

1 [Rent Ordinance amendment adding 12 months to the original 6-month period during which  
2 landlords may not evict tenants for non-payment of capital improvement passthrough costs  
3 certified at the Rent Board after April 10, 2000, pursuant to petitions filed prior to August 10,  
2001; and prohibiting imposition of late fees.]

4 **Ordinance amending Administrative Code Chapter 37 "Residential Rent Stabilization**  
5 **and Arbitration Ordinance" by changing Section 37.9 to add 12 months to the original**  
6 **six-month period during which landlords are prohibited from evicting tenants for non-**  
7 **payment of that portion of rent attributable to capital improvement cost passthrough**  
8 **petitions decided at the Rent Board after April 10, 2000, pursuant to capital**  
9 **improvement petitions filed prior to August 10, 2001 (so that the prohibition period for**  
10 **such evictions is now extended from February 10, 2002 to February 10, 2003); by**  
11 **prohibiting landlords from imposing late fees on tenants for such non-payment of**  
12 **capital improvement costs; and with Findings in support.**

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14 Note: Additions are *single-underline italics Times New Roman font*;  
15 deletions are *strikethrough italics Times New Roman font*.  
16 Board amendment additions are double underlined Arial font;  
17 Board amendment deletions are ~~strikethrough~~ Arial font.

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

19 Section 1. The San Francisco Administrative Code is hereby amended by amending  
20 Section 37.9, to read as follows:

21 SEC. 37.9. EVICTIONS.

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

24 (a) A landlord shall not endeavor to recover possession of a rental unit unless:  
25

1 (1) The tenant:

2 (A) Has failed to pay the rent to which the landlord is lawfully entitled under the oral  
3 or written agreement between the tenant and landlord:

4 (i) Except that a tenant's nonpayment of a charge prohibited by Section 919.1 of  
5 the Police Code shall not constitute a failure to pay rent; and

6 (ii) Except that, ~~for a six (6) month period~~ commencing August 10, 2001, to and  
7 including February 10, ~~2002~~ 2003, a landlord shall not endeavor to recover or recover  
8 possession of a rental unit for failure of a tenant to pay that portion of rent attributable to a  
9 capital improvement passthrough certified pursuant to a decision issued after April 10, 2000,  
10 where the capital improvement passthrough petition was filed prior to August 10, 2001, and a  
11 landlord shall not impose any late fee(s) upon the tenant for such non-payment of capital improvement  
12 costs; or

13 (B) Habitually pays the rent late; or,

14 (C) Gives checks which are frequently returned because there are insufficient funds  
15 in the checking account; or

16 (2) The tenant has violated a lawful obligation or covenant of tenancy other than the  
17 obligation to surrender possession upon proper notice and failure to cure such violation after  
18 having received written notice thereof from the landlord, provided further that notwithstanding  
19 any lease provision to the contrary, a landlord shall not endeavor to recover possession of a  
20 rental unit as a result of subletting of the rental unit by the tenant if the landlord has  
21 unreasonably withheld the right to sublet following a written request by the tenant, so long as  
22 the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one  
23 replacement of the departing tenant(s). If the landlord fails to respond to the tenant in writing  
24 within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall  
25 be deemed approved by the landlord; or

1           (3)    The tenant is committing or permitting to exist a nuisance in, or is causing  
2 substantial damage to, the rental unit, or is creating a substantial interference with the  
3 comfort, safety or enjoyment of the landlord or tenants in the building, and the nature of such  
4 nuisance, damage or interference is specifically stated by the landlord in writing as required  
5 by Section 37.9(c); or

6           (4)    The tenant is using or permitting a rental unit to be used for any illegal  
7 purpose; or

8           (5)    The tenant, who had an oral or written agreement with the landlord which  
9 has terminated, has refused after written request or demand by the landlord to execute a  
10 written extension or renewal thereof for a further term of like duration and under such terms  
11 which are materially the same as in the previous agreement; provided, that such terms do not  
12 conflict with any of the provisions of this Chapter; or

13          (6)    The tenant has, after written notice to cease, refused the landlord access  
14 to the rental unit as required by State or local law; or

15          (7)    The tenant holding at the end of the term of the oral or written agreement  
16 is a subtenant not approved by the landlord; or

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

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

21           (ii)   For the use or occupancy of the landlord's grandparents, grandchildren,  
22 parents, children, brother or sister, or the landlord's spouse, or the spouses of such relations,  
23 as their principal place of residency for a period of at least 36 months, in the same building in  
24 which the landlord resides as his or her principal place of residency, or in a building in which  
25 the landlord is simultaneously seeking possession of a rental unit under Section 37.9(a)(8)(i).

