1 (a) Promulgate policies, rules, and regulations to effectuate the purposes of this
2 Chapter 37, and to effectuate the purposes of Administrative Code Chapters 37B and 41D;

3 * * * *

4 (c) Conduct rental arbitration hearings and residential hotel visitor policy hearings,
5 and administer oaths and affirmations in connection with such hearings, with respect to rental
6 units covered by this Chapter 37 as well as Midtown Park Apartments units as set forth in
7 Administrative Code Chapter 37B;

8 * * * *

9
10 Section 2. ~~The Administrative Code is hereby amended by adding Section 37.12A, to~~
11 read as follows:

12 **SEC. 37.12A. MIDTOWN PARK APARTMENTS**

13 (a) ~~Midtown Park Apartments ("Midtown"), which is located at 1415 Scott Street,~~
14 ~~San Francisco (Lot 31, Assessor's Block 1099), is a City-owned apartment complex in the~~
15 ~~Western Addition neighborhood that opened in 1968 to provide housing to families displaced~~
16 ~~by urban renewal policies. From 1968-2014, a tenant board was empowered to make~~
17 ~~decisions regarding Midtown's management and development, and Midtown tenants generally~~
18 ~~received rent increases commensurate with the city's rent control laws. On or about January~~
19 ~~31, 2014, the City began to operate Midtown under a program that set rents based on~~
20 ~~household gross income, which caused some tenants to experience significant rent increases.~~
21 ~~The Board of Supervisors finds it is appropriate and in the public interest to extend rent control~~
22 ~~protections to tenants at Midtown, and enacts this Section 37.12A in order to assure a smooth~~
23 ~~transition to coverage under this Chapter 37.~~

24 (b) ~~The City shall not endeavor to recover possession of a residential dwelling unit~~
25 ~~located at Midtown Park Apartments (each, a "Midtown Unit") except as authorized by Section~~

1 37.9, as it may be amended from time to time; and provided, further, that Section 37.9(a)(8)
2 and Section 37.9(a)(13) shall not apply to Midtown Units.

3 (c) — For Midtown Units where one or more of the tenants has been occupying the
4 unit since January 1, 2014 (each, a “Legacy Tenant”), the initial base rent shall be the rent
5 that was in effect for the unit on May 1, 2014, plus any allowable increases under Section
6 37.3. For Midtown Units without a Legacy Tenant, the initial base rent shall be the rent in
7 effect at the time the tenancy commenced, plus any allowable increases under Section 37.3.
8 All subsequent rent increases shall be subject to the rent increase limitations of Section 37.3
9 as it may be amended from time to time.

10 (d) — The City shall discharge its duties as Landlord through the Mayor’s Office of
11 Housing and Community Development (“MOHCD”). MOHCD may adopt rules and regulations
12 consistent with this Chapter 37 to manage the property, and shall develop procedures to verify
13 Legacy Tenant status and to set the rent consistent with subdivision (c). If a tenant has paid
14 rent after May 1, 2014 in excess of the rent allowed under subdivision (c), MOHCD shall credit
15 the excess payment against the tenant’s future rent payments as soon as practicable after the
16 effective date of this Section 37.12A. Nothing in this Section 37.12A shall affect or impair the
17 ability of either MOHCD or a person residing in a Midtown Unit to file a petition to the Rent
18 Board as set forth in this Chapter 37.

19
20 Section 3. Additional Findings. This ordinance is intended to bring tenants at Midtown
21 Park Apartments under the City’s Rent Ordinance. As compared to the just cause protections
22 of the California Tenant Protection Act of 2019 (“AB 1482”), this ordinance further limits the
23 permissible reasons for termination of a residential tenancy and provides additional tenant
24 protections. The Board of Supervisors therefore finds that this ordinance is more protective of
25

1 tenants than AB 1482, and intends that the Rent Ordinance (as hereby amended) shall apply
2 rather than AB 1482.

3
4 Section 2. The Administrative Code is hereby amended by revising Sections 37A.1,
5 37A.2, and 37A.3, to read as follows:

6 **SEC. 37A.1. SCOPE.**

7 This Chapter 37A is applicable to all residential units in the City and County of San
8 Francisco, including residential units which are exempt from the rent increase limitation
9 provisions (but not other provisions) of Chapter 37 pursuant to the Costa-Hawkins Rental
10 Housing Act (Civil Code §§ 1954.50. et seq.) and/or ~~San Francisco~~ Administrative Code
11 Section 37.3(d), and including units at Midtown Park Apartments as set forth in Administrative
12 Code Chapter 37B. For purposes of this Chapter 37A, "residential units" are dwelling units
13 and guest rooms as those terms are defined in Sections 400 and 401 of the San Francisco
14 Housing Code. The term shall not include:

15 * * * *

16
17 **SEC. 37A.2. FINDINGS.**

18 * * * *

19 (c) It is fair and reasonable that the costs of administering and enforcing the Rent
20 Ordinance and Administrative Code Chapter 37B through the Rent Board should be equitably
21 distributed among the City's residential units.

