

1 [Just cause eviction protections for residential tenants, extend to non-rent controlled units.]

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3 **Ordinance amending Administrative Code Chapter 37 "Residential Rent Stabilization**
 4 **and Arbitration Ordinance" by amending Sections 37.2 and 37. 3 to extend just cause**
 5 **eviction requirements and protections to tenants in units that are not now subject to**
 6 **eviction controls (*i.e.*, most residential rental units with a certificate of occupancy**
 7 **issued after June 13, 1979); and by amending Chapter 37A "Rent Stabilization and**
 8 **Arbitration Fee" by amending Section 37A.1 to extend the City's current residential**
 9 **rental unit fee to these units.**

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

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

14

15 Section 1. The San Francisco Administrative Code is hereby amended by amending
 16 Section 37.2 to delete Sections 37.2(r)(5), (6), and (7), to read as follows:

17 SEC. 37.2. DEFINITIONS.

18 (a) Base Rent.

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

1 increases attributable to the City Administrator's amortization of an RAP loan in an area
2 designated on or after July 1, 1977, shall not be included in the base rent.

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

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

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

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

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

1 (B) For any tenant occupying a unit upon the expiration or termination, for whatever
2 reason, of a project-based HAP contract under Section 8 of the United States Housing Act of
3 1937 (42 USC Section 1437f, as amended), the base rent for each such unit following
4 expiration or termination shall be the "contract rent" in effect for that unit immediately prior to
5 the expiration or termination of the project-based HAP contract.

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

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

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

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

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

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

25 (f.1) Reserved.

1 (g) Housing Services. Services provided by the landlord connected with the use or
2 occupancy of a rental unit including, but not limited to: quiet enjoyment of the premises,
3 without harassment by the landlord as provided in Section 10B; repairs; replacement;
4 maintenance; painting; light; heat; water; elevator service; laundry facilities and privileges;
5 janitor service; refuse removal; furnishings; telephone; parking; rights permitted the tenant by
6 agreement, including the right to have a specific number of occupants, whether express or
7 implied, and whether or not the agreement prohibits subletting and/or assignment; and any
8 other benefits, privileges or facilities.

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

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

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

16 (k) Payment Standard. An amount determined by the San Francisco Housing
17 Authority that is used to determine the amount of assistance paid by the San Francisco
18 Housing Authority on behalf of a tenant under the Section 8 Voucher Program (24 CFR Part
19 887).

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

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

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

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

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

9 (q) Rent Increases. Any additional monies demanded or paid for rent as defined in
10 item (p) above, or any reduction in housing services without a corresponding reduction in the
11 monies demanded or paid for rent; provided, however, that: (1) where the landlord has been
12 paying the tenant's utilities and the cost of those utilities increases, the landlord's passing
13 through to the tenant of such increased costs pursuant to this Chapter does not constitute a
14 rent increase; (2) where there has been a change in the landlord's property tax attributable to
15 a general obligation bond approved by the voters between November 1, 1996 and November
16 30, 1998, or after November 14, 2002, the landlord's passing through to the tenant of such
17 increased costs in accordance with this Chapter (see Section 37.3(a)(6)) does not constitute a
18 rent increase; (3) where there has been a change in the landlord's property tax attributable to
19 a San Francisco Unified School District or San Francisco Community College District general
20 obligation bond approved by the voters after November 1, 2006, the landlord's passing
21 through to the tenant of such increased costs in accordance with this Chapter (see Section
22 37.3(a)(6)) does not constitute a rent increase; and, (4) where water bill charges are
23 attributable to water rate increases resulting from issuance of water revenue bonds authorized
24 at the November 5, 2002 election, the landlord's passing through to the tenant of such
25 increased costs in accordance with this Chapter (see Section 37.3(a)(5)(B)) does not

1 constitute a rent increase.

