

BOARD of SUPERVISORS



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MEMORANDUM

TO: Robert Collins, Executive Director, Rent Board
Olson Lee, Director, Mayor's Office of Housing and Community
Development
Nadia Sesay, Interim Executive Director, Office of Community Investment
and Infrastructure

FROM:  Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

DATE: April 19, 2017

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on April 11, 2017:

File No. 170417

Ordinance amending the Administrative Code to require a landlord seeking to recover possession of a rental unit based on an owner move-in ("OMI") or relative move-in ("RMI") to provide a declaration under penalty of perjury stating that the landlord intends to occupy the unit for use as the principal place of residence of the landlord or the landlord's relative for a period of at least 36 continuous months; to require a landlord following an OMI or RMI to provide annual documentation for 36 months showing whether the landlord or relative is occupying the unit as his or her principal place of residence; and to provide that a landlord who performs an OMI or RMI and then rents out the unit for more than the maximum allowable rent is guilty of a misdemeanor.

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
Kate Hartley, Mayor's Office of Housing and Community Development
Amy Chan, Mayor's Office of Housing and Community Development

1 [Administrative Code - Owner Move-In Reporting and Abuse]

2
3 **Ordinance amending the Administrative Code to require a landlord seeking to recover**
4 **possession of a rental unit based on an owner move-in (“OMI”) or relative move-in**
5 **(“RMI”) to provide a declaration under penalty of perjury stating that the landlord**
6 **intends to occupy the unit for use as the principal place of residence of the landlord or**
7 **the landlord’s relative for a period of at least 36 continuous months; to require a**
8 **landlord following an OMI or RMI to provide annual documentation for 36 months**
9 **showing whether the landlord or relative is occupying the unit as his or her principal**
10 **place of residence; and to provide that a landlord who performs an OMI or RMI and**
11 **then rents out the unit for more than the maximum allowable rent is guilty of a**
12 **misdemeanor.**

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

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

22 Section 1. The Administrative Code is hereby amended by revising Section 37.9 to
23 read as follows:

24 **SEC. 37.9. EVICTIONS**

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

1 (a) A landlord shall not endeavor to recover possession of a rental unit unless:

2 * * * *

3 (8) The landlord seeks to recover possession in good faith, without ulterior reasons
4 and with honest intent:

5 (i) For the landlord's use or occupancy as his or her principal residence for a
6 period of at least 36 continuous months;

7 (ii) For the use or occupancy of the landlord's grandparents, grandchildren,
8 parents, children, brother or sister, or the landlord's spouse, or the spouses of such relations,
9 as their principal place of residency for a period of at least 36 months, in the same building in
10 which the landlord resides as his or her principal place of residency, or in a building in which
11 the landlord is simultaneously seeking possession of a rental unit under Section 37.9(a)(8)(i).
12 For purposes of this Section 37.9(a)(8)(ii), the term spouse shall include domestic partners as
13 defined in San Francisco Administrative Code Sections 62.1 through 62.8.

14 * * * *

15 (v) The notice to vacate shall include a declaration executed by the landlord under
16 penalty of perjury stating that the landlord seeks to recover possession of the unit in good faith, without
17 ulterior reasons and with honest intent, for use or occupancy as the principal residence of the landlord
18 or the landlord's relative (identified by name and relation to the landlord), for a period of at least 36
19 continuous months, as set forth in subsections 37.9(a)(8)(i) and (ii). The landlord shall file the
20 declaration with the Rent Board along with the notice to vacate. Evidence of any of the following shall
21 create a rebuttable presumption that the landlord has not acted in good faith, unless and until evidence
22 is introduced that would support a finding that the landlord has acted in good faith, in which case the
23 trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and
24 without regard to the presumption: It shall be rebuttably presumed that the landlord has not acted in
25 good faith if (1) the landlord did not file the notice with the Rent Board, (2) the landlord or relative

1 for whom the tenant was evicted ~~did~~ *does* not move into the rental unit within three months
2 after recovering possession and then occupy said unit as that person's principal residence for a
3 minimum of 36 consecutive months-, or (3) the landlord rented the unit to a new tenant at a rent
4 greater than that which would have been the rent had the tenant who had been required to vacate
5 remained in continuous occupancy and the rental unit remained subject to this Chapter as provided in
6 Section 37.9B;