22 —Therefore, the Board finds that the owner of each residential unit as defined in
23 Section 37A.1 above shall be required to pay an annual Rent Stabilization and Arbitration fee
24 for each unit.

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SEC. 37A.3. PURPOSE.

The purpose of this ordinance is to require those who rely upon and/or benefit from the Rent Board's administration and enforcement of the Rent Ordinance and Administrative Code Chapter 37B to pay a fee which is directly related to the financial burden placed upon the City in carrying out the Rent Board's functions and duties.

Section 3. The Administrative Code is hereby amended by adding Chapter 37B, consisting of Sections 37B.1, 37B.2, 37B.3, 37B.4, and 37B.5, to read as follows:

CHAPTER 37B:

MIDTOWN PARK APARTMENTS

SEC. 37B.1. PURPOSE AND FINDINGS.

(a) Midtown Park Apartments ("Midtown"), located at 1415 Scott Street (Lot 31, Assessor's Block 1099), is a City-owned apartment complex in the Western Addition neighborhood that opened in 1968 to provide housing to families displaced by urban renewal policies. From 1968 to 2014, a tenant board was empowered to make decisions regarding Midtown's management and development, and Midtown tenants generally received rent increases commensurate with the city's rent control laws.

(b) On or about January 31, 2014, the Mayor's Office of Housing and Community Development ("MOHCD") began to operate Midtown under a Rent Modification Program and Maximum Rent Schedule and set rents as a percentage of the tenant's gross household income, while also considering factors such as median income for San Francisco, household size, and number of bedrooms. With rents being set under this program, the City's Rent Ordinance (Administrative Code Ch. 37) did not apply, and some tenants began to experience rent increases not allowed under the Rent Ordinance. The Board of Supervisors finds it is

1 appropriate and in the public interest to allow tenants who had been residing at Midtown to
2 receive the benefits of the rent control provisions of the Rent Ordinance even while the
3 MOHCD program remains in effect. This Chapter 37B shall not affect or impair the Rent
4 Ordinance from applying if the City ceases ownership of Midtown and/or this MOHCD
5 program of controlling and regulating the rents at Midtown.

6
7 **SEC. 37B.2. INITIAL BASE RENT.**

8 (a) For residential dwelling units at Midtown where one or more of the tenants has
9 been occupying the unit since January 1, 2014 (each, a “Legacy Tenant”), the initial base rent
10 shall be the lower of the following: (1) rent that was in effect for the unit on May 1, 2014
11 (“Chapter 37 Rent”); or (2) the rent as calculated under MOHCD’s then-existing Rent
12 Modification Program for Midtown.

13 (b) For residential dwelling units at Midtown without a Legacy Tenant, the initial
14 base rent shall be the rent in effect at the time the tenancy commenced as determined by
15 MOHCD’s then-current published maximum affordable rent schedule, or as determined by any
16 successor affordable rent schedule or program for Midtown (either, the “Percentage Rent”).

17
18 **SEC. 37B.3. RENT INCREASE LIMITATIONS.**

19 (a) After the establishment of initial base rent, the maximum allowable rent for a
20 tenant in occupancy at Midtown shall be either of the following: (1) for Legacy Tenants paying
21 Chapter 37 Rent, the initial base rent plus any annual rent increases that may be allowed
22 under Administrative Code Section 37.3(a)(1)-(2) as it may be amended from time to time; or
23 (2) for tenants paying Percentage Rent as initial base rent, as well as any Legacy Tenants
24 who have elected to pay Percentage Rent as set forth in Section 37B.4, the Percentage Rent
25

1 under the then-current Maximum Rent Schedule published each year, which may include a
2 rent increase from the previous year.

3 (b) MOHCD shall determine whether any Midtown tenants paid rent between May 1,
4 2014 and the effective date of the ordinance in Board of Supervisors File No. 200518 enacting
5 this Chapter 37B that exceeded the rent allowed under this Chapter 37B during that time
6 period. If any such excess payments occurred, MOHCD shall promptly credit the excess
7 amounts against the tenant's future rent.

8
9 **SEC. 37B.4. OPTION FOR LEGACY TENANTS.**

10 (a) A Legacy Tenant who is paying Chapter 37 Rent as the initial base rent shall at
11 any time in the future have a one-time option to elect to switch from the Chapter 37 Rent to
12 Percentage Rent going forward, but such Legacy Tenant shall have no option to revert to the
13 Chapter 37 Rent after making the election. If a Legacy Tenant elects to change from Chapter
14 37 Rent to Percentage Rent, the Legacy Tenant must notify MOHCD (or its successor or
15 designee) in writing, and the Percentage Rent shall be implemented within 60 days.

16
17 **SEC. 37B.5. IMPLEMENTATION; INCOME VERIFICATION.**

18 (a) MOHCD may adopt rules and regulations consistent with this Chapter 37B to
19 manage the Midtown property, and shall develop procedures to verify Legacy Tenant status,
20 and to set the rent consistent with this Chapter. Disputes regarding the allowable rent for a
21 Midtown unit may be appealed to the Rent Board via a rental arbitration petitions as set forth
22 in Chapter 37.