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

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

13 The term "rental units" shall not include:

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

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

1 approved by a majority of the residents;

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

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

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

22 (B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9, 37.9A,
23 37.10A, 37.11A and 37.13, the term "rental units" shall include units occupied by recipients of
24 tenant-based rental assistance where the rent payable by the tenant under the tenant-based
25 rental assistance program is a fixed percentage of the tenant's income; such as in the Section

1 8 certificate program and the rental subsidy program for the Housing Opportunities for
2 Persons with Aids ("HOPWA") program (42 U.S.C. Section 12901 et seq., as amended);

3 (C) The term "rental units" shall include units in a building for which tax credits are
4 reserved or obtained pursuant to the federal low income housing tax credit program (LIHTC,
5 Section 42 of the Internal Revenue Code, 26 U.S.C. Section 42), that satisfy the following
6 criteria:

7 (i) Where a tenant's occupancy of the unit began before the applicable LIHTC
8 regulatory agreement was recorded; and,

9 (ii) Where the rent is not controlled or regulated by any use restrictions imposed by
10 the City and County of San Francisco, the San Francisco Redevelopment Agency, the State
11 of California Office of Housing and Community Development, or the United States Department
12 of Housing and Urban Development.

13 Nothing in this Section 37.2(r)(4)(C) precludes a landlord from seeking an exemption
14 on the basis of substantial rehabilitation under Section 37.2(r)(6).

15 This Section 37.2(r)(4)(C) definition of "rental unit" shall apply to any unit where the
16 qualifying tenant (see Section 37.2(r)(4)(C)(i)) is in possession of the unit on or after the
17 effective date of this ordinance (Ord. No. 281-06), including but not limited to any unit where
18 the tenant has been served with a notice to quit but has not vacated the unit and there is no
19 final judgment against the tenant for possession of the unit as of the effective date of this
20 ordinance (Ord. No. 281-06).

21 ~~(5) Rental units located in a structure for which a certificate of occupancy was first issued~~
22 ~~after the effective date of this ordinance; (A) except as provided for certain categories of units and~~
23 ~~dwellings by Section 37.3(d) and Section 37.9A(b) of this Chapter, and (B) except as provided in a~~
24 ~~development agreement entered into by the City under San Francisco Administrative Code Chapter 56.~~

25 ~~(6) Dwelling units in a building which has undergone substantial rehabilitation after the~~

1 ~~effective date of this ordinance; provided, however, that RAP rental units are not subject to this~~
2 ~~exemption.~~

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

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

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

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

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

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1 Section 2. The San Francisco Administrative Code is hereby amended by amending
2 Section 37.3 to add new Section 37.3(e) and renumber current Section 37.3(e) as 37.3(f), to
3 read as follows:

4 SEC. 37.3. RENT LIMITATIONS.

5 (a) Rent Increase Limitations for Tenants in Occupancy. Landlords may impose rent
6 increases upon tenants in occupancy only as provided below and as provided by Subsection
7 37.3(d):

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

13 (2) Banking. A landlord who refrains from imposing an annual rent increase or any
14 portion thereof may accumulate said increase and impose that amount on the tenant's
15 subsequent rent increase anniversary dates. A landlord who, between April 1, 1982, and
16 February 29, 1984, has banked an annual seven percent rent increase (or rent increases) or
17 any portion thereof may impose the accumulated increase on the tenant's subsequent rent
18 increase anniversary dates.

19 (3) Capital Improvements, Rehabilitation, and Energy Conservation Improvements,
20 and Renewable Energy Improvements. A landlord may impose rent increases based upon the
21 cost of capital improvements, rehabilitation, energy conservation improvements, or renewable
22 energy improvements, provided that such costs are certified pursuant to Sections 37.7 and
23 37.8B below; provided further that where a landlord has performed seismic strengthening in
24 accordance with Building Code Chapters 16B and 16C, no increase for capital improvements
25 (including but not limited to seismic strengthening) shall exceed, in any 12 month period, 10

1 percent of the tenant's base rent, subject to rules adopted by the Board to prevent landlord
2 hardship and to permit landlords to continue to maintain their buildings in a decent, safe and
3 sanitary condition. A landlord may accumulate any certified increase which exceeds this
4 amount and impose the increase in subsequent years, subject to the 10 percent limitation.
5 Nothing in this subsection shall be construed to supersede any Board rules or regulations with
6 respect to limitations on increases based upon capital improvements whether performed
7 separately or in conjunction with seismic strengthening improvements pursuant to Building
8 Code Chapters 16B and 16C.

