

1 [Tenant Harassment]

2 **Ordinance amending the San Francisco Rent Ordinance to define and prohibit**
3 **harassment by a landlord and providing for rent reduction fines for landlords who are**
4 **harassing tenants.**

5 Note: Additions are single-underline italics Times New Roman;
6 deletions are ~~striketrough italics Times New Roman~~.
7 Board amendment additions are double underlined.
8 Board amendment deletions are ~~striketrough normal~~.

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

9 Section 1. Pursuant to Article XIIC of the Constitution of the State of California, this
10 ordinance shall be submitted to the qualified electors of the City and County of San Francisco,
11 at the November 4, 2008 general municipal election and shall become operative only if
12 approved by the qualified electors at such election.

13 The San Francisco Rent Ordinance is hereby amended by amending OR adding Section
14 37.2), to read as follows:

15
16 (a) Base Rent.

17
18 (1) That rent which is charged a tenant upon initial occupancy plus any rent increase
19 allowable and imposed under this chapter; provided, however, that base rent shall not include
20 increases imposed pursuant to Section 37.7 and base rent shall not include utility
21 passthroughs or water revenue bond passthroughs or general obligation bond passthroughs
22 pursuant to Sections 37.2(q), 37.3(a)(5)(B), and 37.3(a)(6). Base rent for tenants of RAP
23 rental units in areas designated on or after July 1, 1977 shall be that rent which was
24 established pursuant to Section 32.73-1 of the San Francisco Administrative Code. Rent
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1 increases attributable to the Chief Administrative Officer's amortization of a RAP loan in an
2 area designated on or after July 1, 1977 shall not be included in the base rent.

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

7

8 (a) With respect to tenant-based rental assistance:

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

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

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

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

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

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

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

4
5 (d) CPI. Consumer Price Index for all Urban Consumers for the San Francisco-Oakland
6 Metropolitan Area, U.S. Department of Labor.

7
8 (e) Energy Conservation Improvements. Work performed pursuant to the requirements of
9 Chapter 12 of the San Francisco Housing Code.

10
11 (f) Administrative Law Judge. A person, designated by the board, who arbitrates and mediates
12 rental increase disputes, and performs other duties as required pursuant to this Chapter 37.

13
14 (g) Housing Services. Services provided by the landlord connected with the use or occupancy
15 of a rental unit including, but not limited to: quiet enjoyment of the premises, without
16 harassment by the landlord as provided for in Section 10B; repairs; replacement;
17 maintenance; painting; light; heat; water; elevator service; laundry facilities and privileges;
18 janitor service; refuse removal; furnishings; telephone; parking; rights permitted the tenant by
19 agreement, including the right to have a specific number of occupants, whether express or
20 implied, and whether or not the agreement prohibits subletting and/or assignment; and any
21 other benefits, privileges or facilities.

22
23 (h) Landlord. An owner, lessor, sublessor, who receives or is entitled to receive rent for the
24 use and occupancy of any residential rental unit or portion thereof in the City and County of
25 San Francisco, and the agent, representative or successor of any of the foregoing.

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

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

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

(l) Rap. Residential Rehabilitation Loan Program (Chapter 32, San Francisco Administrative Code).

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

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

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

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

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

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

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

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14 The term "rental units" shall not include:

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

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1 (2) dwelling units in non-profit cooperatives owned, occupied and controlled by a majority of
2 the residents or dwelling units solely owned by a non-profit public benefit corporation
3 governed by a board of directors the majority of which are residents of the dwelling units and
4 where it is required in the corporate by-laws that rent increases be approved by a majority of
5 the residents;

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

12

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

21

22 (A) For purposes of sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6, 37.9, 37.9A, 37.10A,
23 37.11A and 37.13, and the arbitration provisions of sections 37.8 and 37.8A applicable only to
24 the provisions of section 37.3(a)(10)(A), the term "rental units" shall include units occupied by
25 recipients of tenant-based rental assistance where the tenant-based rental assistance

1 program does not establish the tenant's share of base rent as a fixed percentage of a tenant's
2 income, such as in the Section 8 voucher program and the "Over-FMR Tenancy" program
3 defined in 24 CFR §982.4;

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5 (B) For purposes of sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9, 37.9A, 37.10A,
6 37.11A and 37.13, the term "rental units" shall include units occupied by recipients of tenant-
7 based rental assistance where the rent payable by the tenant under the tenant-based rental
8 assistance program is a fixed percentage of the tenant's income; such as in the Section 8
9 certificate program and the rental subsidy program for the Housing Opportunities for persons
10 with AIDS ("HOPWA") program (42 U.S.C. §12901 et seq., as amended).

11
12 (C) The term "rental units" shall include units in a building for which tax credits are reserved or
13 obtained pursuant to the federal low income housing tax credit program (LIHTC, Section 42 of
14 the Internal Revenue Code, 26 U.S.C. Section 42), that satisfy the following criteria:

15
16 (i) Where a tenant's occupancy of the unit began before the applicable LIHTC regulatory
17 agreement was recorded; and

18
19 (ii) Where the rent is not controlled or regulated by any use restrictions imposed by the City
20 and County of San Francisco, the San Francisco Redevelopment Agency, the State of
21 California Office of Housing and Community Development, or the United States Department of
22 Housing and Urban Development.

23
24 Nothing in this Section 37.2(r)(4)(C) precludes a landlord from seeking an exemption on the
25 basis of substantial rehabilitation under Section 37.2(r)(6).