23 (b) A Legacy Tenant shall not be required to show proof of income in order to be
24 charged the Chapter 37 Rent. However, if MOHCD (or its successor or designee) informs the
25 Legacy Tenant in writing that it needs to verify the Legacy Tenant's household income for

1 compliance with a current financing program or financing application, the Legacy Tenant shall
2 provide such information. MOHCD shall use such information for compliance purposes only,
3 and shall keep such information confidential to the extent permitted by law.

4
5 Section 4. Effective Date. This ordinance shall become effective 30 days after
6 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
7 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
8 of Supervisors overrides the Mayor’s veto of the ordinance.

9
10 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
11 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
12 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
13 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
14 additions, and Board amendment deletions in accordance with the “Note” that appears under
15 the official title of the ordinance.

16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18
19 By: /s/
20 MANU PRADHAN
21 Deputy City Attorney
22 n:\legana\as2020\2000279\01478845.docx

REVISED LEGISLATIVE DIGEST
(Amended in Committee – September 17, 2020)

[Administrative Code - Rent Control at Midtown Park Apartments]

Ordinance amending the Administrative Code to adopt rent increase limitations for dwelling units at Midtown Park Apartments, a residential development owned by the City and County of San Francisco; and expanding the Rent Board fee to cover those dwelling units.

Existing Law

Midtown Park Apartments is a residential building owned by the City. Rental units at Midtown are not subject to the City’s Rent Ordinance. Instead, rents at Midtown are set by the Mayor’s Office of Housing and Community Development (“MOHCD”), based on a percentage of each tenant’s household income and other factors.

Amendments to Current Law

MOHCD would retain the ability to set rents at Midtown as it has previously done, for all dwelling units that are not occupied by tenants who have residing there since January 1, 2014 (“Legacy Tenants”). Legacy Tenants would instead have their rents set as though the Rent Ordinance applied. But, each Legacy Tenant would have a one-time option to switch over to having their rents be set under whatever MOHCD rent program may exist at that time. Once a Legacy Tenant switched over to the MOHCD rent program, that would apply going forward, and the Legacy Tenant could not later revert to the Rent Ordinance.

Rent disputes for Midtown units (regardless whether occupied by a Legacy Tenant) could be appealed to the Rent Board, and the Rent Board fee would apply to Midtown units in order for the City to recoup the associated costs.

Background Information

Midtown Park Apartments is located at 1415 Scott Street, San Francisco (Lot 31, Assessor’s Block 1099). This version of the legislative digest reflects amendments made on September 17, 2020.

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CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292
FAX (415) 252-0461

September 25, 2020


TO: Government Audit and Oversight Committee
FROM: Budget and Legislative Analyst 
SUBJECT: October 1, 2020 Government Audit and Oversight Committee Meeting

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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance amends the Administrative Code to make Midtown Park Apartments subject to the Residential Rent Stabilization and Arbitration Ordinance.

Key Points

- In 2014, MOHCD entered into a lease with Mercy Midtown Inc. to manage the Midtown Park Apartments, and established the Rental Modification Program, setting rent rates for existing tenants, generally equal to 30 percent of household income. Because Midtown Park Apartments is a City-owned property, the apartments are not subject to the City’s Rent Stabilization and Arbitration Ordinance.
- According to the proposed ordinance initial base rent for tenants who have occupied their units since January 2014 (“legacy tenants”) would be set at the lower of (1) rent in effect as of May 2014, or (2) rent set by the Rent Modification Program.
- Initial base rent for tenants who began occupying their units after January 2014, rent would be the rent in effect at the time the tenancy commenced as determined by MOHCD’s then-current published maximum affordable rent schedule, or as determined by any successor affordable rent schedule or program for Midtown (“percentage rent”).
- Rent increases for (1) legacy tenants would be the allowable percentage increase to base rent in effect as of May 2014 set by the Rent Stabilization and Arbitration Ordinance, and (2) tenants paying percentage rent as base rent (including legacy tenants) would be the allowable rent under the current Maximum Rent Schedule published for each year, which could include a rent increase.

Fiscal Impact

- Total rents owed by legacy tenants would decrease by approximately \$500,000 if all legacy tenants elected to set base rent in accordance with the Rent Stabilization and Arbitration Ordinance. However, the actual decrease in rents owed by legacy tenants would vary depending on the number of legacy tenants who instead elected to set rent as percentage rent rather than rent subject to the Rent Stabilization and Arbitration Ordinance. The impact of the proposed ordinance on the City’s operating subsidy to Midtown Park Apartments would depend on operating expenses. The City’s operating subsidy Midtown Park Apartments varied from 850,000 in CY 2018 to \$425,973 in CY 2019.

Recommendations

- Request clarification from MOHCD and Rent Board on how the proposed ordinance would impact (1) tenants temporarily relocated from housing projects undergoing rehabilitation to Midtown Parks Apartments; and (2) would apply to back rent owed by 11 tenants.
- Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance.