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

11 (5) Water: Charges Related to Excess Water Use, and 50% Passthrough of Water Bill
12 Charges Attributable to Water Rate Increases Resulting From Issuance of Water System
13 Improvement Revenue Bonds Authorized at the November 2002 Election.

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

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

23 (ii) The landlord provides the tenants with written certification that no known plumbing
24 leaks currently exist in the building and that any leaks reported by tenants in the future will be
25 promptly repaired; and

1 (iii) The landlord provides the tenants with a copy of the water bill for the period in
2 which the penalty was charged. Only penalties billed for a service period which begins after
3 the effective date of the ordinance [April 20, 1991] may be passed through to tenants. Where
4 penalties result from an allocation which does not reflect documented changes in occupancy
5 which occurred after March 1, 1991, a landlord must, if requested in writing by a tenant, make
6 a good-faith effort to appeal the allotment. Increases based upon penalties shall be prorated
7 on a per-room basis provided that the tenancy existed during the time the penalty charges
8 accrued. Such charges shall not become part of a tenant's base rent. Where a penalty in any
9 given billing period reflects a 25 percent or more increase in consumption over the prior billing
10 period, and where that increase does not appear to result from increased occupancy or any
11 other known use, a landlord may not impose any increase based upon such penalty unless
12 inspection by a licensed plumber or Water Department inspector fails to reveal a plumbing or
13 other leak. If the inspection does reveal a leak, no increase based upon penalties may be
14 imposed at any time for the period of the unrepaired leak.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (6) Property Tax. A landlord may impose increases based upon a 100% passthrough
19 of the change in the landlord's property tax resulting from the repayment of general obligation
20 bonds of the City and County of San Francisco approved by the voters between November 1,
21 1996, and November 30, 1998 as provided in Section 37.2(q) above.

22 A landlord may impose increases based upon a 50% passthrough of the change in the
23 landlord's property tax resulting from the repayment of San Francisco Unified School District
24 or San Francisco Community College District general obligation bonds approved by the voters
25 after November 1, 2006, as provided in Section 37.2(q) above.

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

2 (A) For general obligation bonds of the City and County of San Francisco approved by
3 the voters between November 1, 1996 and November 30, 1998:

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

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

12 (iii) The dollar amount calculated under Subsection (ii) shall be divided by the total
13 number of all units in each property, including commercial units. That figure shall be divided
14 by 12 months, to determine the monthly per unit costs for that tax year of the repayment of
15 general obligation bonds approved by the voters between November 1, 1996, and November
16 30, 1998.

17 (B) For general obligation bonds of the City and County of San Francisco approved by
18 the voters after November 14, 2002 where any rent increase has been disclosed and
19 approved by the voters:

20 (i) The Controller and the Board of Supervisors will determine the percentage of the
21 property tax rate, if any, in each tax year attributable to general obligation bonds approved by
22 the voters after November 14, 2002 and repayable within such tax year.

23 (ii) This percentage shall be multiplied by the total amount of the net taxable value for
24 the applicable tax year. The result is the dollar amount of property taxes for that tax year for a
25 particular property attributable to the repayment of general obligation bonds approved by the

1 voters after November 14, 2002.

2 (iii) The dollar amount calculated under Subsection (ii) shall be divided by two, and
3 then by the total number of all units in each property, including commercial units. That figure
4 shall be divided by 12 months, to determine the monthly per unit costs for that tax year of the
5 repayment of general obligation bonds approved by the voters after November 14, 2002.

