

File No. 180318

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date May 18, 2018

Board of Supervisors Meeting

Date _____

Cmte Board

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Completed by: Alisa Somera Date May 16, 2018

Completed by: _____ Date _____

1 [Administrative Code - Landlord Operating and Maintenance Expenses]

2

3 **Ordinance amending the Administrative Code to prohibit landlords from seeking rent**
4 **increases on existing tenants due to increases in debt service and property tax that**
5 **have resulted from a change in ownership; and to prohibit landlords from seeking rent**
6 **increases due to increased management expenses unless the expenses are reasonable**
7 **and necessary.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial 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 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

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

16 Section 1. Purpose and Findings.

17 (a) The Residential Rent Stabilization and Arbitration Ordinance (the "Rent
18 Ordinance") is intended to protect tenants from excessive rent increases while also assuring
19 that landlords receive fair and adequate rents. Thus, although rents are capped, a landlord
20 may increase a tenant's base rent by a certain percentage each year. This annual increase is
21 generally sufficient to provide landlords fair and adequate rents.

22 (b) A landlord may also file a petition with the Rent Board to increase base rents
23 beyond the annual increase, by up to an additional 7%, if the annual increase does not
24 completely cover the landlord's increased operating and maintenance ("O&M") expenses.
25 Examples of O&M expenses include the cost of day-to-day repairs, insurance, pest control,
garbage, water, and security. The purpose of an O&M increase is to help a landlord recover

1 from existing tenants the reasonable cost of keeping the building habitable, and to keep pace
2 with cost increases over time, to the extent the annual increase is not sufficient to cover those
3 cost increases.

4 (c) In recent years, more and more landlords have sought O&M increases on the
5 basis that their debt service and property tax costs have suddenly increased. But these costs
6 do not reflect amounts that were reinvested to maintain or improve the buildings. Rather, the
7 landlords claiming these increases are new buyers who are seeking to offset the costs of
8 acquiring property. The increase in property tax is based on the change in ownership and
9 reflects the high amounts that these buyers are willing to pay for these buildings; the annual
10 increase is intended to cover annual tax increases due to inflation. The increase in debt
11 service is due to the high amount of debt these buyers are willing to take on, and most rent
12 control jurisdictions in California do not allow rent increases based on increased debt service.
13 In short, property tax and debt service are not true O&M expenses, and treating them as such
14 encourages real estate speculation, fuels tenant displacement, and circumvents the purpose
15 of rent control.

16 (d) An article in the *San Francisco Chronicle* on December 11, 2017, documented
17 that many tenants in rent-controlled housing in San Francisco have recently experienced
18 exorbitant rent increases after their buildings were acquired by new owners (often large real
19 estate investment firms), largely because the owners were able to petition for O&M increases
20 to cover the cost of paying off loans taken to buy the buildings and the higher property taxes
21 that had resulted from the purchase price. Since the article was published, the Rent Board
22 has seen a dramatic spike in O&M petitions seeking increases based on property tax and debt
23 service, and many of the tenants of these landlords are now at risk of displacement. The
24 Board of Supervisors intends to prevent landlords from taking advantage of this loophole that
25 the news article exposed.

1 Section 2. The Administrative Code is hereby amended by revising Section 37.8 to
2 read as follows:

3 **SEC. 37.8. ARBITRATION OF RENTAL INCREASE ADJUSTMENTS.**

4 * * * *

5 **(e) Hearings.**

6 * * * *

7 (4) **Determination of the Administrative Law Judge: Rental Units.** Based upon
8 the evidence presented at the hearing and upon such relevant factors as the Board shall
9 determine, the Administrative Law Judge shall make findings as to whether ~~or not~~ the
10 landlord's proposed rental increase exceeding the limitations set forth in Section 37.3 is
11 justified or whether ~~or not~~ the landlord has effected a rent increase through a reduction in
12 services or has failed to perform ordinary repair and maintenance as required by State or local
13 law; and provided further that, where a landlord has imposed a passthrough ~~for property taxes~~
14 pursuant to ~~this Chapter 37~~ Section 37.3(6)(D), the same ~~costs increase in property taxes~~ shall not
15 be included in the calculation of increased operating and maintenance expenses pursuant to
16 this ~~S~~ subsection (4). In making such findings, the Administrative Law Judge shall take into
17 consideration the following factors:

18 (A) Increases or decreases in operating and maintenance expenses, including,
19 but not limited to, ~~real estate taxes;~~ water and sewer service charges; janitorial service;
20 removal;; elevator service;; security system;; insurance for the property; routine repairs and
21 maintenance; and debt service and real estate taxes as set forth in subsections (i) and (ii); and
22 reasonable and necessary management expenses as set forth in subsection (iii).