1 For purposes of this Section 37.9(a)(8)(ii), the term spouse shall include domestic partners as  
2 defined in San Francisco Administrative Code Sections 62.1 through 62.8.

3 (iii) For purposes of this Section 37.9(a)(8) only, as to landlords who become  
4 owners of record of the rental unit on or before February 21, 1991, the term "landlord" shall be  
5 defined as an owner of record of at least 10 percent interest in the property or, for Section  
6 37.9(a)(8)(i) only, two individuals registered as domestic partners as defined in San Francisco  
7 Administrative Code Sections 62.1 through 62.8 whose combined ownership of record is at  
8 least 10 percent. For purposes of this Section 37.9(a)(8) only, as to landlords who become  
9 owners of record of the rental unit after February 21, 1991, the term "landlord" shall be defined  
10 as an owner of record of at least 25 percent interest in the property or, for Section 37.9(a)(8)(i)  
11 only, two individuals registered as domestic partners as defined in San Francisco  
12 Administrative Code Sections 62.1 through 62.8 whose combined ownership of record is at  
13 least 25 percent.

14 (iv) A landlord may not recover possession under this Section 37.9(a)(8) if a  
15 comparable unit owned by the landlord is already vacant and is available, or if such a unit  
16 becomes vacant and available before the recovery of possession of the unit. If a comparable  
17 unit does become vacant and available before the recovery of possession, the landlord shall  
18 rescind the notice to vacate and dismiss any action filed to recover possession of the  
19 premises. Provided further, if a noncomparable unit becomes available before the recovery of  
20 possession, the landlord shall offer that unit to the tenant at a rent based on the rent that the  
21 tenant is paying, with upward or downward adjustments allowed based upon the condition,  
22 size, and other amenities of the replacement unit. Disputes concerning the initial rent for the  
23 replacement unit shall be determined by the Rent Board. It shall be evidence of a lack of good  
24 faith if a landlord times the service of the notice, or the filing of an action to recover  
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1 possession, so as to avoid moving into a comparable unit, or to avoid offering a tenant a  
2 replacement unit.

3 (v) It shall be rebuttably presumed that the landlord has not acted in good  
4 faith if the landlord or relative for whom the tenant was evicted does not move into the rental  
5 unit within three months and occupy said unit as that person's principal residence for a  
6 minimum of 36 continuous months.

7 (vi) Once a landlord has successfully recovered possession of a rental unit  
8 pursuant to Section 37.9(a)(8)(i), then no other current or future landlords may recover  
9 possession of any other rental unit in the building under Section 37.9(a)(8)(i). It is the intention  
10 of this Section that only one specific unit per building may be used for such occupancy under  
11 Section 37.9(a)(8)(i) and that once a unit is used for such occupancy, all future occupancies  
12 under Section 37.9(a)(8)(i) must be of that same unit, provided that a landlord may file a  
13 petition with the Rent Board, or at the landlord's option, commence eviction proceedings,  
14 claiming that disability or other similar hardship prevents him or her from occupying a unit  
15 which was previously occupied by the landlord.

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

20 (9) The landlord seeks to recover possession in good faith in order to sell the  
21 unit in accordance with a condominium conversion approved under the San Francisco  
22 subdivision ordinance and does so without ulterior reasons and with honest intent; or

23 (10) The landlord seeks to recover possession in good faith in order to  
24 demolish or to otherwise permanently remove the rental unit from housing use and has  
25 obtained all the necessary permits on or before the date upon which notice to vacate is given,

1 and does so without ulterior reasons and with honest intent; provided that a landlord who  
2 seeks to demolish an unreinforced masonry building pursuant to Building Code Chapters 14  
3 and 15 must provide the tenant with the relocation assistance specified in Section 37.9A(f)  
4 below prior to the tenant's vacating the premises; or

