

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Robert Collins, Executive Director, Rent Board  
Kate Hartley, Acting Director, Mayor's Office of Housing and Community Development

FROM:  Alisa Somera, Legislative Deputy Director  
Rules Committee

DATE: December 5, 2017

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Rules Committee has received the following proposed legislation, introduced by Supervisor Sheehy on November 28, 2017:

**File No. 171252**

**Ordinance amending the Administrative Code to establish an Office of Tenant Assistance to provide full scope legal representation to San Francisco tenants in certain eviction proceedings; and to require notice regarding the Office of Tenant Assistance to tenants being evicted from rental units covered by the Rent Ordinance.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [alisa.somera@sfgov.org](mailto:alisa.somera@sfgov.org).

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

1 [Administrative Code - Establishing an Office of Tenant Assistance]

2  
3 **Ordinance amending the Administrative Code to establish an Office of Tenant**  
4 **Assistance to provide full scope legal representation to San Francisco tenants in**  
5 **certain eviction proceedings; and to require notice regarding the Office of Tenant**  
6 **Assistance to tenants being evicted from rental units covered by the Rent Ordinance.**

7  
8 NOTE: **Unchanged Code text and uncodified text** are in plain font.  
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
11 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
12 subsections or parts of tables.

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

14 Section 1. Purpose and Findings.

15 (a) In 2012, the City enacted Ordinance No. 45-12, which declared San Francisco a  
16 “Right to Civil Counsel City” and established a one-year San Francisco Right to Civil Counsel  
17 pilot program. Under the pilot program, the City provided coordination among the Superior  
18 Court, non-profit organizations, pro bono attorneys, and others to provide free legal services  
19 to indigent San Francisco residents facing eviction.

20 (b) The pilot program was evaluated in a report entitled “San Francisco Right to Civil  
21 Counsel Pilot Program Documentation Report,” authored by the John and Terry Levin Center  
22 for Public Service and Public Interest at Stanford Law School, which is on file with the Clerk of  
23 the Board of Supervisors in File No. \_\_\_\_\_. This report found, among other things, that legal  
24 representation for tenants helps to “balance the playing field” in eviction proceedings, and that  
25 “providing full-scope representation increases the likelihood that a tenant will be able to stay in  
their home.”

1 (c) The pilot program has expired, and many tenants remain unable to secure legal  
2 representation in eviction proceedings. The high number of evictions combined with the  
3 shortage of affordable housing in San Francisco has caused many tenants to lose their homes  
4 and, in some cases, to leave the City altogether.

5 (d) Establishing an Office of Tenant Assistance to give tenants in eviction proceedings  
6 access to legal representation will help curb displacement and assist in the fair administration  
7 of justice. This ordinance is intended to serve this broad purpose. But, the Board of  
8 Supervisors does not intend for this program to assist tenants who are facing eviction  
9 because they engaged in domestic violence, child abuse, elder abuse, or harassment.

10 e) The Board of Supervisors intends to adopt this ordinance with the goal that the  
11 program can be funded from the FY 17-18 budget.

12  
13 Section 2. The Administrative Code is hereby amended by deleting existing Sections  
14 58.2 and 58.3, and adding new Section 58.2, to read as follows:

15 **SEC. 58.2. OFFICE OF TENANT ASSISTANCE ESTABLISHMENT OF RIGHT TO**  
16 **CIVIL COUNSEL PILOT PROGRAM.**

17 *~~Within six months of the effective date of this ordinance, the Board of Supervisors shall consider~~*  
18 *~~recommendations regarding the creation of a San Francisco Right to Civil Counsel Pilot Program~~*  
19 *~~("Pilot Program") to be administered by the City and to take place for one year in FY 2012-2013.~~*

20 *(a) There is hereby established within the Mayor's Office of Housing and Community*  
21 *Development ("MOHCD") an Office of Tenant Assistance. The Office of Tenant Assistance shall*  
22 *administer a program to provide full scope legal representation within 30 days of notification to any*  
23 *tenant of a residential dwelling unit in San Francisco who is in an eviction proceeding. The Director of*  
24 *MOHCD may enter into contracts, award grants, adopt rules and regulations, and take all other*  
25 *necessary steps to carry out the purposes of this Section 58.2.*

1 (b) The term “full scope representation” shall mean ongoing legal representation to an  
2 individual and all legal advice, advocacy, and assistance associated with such representation,  
3 including, without limitation, filing a notice of appearance on behalf of the individual in an eviction  
4 proceeding, filing responsive pleadings, and appearing on behalf of the individual in court and  
5 settlement proceedings; provided, however, that “full scope representation” does not include  
6 representation in any of the types of eviction proceedings identified in subsection (c).

7 (c) Program funds may not be used to assist a tenant in an eviction proceeding (1) brought by a  
8 landlord or master tenant who resides in the same unit as the tenant; (2) based in whole or part on the  
9 tenant having engaged in an act of domestic violence, elder abuse, child abuse, or harassment; or (3)  
10 for which a state or federal program already provides full scope legal representation to the tenant.

11 (d) The Office of Tenant Assistance shall hold at least one public hearing each year to receive  
12 feedback and recommendations about the program.