23 (i) ; provided, however, when a unit is purchased after the effective date of this
24 ordinance, For petitions filed before December 11, 2017, and this purchase occurs the Rent Board may
25 consider increased debt service and increased real estate taxes; provided, however, that if the property

1 has been purchased within two years of the date of the previous purchase, consideration shall
2 not be given to that portion of increased debt service which has resulted from a selling price
3 which exceeds the seller's purchase price by more than the percentage increase in the
4 "Consumer Price Index for All Urban Consumers for the San Francisco-Oakland Metropolitan
5 Area, U.S. Department of Labor" between the date of previous purchase and the date of the
6 current sale, plus the cost of capital improvements or rehabilitation work made or performed
7 by the seller.

8 (ii) For petitions filed on or after December 11, 2017, the Rent Board shall not
9 consider any portion of increased debt service, or that portion of increased real estate taxes that has
10 resulted from an increased assessment due to a change in ownership; provided, however, that the Rent
11 Board may consider that portion of increased real estate taxes that has resulted from the completion of
12 needed repairs or capital improvements with respect to any petition filed on or after December 11,
13 2017; and provided, further, that the Rent Board may consider increased debt service and increased
14 real estate taxes in a petition filed on or after December 11, 2017 pursuant to Section 37.8(e)(4)(A)(i),
15 if the landlord demonstrates that it had purchased the property on or before April 3, 2018 and that it
16 had reasonably relied on its ability to pass through those costs at the time of the purchase.

17 (iii) For petitions filed on or after the effective date of the ordinance in Board of
18 Supervisors File No. 180318, the Rent Board may consider management expenses only to the extent
19 those expenses are reasonable and necessary, based on factors such as the need to provide day-to-day
20 management of the building; the level of management services previously required for the building; the
21 reasonable cost of the services in an arms-length transaction; whether any tenants have objected that
22 the cost and quality of the services are not in keeping with the socioeconomic status of the building's
23 existing tenants; and other extraordinary circumstances.

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

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

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

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

7
8 Section 3. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12
13 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19
20 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word
21 of this ordinance, or any application thereof to any person or circumstance, is held to be
22 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
23 shall not affect the validity of the remaining portions or applications of the ordinance. The
24
25

1 Board of Supervisors hereby declares that it would have passed this ordinance and each and
2 every section, subsection, sentence, clause, phrase, and word not declared invalid or
3 unconstitutional without regard to whether any other portion of this ordinance or application
4 thereof would be subsequently declared invalid or unconstitutional.

5
6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: 
9 MANU PRADHAN
Deputy City Attorney

10 n:\legana\as2018\1800310\01275867.docx

REVISED LEGISLATIVE DIGEST

(Substituted, 5/15/2018)

[Administrative Code - Landlord Operating and Maintenance Expenses]

Ordinance amending the Administrative Code to prohibit landlords from seeking rent increases on existing tenants due to increases in debt service and property tax that have resulted from a change in ownership; and to prohibit landlords from seeking rent increases due to increased management expenses unless the expenses are reasonable and necessary.

Existing Law

The Rent Ordinance allows a landlord to increase rents by a certain percentage each year (the "annual increase"). If the annual increase for a given year does not cover the amount by which the landlord's operating and maintenance ("O&M") expenses have increased that year, the landlord may file an O&M petition to increase base rents beyond the annual increase, by up to an additional 7%, in order to cover those increased costs. The Rent Ordinance lists real estate taxes, debt service, sewer service charges, janitorial service, refuse removal, security system, and elevator service as examples of allowable O&M expenses. The Rent Board has also treated building management as an allowable O&M expense.

Amendments to Current Law

The ordinance would prohibit the Rent Board from treating debt service and real estate taxes attributable to a change in ownership as O&M expenses, and would prohibit landlords from obtaining rent increases on existing tenants based on those costs, unless the landlord had already filed an O&M petition for those costs before December 11, 2017, or unless the landlord demonstrates that it purchased the property on or before April 3, 2018 and that it reasonably relied on the ability to pass through those costs at the time of the purchase.