BACKGROUND

Midtown Park Apartments are a City-owned housing project located at 1415 Scott Street in the Western Addition. The project, which opened in 1968 to provide housing to households displaced by urban development, consists of 139 housing units, which are a mix of three-, two-, and one-bedroom units. Fifty-three percent of the households are single person households, and the remaining households range from two to five persons. Sixty-five percent of the households are headed by an individual who is 60 years or older. Average household income is \$47,711, equal to 45 percent of the Area Median Income.

Income Restrictions

While the City subsidizes the operations of the Midtown Park Apartments, the project does not have deed or other restrictions mandating affordability. The original funding to develop the Midtown Park Apartments came from Department of Housing and Urban Development (HUD) loans, but affordability restrictions set by these loans are no longer in effect.

Property Management Lease

In 2014, the Mayor's Office of Housing and Community Development (MOHCD) entered into a lease and management agreement ("lease") with Mercy Midtown Inc. ("Mercy"), a nonprofit organization, to manage Midtown Park Apartments, including maintaining the property and improvements. The lease was month-to-month and therefore not subject to Board of Supervisors approval.¹

Under the terms of the lease, Mercy collected tenant rents, which were a source of income to be used in accordance with the annual budget approved by MOHCD. MOHCD is required to cover operating deficits, which is any revenue shortfall that is insufficient to pay for operations and maintenance of the property. The lease provided for Mercy to certify the income of all existing tenants and enter into rental agreements with the tenants. Mercy was then responsible to enforce the terms of the rental agreements.

At the beginning of the lease in 2014, Mercy was to maintain the existing rents for tenants, pending implementation of a Rental Credit Program by MOHCD. The second amendment to the lease, executed in March 2015, changed the name of the Rental Credit Program to the "Rent Modification Program". The second amendment provided for Mercy to enter into rental agreements with existing tenants by June 2015; rents were to remain unchanged from the 2014

¹ Administrative Code Section 23.31 states that leases of City-owned property that are year-to-year or less, including month-to-month leases, for which the fair market rent is \$15,000 or less per month, can be approved by the Director of Real Estate. Rent paid by Mercy to the City was \$1.00 per month.

rents until implementation of the Rent Modification Program, which required annual certification of tenant income. The Rent Modification Program contained the following provisions:

- Rents to be set at 30 percent of tenant’s income or market rate, whichever was less;
- Rent increases would be phased in over time for tenants paying less than 30 percent of their income;
- Rents would be reduced for tenants paying more than 30 percent of their income;
- Rents would be unchanged for tenants currently paying rent equal to 30 percent of their income.

The Rent Modification Program specified that no tenant would be evicted if their income was considered too high or too low.

Deferred Maintenance and Improvements

Between 2014 and 2019, Mercy completed repairs to the Midtown Apartments. The third amendment to the lease with Mercy provided for an allocation of Community Development and Block Grant (CDBG) funds of \$5 million to Mercy for emergency mold remediation of the property. In 2017, the fourth amendment increased CDBG funds to \$8.7 million for health and safety improvements to the property. The fifth amendment increased this funding to approximately \$9.5 million. According to Ms. Cindy Heavens, MOHCD Senior Project Manager, when the \$5 million repair began, there were 126 occupied units of the total 139 units. All of the occupied units were inspected, and based on the inspections repairs were completed on 123 units. All repairs with the CDBG funds were completed in 2019.

According to Ms. Heavens, the Midtown Park Apartments require additional repairs that need to be completed within the next 18 months, including repairs to the roofs, HVAC (heating, ventilation, air conditioning) system, fire safety, and other improvements and repairs. The estimated cost of the repairs needed to be completed in the next 18 months is approximately \$2 million.

Assignment of Lease

In January 2020, Mercy assigned the lease to Midtown Park Apartments – Kalco, LLC (“Kalco”), a limited liability company. Under the assignment agreement, MOHCD agreed to continue providing adequate funds to manage and operate the Midtown Park Apartments project to offset revenue shortfalls.

City Subsidy to Midtown Parks Apartments

Under the lease agreement between the City and Kalco, the City agreed to provide adequate funds to manage and operate the Midtown Park Apartments project, as noted above. According to the Midtown Park Apartments audited financial statements, the City’s subsidy to the Midtown Park Apartments in CY 2018 was \$850,000 and in CY 2019 was \$425,973.

DETAILS OF PROPOSED LEGISLATION

Note: This report is based on amendments submitted in the Government Audit and Oversight Committee on September 17, 2020.

File 20-0518 is an ordinance amending the Administrative Code to subject dwelling units at Midtown Park Apartments, a residential development owned by the City and County of San Francisco, to the Residential Rent Stabilization and Arbitration Ordinance; and making findings pursuant to as required by the California Tenant Protection Act of 2019. According to the proposed ordinance:

Initial base rent for:

- Tenants who have occupied their units since January 2014 (“legacy tenants”) would be set at the lower of (1) rent in effect as of May 2014, or (2) rent set by the Rent Modification Program.
- Tenants who began occupying their units after January 2014, rent would be the rent in effect at the time the tenancy commenced as determined by MOHCD’s then-current published maximum affordable rent schedule, or as determined by any successor affordable rent schedule or program for Midtown (“percentage rent”).