5 (11) The landlord seeks in good faith to remove temporarily the unit from  
6 housing use in order to be able to carry out capital improvements or rehabilitation work and  
7 has obtained all the necessary permits on or before the date upon which notice to vacate is  
8 given, and does so without ulterior reasons and with honest intent. Any tenant who vacates  
9 the unit under such circumstances shall have the right to reoccupy the unit at the prior rent  
10 adjusted in accordance with the provisions of this Chapter. The tenant will vacate the unit only  
11 for the minimum time required to do the work. On or before the date upon which notice to  
12 vacate is given, the landlord shall advise the tenant in writing that the rehabilitation or capital  
13 improvement plans are on file with the Central Permit Bureau of the Department of Building  
14 Inspection and that arrangements for reviewing such plans can be made with the Central  
15 Permit Bureau. In addition to the above, no landlord shall endeavor to recover possession of  
16 any unit subject to a RAP loan as set forth in Section 37.2(m) of this Chapter except as  
17 provided in Section 32.69 of the San Francisco Administrative Code. The tenant shall not be  
18 required to vacate pursuant to this Section 37.9(a)(11), for a period in excess of three months;  
19 provided, however, that such time period may be extended by the Board or its Administrative  
20 Law Judges upon application by the landlord. The Board shall adopt rules and regulations to  
21 implement the application procedure. Any landlord who seeks to recover possession under  
22 this Section 37.9(a)(11) shall pay the tenant actual costs up to \$1,000 for moving and  
23 relocation expenses not less than 10 days prior to recovery of possession; or

24 (12) The landlord seeks to recover possession in good faith in order to carry  
25 out substantial rehabilitation, as defined in Section 37.2(s), and has obtained all the necessary

1 permits on or before the date upon which notice to vacate is given, and does so without  
2 ulterior reasons and with honest intent. Notwithstanding the above, no landlord shall endeavor  
3 to recover possession of any unit subject to a RAP loan as set forth in Section 37.2(m) of this  
4 Chapter except as provided in Section 32.69 of the San Francisco Administrative Code; or

5 (13) The landlord wishes to withdraw from rent or lease all rental units within  
6 any detached physical structure and, in addition, in the case of any detached physical  
7 structure containing three or fewer rental units, any other rental units on the same lot, and  
8 complies in full with Section 37.9A with respect to each such unit; provided, however, that a  
9 unit classified as a residential unit under Chapter 41 of this Code which is vacated under this  
10 Section 37.9(a)(13) may not be put to any use other than that of a residential hotel unit without  
11 compliance with the provisions of Section 41.9 of this Code; or

12 (14) The landlord seeks in good faith to temporarily recover possession of the  
13 unit for less than 30 days solely for the purpose of effecting lead remediation or abatement  
14 work, as required by San Francisco Health Code Article 26. The relocation rights and  
15 remedies, established by San Francisco Administrative Code Chapter 72, including but not  
16 limited to, the payment of financial relocation assistance, shall apply to evictions under this  
17 Section 37.9(a)(14).

18 (b) A landlord who resides in the same rental unit with his or her tenant may  
19 evict said tenant without just cause as required under Section 37.9(a) above.

20 (c) A landlord shall not endeavor to recover possession of a rental unit  
21 unless at least one of the grounds enumerated in Section 37.9(a) or (b) above is the landlord's  
22 dominant motive for recovering possession and unless the landlord informs the tenant in  
23 writing on or before the date upon which notice to vacate is given of the grounds under which  
24 possession is sought and that advice regarding the notice to vacate is available from the  
25 Residential Rent Stabilization and Arbitration Board, before endeavoring to recover

1 possession. A copy of all notices to vacate except three-day notices to vacate or pay rent and  
2 a copy of any additional written documents informing the tenant of the grounds under which  
3 possession is sought shall be filed with the Board within 10 days following service of the  
4 notice to vacate. The District Attorney shall determine whether the units set forth on the list  
5 compiled in accordance with Section 37.6(k) are still being occupied by the tenant who  
6 succeeded the tenant upon whom the notice was served. In cases where the District Attorney  
7 determines that Section 37.9(a)(8) has been violated, the District Attorney shall take whatever  
8 action he deems appropriate under this Chapter or under State law.