6 (C) For general obligation bonds of the San Francisco Unified School District or San
7 Francisco Community College District approved by the voters after November 1, 2006:

8 (i) The Controller and the Board of Supervisors will determine the percentage of the
9 property tax rate, if any, in each tax year attributable to San Francisco Unified School District
10 or San Francisco Community College District general obligation bonds approved by the voters
11 after November 1, 2006 and repayable within such tax year.

12 (ii) This percentage shall be multiplied by the total amount of the net taxable value for
13 the applicable tax year. The result is the dollar amount of property taxes for that tax year for a
14 particular property attributable to the repayment of San Francisco Unified School District or
15 San Francisco Community College District general obligation bonds approved by the voters
16 after November 1, 2006.

17 (iii) The dollar amount calculated under Subsection (ii) shall be divided by two, and
18 then by the total number of all units in each property, including commercial units. That figure
19 shall be divided by 12 months, to determine the monthly per unit costs for that tax year of the
20 repayment of San Francisco Unified School District or San Francisco Community College
21 District general obligation bonds approved by the voters after November 1, 2006.

22 (D) Landlords may pass through to each unit in a particular property the dollar amount
23 calculated under these Subsections 37.3(a)(6)(A) and (B) and (C). These passthroughs may
24 be imposed only on the anniversary date of each tenant's occupancy of the property. These
25 passthroughs shall not become a part of a tenant's base rent. The amount of each annual

1 passthrough imposed pursuant to this Subsection (6) may vary from year-to-year, depending
2 on the amount calculated under Subsections (A) and (B) and (C). Each annual passthrough
3 shall apply only for the 12 month period after it is imposed. A landlord may impose the
4 passthroughs described in this Subsection (6) for a particular tax year only with respect to
5 those tenants who were residents of a particular property on November 1st of the applicable
6 tax year. A landlord shall not impose a passthrough pursuant to this Subsection (6) if the
7 landlord has filed for or received Board approval for a rent increase under Section 37.8(e)(4)
8 for increased operating and maintenance expenses in which the same increase in property
9 taxes due to the repayment of general obligation bonds was included in the comparison year
10 cost totals.

11 (E) The Board will have available a form which explains how to calculate the
12 passthrough.

13 (F) Landlords must provide to tenants, on or before the date that notice is served on
14 the tenant of a passthrough permitted under this Subsection (6), a copy of the completed form
15 described in Subsection (E). This completed form shall be provided in addition to the Notice of
16 Rent Increase required under Section 37.3(b)(5). Where a tenant alleges that a landlord has
17 imposed a charge which exceeds the limitations set forth in this Subsection (6), the tenant
18 may petition for a hearing under the procedures provided by Section 37.8. In such a hearing,
19 the landlord shall have the burden of proving the accuracy of the calculation that is the basis
20 for the increase. Any tenant petitions challenging such a passthrough must be filed within one
21 year of the effective date of the passthrough.

22 (G) The Board may amend its rules and regulations as necessary to implement this
23 Subsection (6).

24 (7) RAP Loans. A landlord may impose rent increases attributable to the City
25 Administrator's amortization of the RAP loan in an area designated on or after July 1, 1977,

1 pursuant to Chapter 32 of the San Francisco Administrative Code.

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

5 (9) A landlord may impose a rent increase to recover costs incurred for the
6 remediation of lead hazards, as defined in San Francisco Health Code Article 11 or 26. Such
7 increases may be based on changes in operating and maintenance expenses or for capital
8 improvement expenditures as long as the costs which are the basis of the rent increase are a
9 substantial portion of the work which abates or remediates a lead hazard, as defined in San
10 Francisco Health Code Article 11 or 26, and provided further that such costs are approved for
11 operating and maintenance expense increases pursuant to Section 37.8(e)(4)(A) and certified
12 as capital improvements pursuant to Section 37.7 below.

13 When rent increases are authorized by this Subsection 37.3(a)(9), the total rent
14 increase for both operating and maintenance expenses and capital improvements shall not
15 exceed 10 percent in any 12 month period. If allowable rent increases due to the costs of lead
16 remediation and abatement work exceed 10 percent in any 12 month period, an
17 Administrative Law Judge shall apply a portion of such excess to approved operating and
18 maintenance expenses for lead remediation work, and the balance, if any, to certified capital
19 improvements, provided, however, that such increase shall not exceed 10 percent. A landlord
20 may accumulate any approved or certified increase which exceeds this amount, subject to the
21 10 percent limit.