Rent increases for:

- Legacy tenants would be the allowable percentage increase to base rent in effect as of May 2014 set by the Rent Stabilization and Arbitration Ordinance.
- Tenants paying percentage rent as base rent (including legacy tenants) would be the allowable rent under the current Maximum Rent Schedule published for each year, which could include a rent increase.

Tenants who paid more than the allowable rent increase between May 2014 and the effective date of the proposed ordinance would receive a rent credit against future rents.

Legacy tenants who opt to set base rent at the 2014 amount, with rent increases subject to the Rent Stabilization and Arbitration Ordinance, will have a one-time option to elect to switch to percentage rent.

Vacant Units

Twenty-two of the 139 housing units at Midtown Park Apartments are vacant. According to MOHCD staff, 17 of the 22 vacant units will be made available under a master lease to tenants temporarily relocated from other affordable housing projects that are undergoing rehabilitation. The Board of Supervisors should request clarification from MOHCD and the Rent Board on how these future tenants will be impacted under the proposed ordinance.

FISCAL IMPACT

When the Rent Modification Program at Midtown Parks Apartments was implemented in June 2015, which increased rents to 30 percent of household income:

- 86 tenants had existing rents less than 30 percent of household income and therefore had rent increases phased in over five years, with the median increase equal to 75 percent; and
- 21 tenants had existing rents greater than 30 percent of household income and therefore had rent decreases, with the median decrease equal to 30 percent.

According to rent roll data for Midtown Park Apartments, provided by MOHCD, total rents owed by legacy tenants would decrease by approximately \$500,000 if all legacy tenants elected to set base rent and subsequent annual increases in accordance with the Rent Stabilization and Arbitration Ordinance. However, the actual decrease in rents owed by legacy tenants would vary depending on the number of legacy tenants who instead elected to set rent as percentage rent rather than rent subject to the Rent Stabilization and Arbitration Ordinance.

The impact of the proposed ordinance on the City's operating subsidy to Midtown Park Apartments would depend on operating expenses. As noted above, the City provides an annual operating subsidy to Midtown Park Apartments, which varied from 850,000 in CY 2018 to \$425,973 in CY 2019.

POLICY CONSIDERATION

As noted above, the Board of Supervisors should request clarification from MOHCD and the Rent Board on how tenants temporarily relocated from housing projects undergoing rehabilitation to Midtown Parks Apartments would be impacted by the proposed ordinance.

Also, according to the rent roll data provided by MOHCD, eleven tenants who had rent increases in 2015 now owe back rent exceeding \$20,000. The Board of Supervisors should request clarification from MOHCD and the Rent Board on how the proposed ordinance would apply to back rent owed by the 11 tenants.

RECOMMENDATIONS

1. Request clarification from MOHCD and the Rent Board on how the proposed ordinance would impact (1) tenants temporarily relocated from housing projects undergoing rehabilitation to Midtown Parks Apartments; and (2) would apply to back rent owed by 11 tenants.
2. Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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September 11, 2020


TO: Government Audit and Oversight Committee
FROM: Budget and Legislative Analyst 
SUBJECT: September 17, 2020 Government Audit and Oversight Committee Meeting

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<p>Item 8 File 20-0518</p>	<p>Department: Mayor’s Office of Housing and Community Development</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> ▪ The proposed ordinance amends the Administrative Code to make Midtown Park Apartments, a housing development owned by the City, subject to the Residential Rent Stabilization and Arbitration Ordinance. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> ▪ In 2014, the Mayor’s Office of Housing and Community Development (MOHCD) entered into a lease with Mercy Midtown Inc. (“Mercy”) to manage Midtown Park Apartments, and established the Rental Modification Program, setting rent rates for existing tenants, generally equal to 30 percent of household income. 88 tenants had existing rents less than 30 percent of household income and therefore had rent increases phased in over five years, with the median increase equal to 75 percent; and 28 tenants had existing rents greater than 30 percent of household income and therefore had rent decreases, with the median decrease equal to 30 percent. Because Midtown Park Apartments is a City-owned property, the apartments are not subject to the City’s Rent Stabilization and Arbitration Ordinance. ▪ According to the proposed ordinance: (a) tenants occupying their units in the Midtown Park Apartments since May 2014, would have rent set at 2014 rates, plus allowable annual percentage increases; (b) tenants who paid rent since May 2014, exceeding the allowable amount, would receive rent credits against future rents; and (c) tenants who began occupying their units after May 2014 would have base rent established as the rent to be paid at the time of their occupancy, increasing annually by the amount allowed under the City’s Residential Rent Stabilization and Arbitration Ordinance. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> ▪ According to the Midtown Park Apartments audited financial statements, the City’s subsidy to the Midtown Park Apartments in CY 2018 was \$850,000 and in CY 2019 was \$425,973. According to the rent roll data for Midtown Park Apartments, provided by MOHCD, the MOHCD subsidy would need to increase to approximately \$975,290 per year, an increase of approximately \$550,000 compared to the CY 2019 subsidy, to offset the decrease in rents under the proposed ordinance. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> ▪ Seventeen vacant units at Midtown Park Apartments will be made available to tenants temporarily relocated from other affordable housing projects that are undergoing rehabilitation. Also, eleven tenants who had rent increases in 2015 now owe back rent exceeding \$20,000 per tenant. <p style="text-align: center;">Recommendations</p> <ul style="list-style-type: none"> ▪ Request clarification from MOHCD and Rent Board on how the proposed ordinance would impact (1) tenants temporarily relocated from housing projects undergoing rehabilitation to Midtown Parks Apartments; and (2) would apply to back rent owed by 11 tenants. ▪ Approval of the proposed ordinance is a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance.