The ordinance would provide that the Rent Board may consider building management as an O&M expense only to the extent that the expenses are reasonable and necessary, based on various factors that are specified in the ordinance.

Background Information

Separate from the annual increase and the O&M petition process, the Rent Ordinance also lets a landlord impose other types of rent increases on existing tenants, either with or without the filing of a petition, and generally lets a landlord reset the rent at market value at the start of any new tenancy. December 11, 2017 is the date that the *San Francisco Chronicle* published an article concerning O&M petitions that are based on increased debt service and real estate taxes. April 3, 2018 is the date the ordinance was introduced.

SF landlords' attempts to pass some charges on to tenants face opposition

By Dominic Fracassa

December 11, 2017 Updated: December 12, 2017 5:30am

Amina Rubio thought little of the notice she received in the mail in October 2016 informing her that the Powell Street apartment building where she's lived for nearly 20 years was under new management.

At the time, the name of her building's new owners, Veritas Investments and its subsidiary, Greentree Property Management — one of the largest landlords in San Francisco — didn't ring any bells, so it was a fact of life easily tucked away in the back of her mind.

But Rubio's indifference toward her new property manager was shattered when, in September, she received another notice, this one informing her that her rent, which had risen just \$113 — to \$543 — since 1998, would rise 31 percent to \$714, effective immediately. On her already modest Social Security income and tight household budget, the rent hike came as an overwhelming blow.

"I was in shock, just crying. I went into a three-day depression. It was devastating. I couldn't even function," Rubio said.

The steep rent increases stemmed from of a number of new charges, including fees for operating and maintaining the building that Greentree was passing on to the building's rent-controlled tenants, who like Rubio, were paying far below market rates for their apartments on the south side of Nob Hill.

In San Francisco, like many other cities, when the various costs of running an apartment building outpace the annual allowable rent increases set by the city's Rent Board, landlords can request to pass on a portion of those expenses to their tenants.

But in recent years, a pattern involving these so-called pass-through expenses has emerged that's causing alarm among tenants-rights organizations. Landlords, particularly large property management companies, increasingly are passing on the costs of their debt service — payments on the loan taken out to buy the building — and property taxes to tenants.