9 (d) No landlord may cause a tenant to quit involuntarily or threaten to bring  
10 any action to recover possession, or decrease any services, or increase the rent, or take any  
11 other action where the landlord's dominant motive is retaliation for the tenant's exercise of any  
12 rights under the law. Such retaliation shall be a defense to any action to recover possession.  
13 In an action to recover possession of a rental unit, proof of the exercise by the tenant of rights  
14 under the law within six months prior to the alleged act of retaliation shall create a rebuttable  
15 presumption that the landlord's act was retaliatory.

16 (e) It shall be unlawful for a landlord or any other person who wilfully assists  
17 the landlord to endeavor to recover possession or to evict a tenant except as provided in  
18 Section 37.9(a) and (b). Any person endeavoring to recover possession of a rental unit from a  
19 tenant or evicting a tenant in a manner not provided for in Section 37.9(a) or (b) without  
20 having a substantial basis in fact for the eviction as provided for in Section 37.9(a) shall be  
21 guilty of a misdemeanor and shall be subject, upon conviction, to the fines and penalties set  
22 forth in Section 37.10. Any waiver by a tenant of rights under this Chapter shall be void as  
23 contrary to public policy.

24 (f) Whenever a landlord wrongfully endeavors to recover possession or  
25 recovers possession of a rental unit in violation of Sections 37.9 and/or 37.10 as enacted



1 herein, the tenant or Board may institute a civil proceeding for injunctive relief, money  
2 damages of not less than three times actual damages, (including damages for mental or  
3 emotional distress), and whatever other relief the court deems appropriate. In the case of an  
4 award of damages for mental or emotional distress, said award shall only be trebled if the trier  
5 of fact finds that the landlord acted in knowing violation of or in reckless disregard of Section  
6 37.9 or 37.10A herein. The prevailing party shall be entitled to reasonable attorney's fees and  
7 costs pursuant to order of the court. The remedy available under this Section 37.9(f) shall be  
8 in addition to any other existing remedies which may be available to the tenant or the Board.

9 (g) The provisions of this Section 37.9 shall apply to any rental unit as  
10 defined in Sections 37.2(r)(4)(A) and 37.2(r)(4)(B), including where a notice to vacate/quit any  
11 such rental unit has been served as of the effective date of this Ordinance No. 250-98 but  
12 where any such rental unit has not yet been vacated or an unlawful detainer judgment has not  
13 been issued as of the effective date of this Ordinance No. 250-98.

14 (h) With respect to rental units occupied by recipients of tenant-based rental  
15 assistance, the notice requirements of this Section 37.9 shall be required in addition to any  
16 notice required as part of the tenant-based rental assistance program, including but not limited  
17 to the notice required under 24 CFR Section 982.310(e)(2)(ii).

18 (i) The following additional provisions shall apply to a landlord who seeks to  
19 recover a rental unit by utilizing the grounds enumerated in Section 37.9(a)(8):

20 (1) A landlord may not recover possession of a unit from a tenant under  
21 Section 37.9(a)(8) if the landlord has or receives notice, any time before recovery of  
22 possession, that any tenant in the rental unit:

23 (A) Is 60 years of age or older and has been residing in the unit for 10 years  
24 or more; or

25

1 (B) Is disabled within the meaning of Section 37.9(i)(1)(B)(i) and has been  
2 residing in the unit for 10 years or more, or is catastrophically ill within the meaning of Section  
3 37.9(i)(1)(B)(ii) and has been residing in the unit for five years or more:

4 (i) A “disabled” tenant is defined for purposes of this Section 37.9(i)(1)(B) as  
5 a person who is disabled or blind within the meaning of the federal Supplemental Security  
6 Income/California State Supplemental Program (SSI/SSP), and who is determined by  
7 SSI/SSP to qualify for that program or who satisfies such requirements through any other  
8 method of determination as approved by the Rent Board;

9 (ii) A “catastrophically ill” tenant is defined for purposes of this Section  
10 37.9(i)(1)(B) as a person who is disabled as defined by Section 37.9(i)(1)(B)(i), and who is  
11 suffering from a life threatening illness as certified by his or her primary care physician.