BACKGROUND

Midtown Park Apartments are a City-owned housing project located at 1415 Scott Street in the Western Addition. The project opened in 1968 to provide housing to households displaced by urban development. The project consists of 139 housing units, which are a mix of three-, two-, and one-bedroom units. Fifty-three percent of the households are single person households, and the remaining households range from two to five persons. Sixty-five percent of the households are headed by an individual who is 60 years or older. Average household income is \$47,711, equal to 45 percent of the Area Median Income.

Income Restrictions

While the City subsidizes the operations of the Midtown Park Apartments, the project does not have deed or other restrictions mandating affordability. The original funding to develop the Midtown Park Apartments came from Department of Housing and Urban Development (HUD) loans, but affordability restrictions set by these loans are no longer in effect.

Property Management Lease

In 2014, the Mayor's Office of Housing and Community Development (MOHCD) entered into a lease and management agreement ("lease") with Mercy Midtown Inc. ("Mercy"), a nonprofit organization, to manage Midtown Park Apartments, including maintaining the property and improvements. The lease was month-to-month and therefore not subject to Board of Supervisors approval.¹

Under the terms of the lease, Mercy collected tenant rents, which were a source of income to be used in accordance with the annual budget approved by MOHCD. MOHCD is required to cover operating deficits, which is any revenue shortfall that is insufficient to pay for operations and maintenance of the property. The lease provided for Mercy to certify the income of all existing tenants and enter into rental agreements with the tenants. Mercy was then responsible to enforce the terms of the rental agreements.

At the beginning of the lease in 2014, Mercy was to maintain the existing rents for tenants, pending implementation of a Rental Credit Program by MOHCD. The second amendment to the lease, executed in March 2015, changed the name of the Rental Credit Program to the "Rent Modification Program". The second amendment provided for Mercy to enter into rental agreements with existing tenants by June 2015; rents were to remain unchanged from the 2014

¹ Administrative Code Section 23.31 states that leases of City-owned property that are year-to-year or less, including month-to-month leases, for which the fair market rent is \$15,000 or less per month, can be approved by the Director of Real Estate. Rent paid by Mercy to the City was \$1.00 per month.

rents until implementation of the Rent Modification Program, which required annual certification of tenant income. The Rent Modification Program contained the following provisions:

- Rents to be set at 30 percent of tenant’s income or market rate, whichever was less;
- Rent increases would be phased in over time for tenants paying less than 30 percent of their income;
- Rents would be reduced for tenants paying more than 30 percent of their income;
- Rents would be unchanged for tenants currently paying rent equal to 30 percent of their income.

The Rent Modification Program specified that no tenant would be evicted if their income was considered too high or too low.

Deferred Maintenance and Improvements

Between 2014 and 2019, Mercy completed repairs to the Midtown Apartments. The third amendment to the lease with Mercy provided for an allocation of Community Development and Block Grant (CDBG) funds of \$5 million to Mercy for emergency mold remediation of the property. In 2017, the fourth amendment increased CDBG funds to \$8.7 million for health and safety improvements to the property. The fifth amendment increased this funding to approximately \$9.5 million. According to Ms. Cindy Heavens, MOHCD Senior Project Manager, when the \$5 million repair began, there were 126 occupied units of the total 139 units. All of the occupied units were inspected, and based on the inspections repairs were completed on 123 units. All repairs with the CDBG funds were completed in 2019.

According to Ms. Heavens, the Midtown Park Apartments require additional repairs that need to be completed within the next 18 months, including repairs to the roofs, HVAC (heating, ventilation, air conditioning) system, fire safety, and other improvements and repairs. The estimated cost of the repairs needed to be completed in the next 18 months is approximately \$2 million.

Assignment of Lease

In January 2020, Mercy assigned the lease to Midtown Park Apartments – Kalco, LLC (“Kalco”), a limited liability company. Under the assignment agreement, MOHCD agreed to continue providing adequate funds to manage and operate the Midtown Park Apartments project to offset revenue shortfalls.