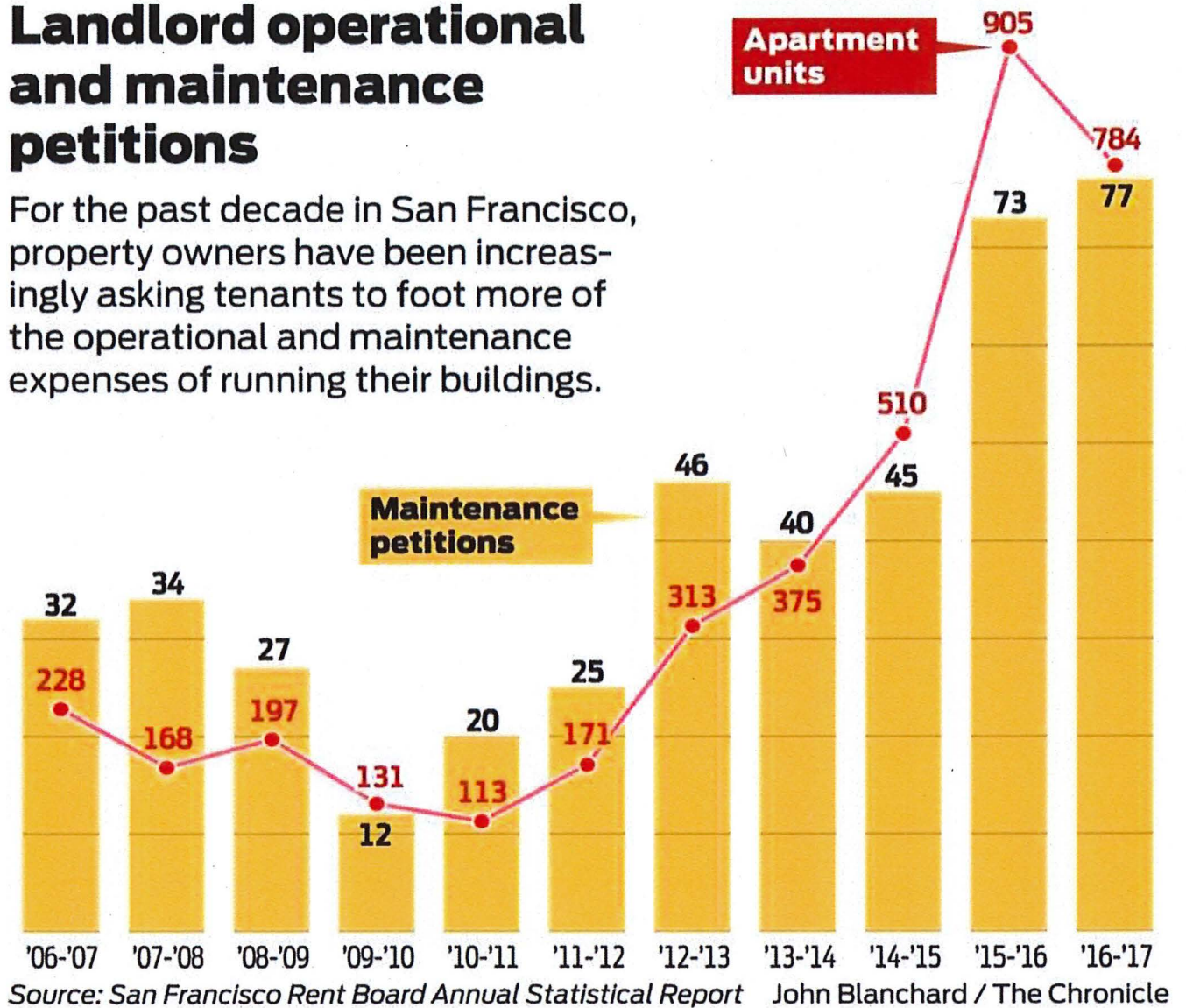
That could soon change. Tenants-rights groups, including the Housing Rights Committee of San Francisco, the Tenderloin Housing Clinic, the San Francisco Tenants Union and Legal Assistance to the Elderly, have secured a commitment from Supervisor Sandra Lee Fewer to sponsor legislation to eliminate debt-service and property tax pass-throughs.

“It's time for San Francisco to eliminate debt service as a justification for rent increases,” Fewer said. “Large corporate landlords that are purchasing residential buildings don't need incentives to immediately burden their rent-controlled tenants with exorbitant rent increases. By closing this loophole, we will help keep our rent-controlled housing affordable and prevent greed-fueled displacement.”

According to **data** from the city's Rent Board, the number of operational and maintenance pass-through petitions filed by landlords has jumped over the past five fiscal years. Between the 2006 and 2012 fiscal years, the number of petitions filed by landlords averaged 25 per year. From the 2012-13 fiscal year to the present, landlords have averaged 56 petitions per year. The number of units potentially affected by those petitions has risen sharply as well, from an average of 168 units to 577 over the same periods.

Landlord operational and maintenance petitions

For the past decade in San Francisco, property owners have been increasingly asking tenants to foot more of the operational and maintenance expenses of running their buildings.



Landlords may bundle together a variety of operational and maintenance costs when asking the Rent Board's permission to raise rents above the annual allowable amount for rent-controlled units, and the board's staff examines those expenses in the aggregate. Landlords have to show that the costs of operating the building jumped by more than the annual allowable amount for two consecutive 12-month periods. These pass-throughs can permanently

increase a tenant's base rent by up to 7 percent under San Francisco's rent ordinance.

But by far, said Robert Collins, the Rent Board's executive director, most petitions are being filed in order to have tenants help pay for their landlord's biggest expense: payments on the loan taken out to buy the building and for the property taxes levied on it.

"Those categories are the big ones," Collins said. Processing operational and maintenance pass-through requests from landlords "is a significant portion of our workload at this point," he said.

In Rubio's building, 21 out of 34 total units are subject to a range of fee increases, including the permanent debt service and property tax pass-throughs. Twelve of the remaining apartments are either not subject to rent control or are being used for sanctioned short-term rental programs. The last unit is occupied by a resident manager, according to Greentree.

San Francisco is the only major city in the Bay Area that allows landlords to pass through their debt obligations to tenants. The practice is prohibited in Berkeley, Oakland and San Jose, which did away with its debt-service pass-throughs last year.