13 **SEC. 58.3. RIGHT TO CIVIL COUNSEL PILOT PROGRAM FUNDING,**  
14 **ADMINISTRATION, AND EVALUATION.**

15 It shall be City policy that in FY 2012-2013, the City's fiscal commitment to the Pilot Program  
16 shall be limited to the cost of a single staff person for supporting program coordination among the  
17 City, the Superior Court, non-profit organizations and others involved in the Pilot Program. The legal  
18 services provided pursuant to the Pilot Program will be provided by pro bono and legal services  
19 attorneys. Prior to the commencement of the Pilot Program, a work plan and a process for independent  
20 evaluation of the Pilot Program shall be developed, and all parties involved in the Pilot Program will  
21 be required to participate in its evaluation. The evaluation described in this section shall be submitted  
22 to the Board of Supervisors within four months of completion of the Pilot Program. The evaluation will  
23 include (a) analysis of relevant data collected regarding impact of Pilot Program on demand for  
24 services (b) consider the effectiveness and continued need for the Pilot Program as it pertains to equal  
25 access to justice, and (c) strategies and recommendations for maximizing the benefit of that

1 ~~representation in the future. If the evaluation finds that the Pilot Program is successful, the Board of~~  
2 ~~Supervisors shall consider extending, expanding, or making permanent the work of the Pilot Program.~~

3  
4 Section 3. The Administrative Code is hereby amended by revising Section 37.9, to  
5 read as follows:

6 **SEC. 37.9. EVICTIONS.**

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

9 \* \* \* \*

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

1 Russian, the landlord shall attach a copy of the form that is in English to the notice. A copy of  
2 all notices to vacate except three-day notices to pay rent or quit and a copy of any additional  
3 written documents informing the tenant of the grounds under which possession is sought shall  
4 be filed with the Rent Board within 10 days following service of the notice to vacate. In any  
5 action to recover possession of the rental unit under Section 37.9, the landlord must plead  
6 and prove that at least one of the grounds enumerated in Section 37.9(a) or (b) and also  
7 stated in the notice to vacate is the dominant motive for recovering possession. Tenants may  
8 rebut the allegation that any of the grounds stated in the notice to vacate is the dominant  
9 motive.

10 \* \* \* \*

11  
12 Section 4. Undertaking for the General Welfare. In enacting and implementing this  
13 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not  
14 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it  
15 is liable in money damages to any person who claims that such breach proximately caused  
16 injury.

17  
18 Section 5. Scope of Ordinance. In enacting this ordinance, the People of the City and  
19 County of San Francisco intend to amend only those words, phrases, paragraphs,  
20 subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other  
21 constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions  
22 or deletions, in accordance with the "Note" that appears under the official title of the  
23 ordinance.

1 Section 6. Construction with Other Laws. If any provision of this ordinance presents a  
2 possible conflict with a voter-approved measure, the two laws shall be harmonized if possible  
3 and if necessary to avoid the conflict, to the fullest extent permitted by law. If any provision of  
4 this ordinance is capable of two constructions, one of which would cause the provision to  
5 become invalid due to a conflict with a voter-approved measure and the other of which would  
6 render the provision valid, then the provision shall have the construction that renders it valid.  
7

8 Section 7. Severability. If any section, subsection, sentence, clause, phrase, or word  
9 of this ordinance, or any application thereof to any person or circumstance, is held to be  
10 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision  
11 shall not affect the validity of the remaining portions or applications of the ordinance. The  
12 Board of Supervisors hereby declares that it would have passed this ordinance and each and  
13 every section, subsection, sentence, clause, phrase, and word not declared invalid or  
14 unconstitutional without regard to whether any other portion of this ordinance or application  
15 thereof would be subsequently declared invalid or unconstitutional.  
16

17 Section 8. Effective Date. This ordinance shall become effective 30 days after  
18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
19 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
20 of Supervisors overrides the Mayor's veto of the ordinance.

21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By:

  
24 MANU PRADHAN  
Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Administrative Code - Establish an Office of Tenant Assistance]

**Ordinance amending the Administrative Code to establish an Office of Tenant Assistance to provide full scope legal representation to San Francisco tenants in certain eviction proceedings; and to require notice regarding the Office of Tenant Assistance to tenants being evicted from rental units covered by the Rent Ordinance.**

Existing Law

The City does not currently have a program to help tenants in eviction proceedings secure free legal representation.

Amendments to Current Law

The proposed ordinance would establish within the Mayor's Office of Housing and Community Development an Office of Tenant Assistance ("OTA"). OTA's purpose would be to help San Francisco tenants who are in eviction proceedings secure free full scope legal representation. OTA assistance would not be available to a tenant in an eviction proceeding (1) brought by a landlord or master tenant who resides in the same unit as the tenant; (2) based in whole or part on the tenant having engaged in an act of domestic violence, elder abuse, child abuse, or harassment; or (3) for which a state or federal program already provides full scope legal representation to the tenant.

The proposed ordinance would also require the Rent Board to include background information about OTA on the form that a landlord is required to provide to a tenant who is being evicted from a "rental unit" covered by the Residential Rent Stabilization and Arbitration Ordinance.

Background Information

In 2012, the City established a pilot program that helped indigent San Francisco tenants in eviction proceedings secure free legal representation, but the program expired. The goal would be to fund the OTA from the FY2017-2018 budget.

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