DETAILS OF PROPOSED LEGISLATION

File 20-0518 is an ordinance amending the Administrative Code to subject dwelling units at Midtown Park Apartments, a residential development owned by the City and County of San Francisco, to the Residential Rent Stabilization and Arbitration Ordinance; and making findings pursuant to as required by the California Tenant Protection Act of 2019. According to the proposed ordinance:

- Tenants occupying their units in the Midtown Park Apartments since May 2014, would have rent set at 2014 rates, plus allowable annual percentage increases under the City's Residential Rent Stabilization and Arbitration Ordinance;
- Tenants who paid rent since May 2014, exceeding the allowable amount, would receive rent credits against future rents;
- Tenants who began occupying their units after May 2014 would have base rent established as the rent to be paid at the time of their occupancy, increasing annually by the amount allowed under the City's Residential Rent Stabilization and Arbitration Ordinance.

Vacant Units

Twenty-two of the 139 housing units at Midtown Park Apartments are vacant. According to MOHCD staff, 17 of the 22 vacant units will be made available under a master lease to tenants temporarily relocated from other affordable housing projects that are undergoing rehabilitation. The Board of Supervisors should request clarification from MOHCD and the Rent Board on how these future tenants will be impacted under the proposed ordinance.

FISCAL IMPACT

Estimated Impact on Rents²

When the Rent Modification Program at Midtown Parks Apartments was implemented in June 2015, which increased rents to 30 percent of household income:

- 88 tenants had existing rents less than 30 percent of household income and therefore had rent increases phased in over five years, with the median increase equal to 75 percent; and
- 28 tenants had existing rents greater than 30 percent of household income and therefore had rent decreases, with the median decrease equal to 30 percent.

Under the proposed ordinance, which would set rents for existing tenants at the lower of (a) 30 percent of household income, or (b) 2014 rents, plus allowable increases under the City's Rent Stabilization and Arbitration Ordinance:

- 47 tenants would have no change in their existing rent, of whom 35 tenants are currently paying rent equal to 30 percent of their household income which is less than rent set by the City's Rent Stabilization and Arbitration Ordinance; and
- 70 tenants would have a rent decrease to bring their rent into conformance with the City's Rent Stabilization and Arbitration Ordinance.

Estimated City Subsidy to Midtown Parks Apartments

Under the lease agreement between the City and Kalco, the City agreed to provide adequate funds to manage and operate the Midtown Park Apartments project, as noted above. According to the Midtown Park Apartments audited financial statements, the City's subsidy to the Midtown

² Rent information based on rent roll data provided by MOHCD for Midtown Park Apartments.

Park Apartments in CY 2018 was \$850,000 and in CY 2019 was \$425,973. According to the rent roll data for Midtown Park Apartments, provided by MOHCD, the MOHCD subsidy would need to increase to approximately \$975,290 per year, an increase of approximately \$550,000 compared to the CY 2019 subsidy, to offset the decrease in rents under the proposed ordinance.

POLICY CONSIDERATION

As noted above, the Board of Supervisors should request clarification from MOHCD and the Rent Board on how tenants temporarily relocated from housing projects undergoing rehabilitation to Midtown Parks Apartments would be impacted by the proposed ordinance.

Also, according to the rent roll data provided by MOHCD, eleven tenants who had rent increases in 2015 now owe back rent exceeding \$20,000. The Board of Supervisors should request clarification from MOHCD and the Rent Board on how the proposed ordinance would apply to back rent owed by the 11 tenants.

RECOMMENDATIONS

- Request clarification from MOHCD and the Rent Board on how the proposed ordinance would impact (1) tenants temporarily relocated from housing projects undergoing rehabilitation to Midtown Parks Apartments; and (2) would apply to back rent owed by 11 tenants.
- Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Carroll, John \(BOS\)](#)
Subject: FW: Government Audit and Oversight Committee - September 17 - Agenda Item 8 (File 200518) - Rent Control at Midtown Park Apartments
Date: Monday, September 21, 2020 9:42:40 AM

From: Cat Bell <bellacatus@yahoo.com>
Sent: Wednesday, September 16, 2020 8:42 PM
To: Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>
Cc: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Government Audit and Oversight Committee - September 17 - Agenda Item 8 (File 200518) - Rent Control at Midtown Park Apartments

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors Peskin, Mar and Haney,
I am writing to urge you to support the Ordinance amending the Administrative Code to make the units at Midtown subject to the Rent Control Ordinance.

The Midtown Apartments were built after the devastating Fillmore Western Addition Project of the 1970's, a legacy that San Francisco has yet to make sufficient reparations for. My understanding is that there are still people who have Certificates of Return that they have not been able to use. That is a travesty.

San Francisco has Midtown apartments, which was specifically built as home for people who were displaced by that redevelopment project. Many of the current residents were displaced or are descendants of displaced individuals. The promise was that the residents would own their homes.