Most operational and maintenance pass-throughs "are typically filed after a change of ownership, when a new owner has reassessed debt service and property taxes," Collins said. "Those also tend to be biggest costs for property owners."

Critics contend that the ease with which landlords — particular large property management companies — can make the case for such pass-throughs is akin to a baked-in charge levied against rent-controlled tenants.

“In this time of incredible pressure in the rental market, in my opinion, the process is being increasingly used to raise rents just to raise rents, not because it’s really necessary to support the true cost of operating and maintaining the building,” said Polly Marshall, a longtime pro-tenant Rent Board commissioner. The board is composed of pro-tenant, pro-landlord and neutral representatives who are appointed by the mayor.

Rubio said she feels like she is being forced to effectively help her landlord make its mortgage payments, “like I’m paying someone else’s credit card bill.”

Many landlords and their advocates agree that debt service and property tax pass-throughs are tools used mostly by larger property management companies. But throwing them out, they say, would disproportionately impact smaller, “mom-and-pop” owners who rely on the pass-throughs to keep themselves solvent.

“A lot of these landlords are barely making it on the income from their properties,” said Calvin Abe, a pro-landlord Rent Board commissioner. “I would oppose doing away with any of those pass-throughs because they’re essential for landlords in general, especially the smaller ones. They need it.”

Charley Goss, government affairs manager for the San Francisco Apartment Association, which represents property owners, also said tenants facing financial hardship may apply for an exemption to a pass-through rent hike.

“You want to protect tenants who need protection with hardship petitions, but there has to be a give-and-take with the ability to recoup costs and investments in the property,” Goss said.

When it comes to the Powell Street building where Rubio lives, Alex Clemens, a Veritas spokesman, pointed to a number of “major improvements” the company has made to the property since purchasing it, including a new roof,

renovated common areas, and ongoing upgrades to the building's electrical and gas systems.

“What little we recoup through the (operational and maintenance) pass-throughs is a small fraction of our costs of the major improvements we've made,” Clemens said in an email.

Rubio and her neighbors are still entitled to a hearing on the pass-throughs, as well as an appeal, but she's not optimistic much will come of it. She took out a \$5,000 loan to cover rent and other expenses for the next few months but said she “knows that's only going to stretch so far.”

“It's difficult to understand how these charges can even be justified,” she said. “I feel like this is a moral issue.”

Dominic Fracassa is a San Francisco Chronicle staff writer.

Email: dfracassa@sfchronicle.com Twitter: [@dominicfracassa](https://twitter.com/dominicfracassa)

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, Rent Board
Kate Hartley, Director, Mayor's Office of Housing and Community
Development

FROM: *AS* Alisa Somera, Legislative Deputy Director
Rules Committee

DATE: April 10, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee has received the following proposed legislation, introduced by Supervisor Fewer on April 3, 2018:

File No. 180318

Ordinance amending the Administrative Code to prohibit landlords from seeking rent increases on existing tenants due to increases in debt service and property tax that have resulted from a change in ownership.

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.

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

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
 BOARD OF SUPERVISORS
 SAN FRANCISCO
 Time stamp
 or meeting date 2018 MAR 19 PM 3:46
 BY AK

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. [180318]
- 9. Reactivate File No. []
- 10. Question(s) 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):

Fewer, Peskin, Yee, Ronen, Kim, Sheehy

Subject:

Ordinance amending the Administrative Code to prohibit landlords from seeking rent increases on existing tenants due to increases in debt service and property tax that have resulted from a change in ownership; and to prohibit landlords from seeking rent increases due to increased management expenses unless the expenses are reasonable and necessary.

The text is listed:

see attached

Signature of Sponsoring Supervisor: Gandra Lee Fewer

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
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SAN FRANCISCO

2018 APR -3 PM 4:00

Time stamp
or meeting date

BY [Signature]

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

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

Sponsor(s):

Fewer; Peskin, Yee, Ronen, Kim

Subject:

Ordinance amending the Administrative Code to prohibit landlords from seeking rent increases on existing tenants due to increases in debt service and property tax that have resulted from a change in ownership

The text is listed:

See attached legislation, legislative digest, and referenced article.

Signature of Sponsoring Supervisor: [Signature]