12 (2) The foregoing provisions of Sections 37.9(i)(1)(A) and (B) shall not apply  
13 where there is only one rental unit owned by the landlord in the building, or where each of the  
14 rental units owned by the landlord in the same building where the landlord resides (except the  
15 unit actually occupied by the landlord) is occupied by a tenant otherwise protected from  
16 eviction by Sections 37.9(i)(1)(A) or (B) and where the landlord's qualified relative who will  
17 move into the unit pursuant to Section 37.9(a)(8) is 60 years of age or older.

18 (3) The provisions established by this Section 37.9(i) include, but are not  
19 limited to, any rental unit where a notice to vacate/quit has been served as of the date this  
20 amendment takes effect but where the rental unit has not yet been vacated or an unlawful  
21 detainer judgment has not been issued.

22 (4) Within 30 days of personal service by the landlord of a written request, or,  
23 at the landlord's option, a notice of termination of tenancy under Section 37.9(a)(8), the tenant  
24 must submit a statement, with supporting evidence, to the landlord if the tenant claims to be a  
25 member of one of the classes protected by Section 37.9(i). The written request or notice shall

1 contain a warning that a tenant's failure to submit a statement within the 30 day period shall  
2 be deemed an admission that the tenant is not protected by Section 37.9(i). The landlord shall  
3 file a copy of the request or notice with the Rent Board within 10 days of service on the tenant.  
4 A tenant's failure to submit a statement within the 30 day period shall be deemed an  
5 admission that the tenant is not protected by Section 37.9(i). A landlord may challenge a  
6 tenant's claim of protected status either by requesting a hearing with the Rent Board or, at the  
7 landlord's option, through commencement of eviction proceedings, including service of a  
8 notice of termination of tenancy. In the Rent Board hearing or the eviction action, the tenant  
9 shall have the burden of proof to show protected status. No civil or criminal liability under  
10 Section 37.9(e) or (f) shall be imposed upon a landlord for either requesting or challenging a  
11 tenant's claim of protected status.

12 (5) This Section 37.9(i) is severable from all other sections and shall be of no  
13 force or effect if any temporary moratorium on owner/relative evictions adopted by the Board  
14 of Supervisors after June 1, 1998 and before October 31, 1998 has been invalidated by the  
15 courts in a final decision.

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18 Section 2. Findings.

19 The Board of Supervisors finds:

20 That pursuant to landlord capital improvement passthrough petitions filed prior to August 10,  
21 2001, the Rent Board has certified several large capital improvement costs for passthrough to tenants  
22 since April 10, 2000;

23 That the total passthrough costs for many individual tenants constitute significant sums of  
24 money, including both lump sum payments due now (for increases based on landlord petitions/notices  
25

1 first filed several years ago), and including substantially increased monthly rent payments going  
2 forward for many years until the certified capital improvements costs are completely paid;

3 That the impact of such passthroughs has been exacerbated by various delays including legal  
4 events surrounding passage of November 2000 Proposition H (which would have prohibited  
5 passthrough of most capital improvements costs);

6 For example, based on a Rent Board decision that was not finalized and implemented until after  
7 the Rent Board was permitted to resume processing capital improvement passthrough petitions after  
8 the court decision invalidating Proposition H in August 2001, the Board of Supervisors understands  
9 that more than ~~\$300,000~~ \$160,000 is now due from ~~45~~ 36 seniors and other tenants at one apartment  
10 complex due to this certification of capital improvements costs dating back to October 1998 (with a  
11 number of tenants each owing over \$10,000). In addition, based on that same Rent Board decision,  
12 monthly rent increases are imposed for all ~~45~~ 36 tenants going forward until the certified capital  
13 improvement costs are fully paid (in approximately 2008); and,

14 That it is reasonable and in the best interests of the City in this indisputably tight housing market  
15 that such tenants be allowed a period of time to address such increases in their rent rather than be  
16 subject to immediate eviction for non-payment of such costs.

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20 APPROVED AS TO FORM:  
21 LOUISE H. RENNE, City Attorney

22 By: \_\_\_\_\_  
23 Marie Corlett Blits  
24 Deputy City Attorney  
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