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

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

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

4 (ii) If the base rent is less than the payment standard, the rent increase limitations of
5 this Chapter shall not apply; provided, however, that any rent increase which would result in
6 the base rent being equal to or greater than the payment standard shall not result in a new
7 base rent that exceeds the payment standard plus the increase allowable under Section
8 37.3(a)(1).

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

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

17 (1) Which portion of the rent increase reflects the annual increase, and/or a banked
18 amount, if any;

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

24 (3) Which portion of the rent increase reflects the passthrough of charges for: gas and
25 electricity; or the passthrough of increased water bill charges attributable to water rate

1 increases resulting from issuance of water revenue bonds authorized at the November 2002
2 election as provided by Section 37.3(a)(5)(B), which charges and calculations of charges shall
3 be explained in writing on a form provided by the Board; or the passthrough of general
4 obligation bond measure costs as provided by Section 37.3(a)(6), which charges shall be
5 explained in writing on a form provided by the Board as described in Section 37.3(a)(6)(E);

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

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

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

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

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

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

21 (A) An owner or residential real property may establish the initial and all subsequent
22 rental rates for a dwelling or a unit which is alienable separate from the title to any other
23 dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b), (d), or
24 (f) of Section 11004.5 of the California Business and Professions Code. The owner's right to
25 establish subsequent rental rates under this paragraph shall not apply to a dwelling or unit

1 where the preceding tenancy has been terminated by the owner by notice pursuant to
2 California Civil Code Section 1946 or has been terminated upon a change in the terms of the
3 tenancy noticed pursuant to California Civil Code Section 827; in such instances, the rent
4 increase limitation provisions of Chapter 37 shall continue to apply for the duration of the new
5 tenancy in that dwelling or unit.

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

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

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

14 (C) An owner's right to establish subsequent rental rates under Subsection 37.3(d)(1)
15 shall not apply to a dwelling or unit which contains serious health, safety, fire or building code
16 violations, excluding those caused by disasters, for which a citation has been issued by the
17 appropriate governmental agency and which has remained unabated for six months or longer
18 preceding the vacancy.

19 (2) Conditions for Establishing the Initial Rental Rate Upon Sublet or Assignment.
20 Except as identified in this Subsection 37.3(d)(2), nothing in this Subsection or any other
21 provision of law of the City and County of San Francisco shall be construed to preclude
22 express establishment in a lease or rental agreement of the rental rates to be applicable in the
23 event the rental unit subject thereto is sublet, and nothing in this Subsection shall be
24 construed to impair the obligations of contracts entered into prior to January 1, 1996, subject
25 to the following:

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

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

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

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

14 (B) This Subsection 37.3(d)(2) shall not apply to partial changes in occupancy of a
15 dwelling or unit where one or more of the occupants of the premises, pursuant to the
16 agreement with the owner provided for above (37.3(d)(2)), remains an occupant in lawful
17 possession of the dwellings or unit, or where a lawful sublessee or assignee who resided at
18 the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit.
19 Nothing contained in this Subsection 37.3(d)(2) shall be construed to enlarge or diminish an
20 owner's right to withhold consent to a sublease or assignment.