7 * * * *

8 (vii) A landlord who has recovered possession of a unit pursuant to Section 37.9(a)(8)
9 must complete a statement of occupancy under penalty of perjury on a form to be prepared by the Rent
10 Board. The landlord shall file the statement of occupancy with the Rent Board no later than three
11 months after recovery of possession of the unit, and shall file updated statements of occupancy no later
12 than 12 months, 24 months, and 36 months after the recovery of possession of the unit. The statement,
13 including the updates, shall identify whether the unit is (1) occupied as the principal place of residence
14 of the landlord or the relative (identified by name and relation to the landlord) for whom the tenant was
15 evicted, (2) occupied by another person, or (3) unoccupied. If the unit is occupied by a person other
16 than the landlord or the relative for whom the tenant was evicted, the statement of occupancy shall also
17 disclose the current rent for the unit; and the Rent Board shall send the displaced tenant a copy of the
18 statement of occupancy, or a notice that the landlord did not file a statement of occupancy if no
19 statement of occupancy was filed. If the unit is occupied by the landlord or the relative for whom the
20 tenant was evicted, the landlord shall file with the statement of occupancy at least two forms of
21 documentation in which the unit is listed as the landlord or relative's place of residence. Acceptable
22 forms of this documentation shall include at least two of the following categories: (1) current utility
23 services contract or utility billing records from within 45 days of the date of filing; (2) current motor
24 vehicle registration and insurance policy for the vehicle; (3) current homeowner's or renter's
25 insurance policy; (4) correspondence from within 45 days of the date of filing from any government

1 agency, including federal, state, and local taxing authorities; (5) current voter registration; (6) current
2 driver's license; (7) proof that the individual has obtained a homeowner's exemption from property
3 taxes for the unit; or (8) any other credible documentary evidence showing that the landlord or relative
4 actually occupies the rental unit as his or her principal place of residence. Evidence that the landlord
5 did not timely file a statement of occupancy and supporting documentation with the Rent Board shall
6 create a rebuttable presumption that the landlord did not recover possession of the unit in good faith,
7 unless and until evidence is introduced that would support a finding that the landlord did recover
8 possession of the unit in good faith, in which case the trier of fact shall determine the existence or
9 nonexistence of the presumed fact from the evidence and without regard to the presumption.

10 (viii) If any provision or clause of this amendment to Section 37.9(a)(8) or the
11 application thereof to any person or circumstance is held to be unconstitutional or to be
12 otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other
13 chapter provisions, and clauses of this Chapter are held to be severable; or

14 * * * *

15
16 **SEC. 37.9B. TENANT RIGHTS IN EVICTIONS UNDER SECTION 37.9(a)(8).**

17 (a) Any rental unit which a tenant vacates after receiving a notice to quit based on
18 Section 37.9(a)(8), and which is subsequently no longer occupied as a principal residence by
19 the landlord or the landlord's grandparent, parent, child, grandchild, brother, sister, or the
20 landlord's spouse, or the spouses of such relations must, if offered for rent during the three-
21 year period following service of the notice to quit under Section 37.9(a)(8), be rented in good
22 faith at a rent not greater than that which would have been the rent had the tenant who had
23 been required to vacate remained in continuous occupancy and the rental unit remained
24 subject to this Chapter. If it is asserted that a rent increase could have taken place during the
25 occupancy of the rental unit by the landlord if the rental unit had been subjected to this

1 Chapter, the landlord shall bear the burden of proving that the rent could have been legally
2 increased during the period. If it is asserted that the increase is based in whole or in part upon
3 any grounds other than that set forth in Section 37.3(a)(1), the landlord must petition the Rent
4 Board pursuant to the procedures of this Chapter. Displaced tenants shall be entitled to
5 participate in and present evidence at any hearing held on such a petition. Tenants displaced
6 pursuant to Section 37.9(a)(8) shall make all reasonable efforts to keep the Rent Board
7 apprised of their current address. The Rent Board shall provide notice of any proceedings
8 before the Rent Board to the displaced tenant at the last address provided by the tenant. No
9 increase shall be allowed on account of any expense incurred in connection with the
10 displacement of the tenant.

11 * * * *

12 (e) Within 30 days after the effective date of a written notice to vacate that is filed with
13 the Rent Board under Section 37.9B(c) the Rent Board shall record a notice of constraints with
14 the County Recorder identifying each unit on the property that is the subject of the Section
15 37.9B(c) notice to vacate, stating the nature and dates of applicable restrictions under
16 Sections 37.9(a)(8) and 37.9B. The Rent Board shall also send a notice to the unit that states the
17 maximum rent for that unit under Sections 37.9(a)(8) and 37.9B, and shall send an updated notice to
18 the unit 12 months, 24 months, and 36 months thereafter. If a notice of constraints is recorded but
19 the tenant does not vacate the unit, the landlord may apply to the Rent Board for a rescission
20 of the recorded notice of constraints. The Rent Board shall not be required to send any further
21 notices to the unit pursuant to this subsection (e) if the constraints on the unit are rescinded.
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2 **SEC. 37.10A. MISDEMEANORS, AND OTHER ENFORCEMENT PROVISIONS.**

3 * * * *

4 (j) It shall be unlawful for any landlord, within three years after service of the notice to quit
5 under Section 37.9(a)(8), to charge a rent for the unit that exceeds the maximum rent for the unit as
6 provided in Section 37.9B.