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

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

(6) Dwelling units in a building which has undergone substantial rehabilitation after the effective date of this ordinance; provided, however, that RAP rental units are not subject to this exemption.

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

(s) Substantial Rehabilitation. The renovation, alteration or remodeling of residential units of 50 or more years of age which have been condemned or which do not qualify for certificates

1 of occupancy or which require substantial renovation in order to conform the building to
2 contemporary standards for decent, safe and sanitary housing. Substantial rehabilitation may
3 vary in degree from gutting and extensive reconstruction to extensive improvements that cure
4 substantial deferred maintenance. Cosmetic improvements alone such as painting, decorating
5 and minor repairs, or other work which can be performed safely without having the unit
6 vacated do not qualify as substantial rehabilitation.

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

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11 (u) Tenant-based Rental Assistance. Rental assistance provided directly to a tenant or directly
12 to a landlord on behalf of a particular tenant, which includes but shall not be limited to
13 certificates and vouchers issued pursuant to Section 8 of the United States Housing Act of
14 1937, as amended (42 U.S.C. §1437f) and the HOPWA program.

15

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

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18 (w) . Harassment. Any act or omission by or on behalf of an owner that causes or is intended
19 to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling
20 unit or to surrender or waive any rights in relation to such occupancy.

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24 Section 2. The San Francisco Rent Ordinance is hereby amended by adding Section 37.10)to
25 read as follows:

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Section 37.10B Tenant Harassment

(a) No landlord shall, with respect to property used as a rental housing unit under any rental housing agreement or other tenancy or estate at will, however created, do any of the following with malice:

(1) Interrupt, terminate or fail to provide housing services required by contract or by State, County or local housing, health or safety laws;

(2) Fail to perform repairs and maintenance required by contract or by State, County or local housing, health or safety laws;

(3) Fail to exercise due diligence in completing repairs and maintenance once undertaken;

(4) Abuse the landlord's right of access into a rental housing unit as that right is specified in California Civil Code Section 1954;

(5) Abuse the tenant with words which are offensive and inherently likely to provoke an immediate violent reaction;

(6) Influence or attempt to influence a tenant to vacate a rental housing unit through fraud, intimidation or coercion, including attempts to coerece the tenant to vacate with offer(s) of payments to vacate which are accompanied with threats or intimidation or which

1 continue to be offered after the tenant(s) has told the landlord that such offers of payment are
2 unwelcome;

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4 (7) Threaten the tenant, by word or gesture, with physical harm;

5
6 (8) Violate any law which prohibits discrimination based on race, gender, sexual
7 preference, sexual orientation, ethnic background, nationality, religion, age, parenthood,
8 marriage, pregnancy, disability, AIDS or occupancy by a minor child.

9
10 (9) Interfere with a tenants right to quiet use and enjoyment of a rental housing unit as
11 that right is defined by California law;

12
13 (10) Refuse to acknowledge receipt of a tenant's lawful rent payment;

14
15 (11) Interfere with a tenant's right to privacy.

16
17 (12) Commencing repeated baseless or frivolous court proceedings against any person
18 lawfully entitled to occupancy of such dwelling unit;

19
20 (13) Other repeated acts or omissions of such significance as to substantially interfere with
21 or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of
22 such dwelling unit and that cause or are intended to cause any person lawfully entitled to
23 occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in
24 relation to such occupancy.

25 .

1 (b) Nothing in this Chapter shall be construed as to prevent the lawful eviction of a tenant
2 by appropriate legal means nor shall anything in this Chapter apply to occupancies defined by
3 subdivision (b) of Civil Code Section 1940. (Added by Ord. No. 1817CCS § 1 (part), adopted
4 10/10/95; amended by Ord. No. 1859CCS § 2 (part), adopted 7/30/96)

5 (c) Enforcement and penalties.

6
7 (a) Rent Board. Violation of this Section is a substantial and significant decrease in services
8 as defined in Section 37.2(g) and tenants may file a petition with the Rent Board for a
9 reduction in rent.

10
11 (a) Criminal Penalty. Any person who is convicted of violating this Chapter shall be guilty of
12 a misdemeanor and upon conviction shall be punished by a fine of not greater than one
13 thousand dollars or by imprisonment in the County Jail for not more than six months, or by
14 both such fine and imprisonment.

15
16 (b) Civil Action. Any person, including the City, may enforce the provisions of this Chapter
17 by means of a civil action. The burden of proof in such cases shall be preponderance of the
18 evidence. A violation of this Chapter may be asserted as an affirmative defense in an unlawful
19 detainer action.

20
21 (c) Injunction. Any person who commits an act, proposes to commit an act, or engages in
22 any pattern and practice which violates Section 4.56.020 may be enjoined therefrom by any
23 court of competent jurisdiction. An action for injunction under this subsection may be brought
24 by any aggrieved person, by the City Attorney, or by any person or entity who will fairly and
25 adequately represent the interest of the protected class.

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2 (d) Penalties and Other Monetary Awards. Any person who violates or aids or incites
3 another person to violate the provisions of this Chapter is liable for each and every such
4 offense for the actual damages suffered by any aggrieved party or for statutory damages in
5 the sum of one thousand dollars, whichever is greater, and shall be liable for such attorney's
6 fees and costs as may be determined by the court in addition thereto. The court may also
7 award punitive damages to any plaintiff, including the City, in a proper case as defined by Civil
8 Code Section 3294.

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Sec.
Section 2.

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

By: _____
ATTORNEY'S NAME
Deputy City Attorney