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

25 (3) Termination or Nonrenewal of a Contract or Recorded Agreement with a

1 Government Agency Limiting Rent. An owner who terminates or fails to renew a contract or
2 recorded agreement with a governmental agency that provides for a rent limitation to a
3 qualified tenant, shall be subject to the following:

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

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

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

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

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

23 (5) This Subsection 37.3(d) is intended to be and shall be construed to be consistent
24 with the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.).
25

1 (e) An owner of residential real property may establish the initial and all subsequent rental
2 rates for a dwelling or a unit located in a structure for which a certificate of occupancy was first issued
3 after the effective date of Ordinance 276-79 (June 13, 1979), except:

4 (1) Where rent restrictions are provided for certain categories of units and dwellings by
5 Section 37.3(d) of this Chapter (e.g., Section 37.3(d)(1)(A) last sentence, (d)(B)(i), (d)(1)(C)),
6 (d)(2)(A)(i) – (iii), and (d)(3));

7 (2) Where rent restrictions are provided by Section 37.9A(b) of this Chapter; and,

8 (3) As provided in a development agreement entered into by the City under San Francisco
9 Administrative Code Chapter 56.

10 ~~(e)~~(f) Effect of Deferred Maintenance on Passthroughs for Lead Remediation
11 Techniques.

12 (1) When lead hazards are remediated or abated pursuant to San Francisco Health
13 Code Articles 11 or 26, are violations of State or local housing health and safety laws, there
14 shall be a rebuttable presumption that the lead hazards are caused or created by deferred
15 maintenance as defined herein of the current or previous landlord. If the landlord fails to rebut
16 the presumption, the costs of such work shall not be passed through to tenants as either a
17 capital improvement or an operating and maintenance expense. If the landlord rebuts the
18 presumption, he or she shall be entitled to a rent increase if otherwise justified by the
19 standards set forth in this Chapter.

20 (2) For purposes of the evaluation of petitions for rent increases for lead remediation
21 work, maintenance is deferred if a reasonable landlord under the circumstances would have
22 performed, on a regular basis, the maintenance work required to keep the premises from
23 being in violation of housing safety and habitability standards set forth in California Civil Code
24 Section 1941 and the San Francisco Municipal Code. In order to prevail on a deferred
25 maintenance defense, a tenant must show that the level of repair or remediation currently

1 required would have been lessened had maintenance been performed in a more timely
2 manner.

3

4 Section 3. The San Francisco Administrative Code is hereby amended by amending
5 Section 37A.1, to read as follows:

6 SEC. 37A.1. SCOPE.

7 This Chapter 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). For purposes of this Chapter, "residential units" are dwelling units and guest
12 rooms as those terms are defined in Sections 400 and 401 of the San Francisco Housing
13 Code. The term shall not include:

14 (a) Guest rooms exempted or excluded from regulation under Chapter 41 of this
15 Code;

16 (b) Dwelling units in nonprofit cooperatives owned, occupied and controlled by a
17 majority of the residents or dwelling units solely owned by a nonprofit public benefit
18 corporation governed by a board of directors the majority of which are residents of the
19 dwelling units and where it is required in the corporate by-laws that rent increases be
20 approved by a majority of the residents;

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

1 (d) Dwelling units whose rents are controlled or regulated by any government unit,
2 agency or authority, excepting those units which are subject to the jurisdiction of the
3 Residential Rent Stabilization and Arbitration Board. However, Section 8 certificate, voucher
4 and related programs administered by the San Francisco Housing Authority, which are subject
5 in whole or part to the jurisdiction of the Residential Rent Stabilization and Arbitration Board
6 shall remain exempt from the fee;

7 (e) Any dwelling unit for which the owner has on file with the Assessor a current
8 homeowner's exemption;

9 (f) Any dwelling unit which is occupied by an owner of record on either a full-time or
10 part-time basis and which is not rented at any time, provided that the owner file with the Tax
11 Collector an affidavit so stating;

12 ~~(g) Dwelling units located in a structure for which a certificate of final completion and~~
13 ~~occupancy was first issued by the Bureau of Building Inspection after June 13, 1979, except that any~~
14 ~~such units shall be subject to this Chapter 37A if so designated in a development agreement entered~~
15 ~~into by the City under Chapter 56 of the San Francisco Administrative Code;~~

16 ~~(h) Dwelling units in a building which, after June 13, 1979, has undergone substantial~~
17 ~~rehabilitation as that term is defined in Chapter 37 of this Code.~~

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

24 By: _____
25 MARIE CORLETT BLITS
Deputy City Attorney