7 ~~(k)(f)~~ Any person who violates Section 37.10A(a), (b), (c), (d), (g), ~~or (h)~~, or (j) is guilty
8 of a misdemeanor and shall be punished by a mandatory fine of ~~one thousand dollars (\$1,000)~~,
9 and in addition to such fine may be punished by imprisonment in the County Jail for a period
10 of not more than six months. Each violation shall constitute a separate offense.

11
12 Section 2. Effective Date. This ordinance shall become effective 30 days after
13 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
14 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
15 of Supervisors overrides the Mayor's veto of the ordinance.

16
17 Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word
18 of this ordinance, or any application thereof to any person or circumstance, is held to be
19 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
20 shall not affect the validity of the remaining portions or applications of the ordinance. The
21 Board of Supervisors hereby declares that it would have passed this ordinance and each and
22 every section, subsection, sentence, clause, phrase, and word not declared invalid or
23 unconstitutional without regard to whether any other portion of this ordinance or application
24 thereof would be subsequently declared invalid or unconstitutional.

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

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8
9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By: 
12 MANU PRADHAN
13 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Owner Move-In Reporting and Abuse]

Ordinance amending the Administrative Code to require a landlord seeking to recover possession of a rental unit based on an owner move-in (“OMI”) or relative move-in (“RMI”) to provide a declaration under penalty of perjury stating that the landlord intends to occupy the unit for use as the principal place of residence of the landlord or the landlord’s relative for a period of at least 36 continuous months; to require a landlord following an OMI or RMI to provide annual documentation for 36 months showing whether the landlord or relative is occupying the unit as his or her principal place of residence; and to provide that a landlord who performs an OMI or RMI and then rents out the unit for more than the maximum allowable rent is guilty of a misdemeanor.

Existing Law

The City’s Residential Rent Stabilization and Arbitration Ordinance allows a landlord to recover possession of a rental unit if the landlord has a good faith intent to occupy the rental unit as its principal residence for a period of at least 36 continuous months (an “Owner Move-In,” or “OMI”). Under certain conditions, a landlord can also recover a rental unit based on the landlord’s good faith intent to use the unit as the principal residence of the landlord’s family members for a period of at least 36 continuous months (a “Relative Move-In,” or “RMI”).

A landlord formally initiates the OMI or RMI process by serving the tenant in the rental unit a notice to vacate. Landlords are not currently required to report to the Rent Board regarding the use of a rental unit following an OMI or RMI. Any rental unit which a tenant vacates after receiving a notice to quit based on Section 37.9(a)(8), and which is subsequently no longer occupied as a principal residence by the landlord or the landlord's relative, must, if offered for rent during the three years following service of the notice to quit, be rented in good faith at a rent not greater than the rent the original tenant would have been required to pay had the original tenant remained in continuous occupancy of the rental unit.

Amendments to Current Law

The legislation would require the notice to vacate for an OMI or RMI to include a declaration executed by the landlord stating that the landlord intends to recover possession of the unit in good faith for use as the principal residence of the landlord or the landlord’s relative for a period of at least 36 continuous months. The landlord would be required to execute the declaration under penalty of perjury and file it with the Rent Board.

The legislation would also create a rebuttable presumption that the landlord did not perform the OMI or RMI in good faith, if (1) the landlord did not file the above declaration with the Rent Board; (2) the landlord or relative did not move into the unit within three months after the recovery of possession and then occupy the unit as their principal residence for at least 36

continuous months; or (3) the landlord within three years after serving the notice to quit rented the unit to a new tenant at a rent greater than what the original tenant would have been required to pay had the original tenant remained in the unit. A landlord who charged above the allowable rent during this three year period would also be guilty of a misdemeanor.

In addition, the legislation would require a landlord to file an annual "statement of occupancy" with the Rent Board up until 36 months after the OMI or RMI was performed. The landlord would be required to certify under penalty of perjury whether the unit was occupied as the principal residence of the landlord or relative, and if so, to provide supporting documentation. If the unit was not occupied by the landlord or relative, the statement of occupancy would be required to disclose the current rent for the unit. The Rent Board would be required to send the original tenant a copy of the landlord's statement of occupancy. A landlord's failure to file a statement of occupancy (and supporting documentation, if applicable) would create a rebuttable presumption that the OMI or RMI was not in good faith.

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