Instead, Midtown was turned over to Mercy Housing, an agency that proceeded to raise their rent to 30% of income, which caused some tenants's rent to increase substantially, and thus caused tremendous hardship and stress for residents. San Francisco is blessed with this opportunity for which many members of the Midtown Community and allies have worked so hard to bring forth. And this is your opportunity to represent the best of San Francisco, to make this vitally urgent correction: To amend the Administrative Code in order to protect Midtown Apartments with Rent Control. The alternative: Betrayal, further fueling of gentrification, pushing yet more Black people and other people of color out of San Francisco.

Supervisor Preston's legislation adjusts the rent owed by long term tenants to what would have been allowed under rent control and it provides future protection against major rent increases. Please support this legislation.

Sincerely,
Cathy Bellin (Cat Bell)

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Carroll, John \(BOS\)](#)
Subject: FW: Rent Control protections for Midtown! (File No. 200518)
Date: Wednesday, September 16, 2020 4:56:34 PM

From: Cynthia Fong <cynthia@hrccsf.org>
Sent: Wednesday, September 16, 2020 4:03 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; BOS-Legislative Aides <bos-legislative_aides@sfgov.org>
Cc: Fred Sherburn Zimmer <fred@hrccsf.org>; tommy avicelli mecca <tmecca@hrccsf.org>
Subject: Rent Control protections for Midtown!

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

I am writing on behalf of Housing Rights Committee of San Francisco in support of Supervisor Preston's ordinance to return historic rent control protections to the Midtown Park Apartments.

As you know, Midtown was built in 1967 as replacement housing for Fillmore/Western Addition families who lost their homes during our City's Civic Redevelopment. Midtown was built and developed as cooperative housing with opportunities to own, but the City never fulfilled this promise to the residents. For decades, Midtown residents believed they were subject to the protections of rent control, and received rent increases aligned with the annual allowable amounts. That changed suddenly in 2014, when some tenants received rent increases of 300% or more.

Supervisor Preston's legislation addresses these unjust rent hikes, by adjusting the rent owed by long term tenants to what would have been allowed under rent control. It also provides future protection against major rent increases.

This legislation is about basic fairness. Without it, the largely African American community at Midtown will lose housing stability, which could lead to displacement. If you think that "Black Homes Matter", and you want to support our community in San Francisco, we urge you to approve this important legislation.

Sincerely,

Cynthia

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Cynthia Fong
Housing Rights Committee of San Francisco
Richmond District Community Organizer
(pronouns: they/she)

www.hrcsf.org | <https://www.facebook.com/housingrightsSF/>

Our offices are currently closed to the public in response to public health recommendations regarding COVID-19. If you are contacting us regarding Counseling: please email or call (415-947-9085) and provide your name, phone number, and we will have a counselor return your call as soon as possible. We will not be meeting tenants in person for the time being. We will announce any changes to our programming via our newsletter and [facebook](#) if you want to follow along.

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Carroll, John \(BOS\)](#)
Subject: FW: Government Audit and Oversight Committee - September 17 - Agenda Item 8 (File 200518) - Rent Control at Midtown Park Apartments
Date: Wednesday, September 16, 2020 4:53:30 PM

From: Richard Ivanhoe <richardivanhoe@sbcglobal.net>
Sent: Wednesday, September 16, 2020 4:03 PM
To: Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>
Cc: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Government Audit and Oversight Committee - September 17 - Agenda Item 8 (File 200518) - Rent Control at Midtown Park Apartments

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors Mar, Peskin and Haney,

I support the Ordinance amending the Administrative Code to make the units at Midtown subject to the Rent Control Ordinance.

As described in the Background section of the Budget and Legislative Analyst's report, Midtown opened in 1968 to provide housing for those displaced by urban renewal. 65% of the units have an individual 60 years old or older (born 1960 or earlier). As stated in section 37.12A(a) of the proposed ordinance, from 1968 to 2014, Midtown tenants generally received rent increases commensurate with the City's rent control laws.

Many of the tenants of Midtown were displaced, or are the descendants of those displaced by urban renewal. San Francisco was responsible for the displacement. It should accept responsibility and take care of the Midtown tenants. This ordinance can help.

I urge you to support the Ordinance and send it to the full Board with a recommendation for approval.

Thank you,

--Richard Ivanhoe--

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Robert Collins, Executive Director, Residential Rent Stabilization and Arbitration Board
Eric D. Shaw, Director, Mayor's Office of Housing and Community Development

FROM: John Carroll, Assistant Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: July 1, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, transferred from the Land Use and Transportation Committee, introduced by Supervisor Preston on May 19, 2019:

File No. 200518

Ordinance amending the Administrative Code to subject dwelling units at Midtown Park Apartments, a residential development owned by the City and County of San Francisco, to the Residential Rent Stabilization and Arbitration Ordinance; and making findings pursuant to as required by the California Tenant Protection Act of 2019.

If you have any 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.

c: Eugene Flannery, Mayor's Office of Housing and Community Development
Amy Chan, Mayor's Office of Housing and Community Development
Office of Chair Mar,
Office of Supervisor Preston

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only