

1 [Administrative, Subdivision Codes - Tenant Buyout Agreements]

2
3 **Ordinance amending the Administrative Code 1) to require landlords to provide tenants**
4 **with a disclosure of the tenants' rights before the landlord commences buyout**
5 **negotiations; 2) to require landlords to file a form with the Rent Board indicating the**
6 **address of the unit that may become the subject of buyout negotiations; 3) to require**
7 **all buyout agreements to be in writing and to include certain statements about the**
8 **tenant's rights; 4) to allow tenants to rescind buyout agreements for up to 45 days after**
9 **the agreements are fully executed; 5) to require landlords to file a copy of buyout**
10 **agreements with the Rent Board and to pay a fee to the Rent Board; 6) to require the**
11 **Rent Board to create a publically available, searchable database of buyout agreements;**
12 **7) to require the Rent Board to provide an annual report to the Board of Supervisors**
13 **regarding tenant buyouts; 8) to authorize tenants to bring civil actions for actual**
14 **damages and civil penalties against landlords who fail to provide the required**
15 **disclosures about the tenants' rights; and 9) to authorize certain non-profits to bring**
16 **civil actions for a landlord's failure to file a buyout agreement with the Rent Board; and**
17 **amending the Subdivision Code to prohibit buildings from entering the condominium**
18 **conversion lottery if the owners of the building have entered certain tenant buyout**
19 **agreements.**

20
21
22 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
23 **Additions to Codes** are in *single-underline italics Times New Roman font*.
24 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
25 **Board amendment additions** are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

2
3 Section 1. The Administrative Code is hereby amended by adding Section 37.9E, to
4 read as follows:

5 **SEC. 37.9E. TENANT BUYOUT AGREEMENTS.**

6 *(a) Findings and Purpose. San Francisco is in the midst of a housing crisis. As the disparity*
7 *between rent-controlled and market rate rents continues to grow, landlords have greater incentives to*
8 *induce tenants in rent-controlled units to move out. Similarly, with the real estate market skyrocketing,*
9 *many landlords are selling their property with the knowledge that an unoccupied unit can command a*
10 *significantly higher sale price than an occupied one.*

11 *Instead of evicting tenants, some landlords offer cash buyouts to tenants in exchange for the*
12 *tenants vacating rental units. These are sometimes called buyout agreements. Even buyouts worth tens*
13 *of thousands of dollars can be recouped by a landlord retaining ownership and re-renting at market*
14 *rates or selling the unit. Unlike no-fault evictions, these buyouts are unregulated, and can enable*
15 *landlords to circumvent many of the restrictions that apply when a landlord executes a no-fault*
16 *eviction. For example, a landlord who executes some types of no-fault evictions must give tenants a*
17 *certain amount of time to move out, provide funds to tenants to cover relocation costs, and allow*
18 *tenants to move back into the unit under specified circumstances. Two types of these no fault evictions*
19 *– the Ellis Act and owner move-in evictions – contain restrictions on how much rent a landlord can*
20 *charge if the units are re-rented following eviction. Analogous regulations do not exist for tenant*
21 *buyouts.*

22 *Anecdotal evidence indicates that many buyout negotiations are not conducted at arms-length,*
23 *and landlords sometimes employ high-pressure tactics and intimidation to induce tenants to sign the*
24 *agreements. Some landlords threaten tenants with eviction if they do not accept the terms of the*
25 *buyout. The frequency of these buyout offers increased significantly following passage of a San*

1 Francisco law in 1996 which restricted, and in many cases prohibited, condominium conversions
2 following no fault evictions. By threatening a specific no fault eviction and then convincing a tenant to
3 vacate rather than receiving the eviction notice, a landlord will avoid restrictions on condominium
4 conversion as well as restrictions on renovations, mergers, or demolitions.

5 These tactics sometimes result in tenants entering into buyout agreements without a full
6 understanding of their rights and without consulting a tenants' rights counselor. These buyouts vary
7 widely in amounts and, in some cases, are even below minimum relocation benefits which are required
8 to be paid for all no fault evictions. Disabled, senior, and catastrophically ill tenants can be
9 particularly vulnerable, and can face greater hurdles in securing new housing.

10 The main purpose of this Section 37.9E is to increase the fairness of buyout negotiations and
11 agreements by requiring landlords to provide tenants with a statement of their rights and allowing
12 tenants to rescind a buyout agreement for up to 45 days after signing the agreement, thus reducing the
13 likelihood of landlords pressuring tenants into signing buyout agreements without allowing the tenants
14 sufficient time to consult with a tenants' rights specialist. Another goal of this ordinance is to help the
15 City collect data about buyout agreements. The City lacks comprehensive information about the
16 number, location, and terms of buyout agreements. This dearth of information precludes the City from
17 understanding the true level of tenant displacement in San Francisco.

18 (b) Applicability of Section. Notwithstanding Section 37.3 or any other provision in City law,
19 this Section 37.9E shall apply to all landlords and tenants of rental units as defined in Section 37.2(r).

20 (c) Definitions. For purposes of this Section 37.9E, the following definitions shall apply:

21 "Buyout Agreement" means an agreement wherein the landlord pays the tenant money or other
22 consideration to vacate the rental unit. An agreement to settle a pending unlawful detainer action shall
23 not be a "Buyout Agreement."

24 "Buyout Negotiations" means any discussion or bargaining, whether oral or written, between a
25 landlord and tenant regarding the possibility of entering into a Buyout Agreement.

1 (d) Disclosure required prior to Buyout Negotiations. Prior to commencing Buyout
2 Negotiations for a rental unit, the landlord shall provide each tenant in that rental unit a written
3 disclosure, on a form developed and authorized by the Rent Board, that shall include the following:

4 (1) A statement that the tenant has a right not to enter into a Buyout Agreement or
5 Buyout Negotiations;

6 (2) A statement that the tenant may choose to consult with an attorney before entering
7 into a Buyout Agreement or Buyout Negotiations;

8 (3) A statement that the tenant may rescind the Buyout Agreement for up to 45 days
9 after the Buyout Agreement is fully executed;

10 (4) A statement that the tenant may visit the Rent Board for information about other
11 Buyout Agreements in the tenant's neighborhood;

12 (5) A list of tenants' rights organizations and their contact information;

13 (6) A statement that information about tenants' rights is available at the Rent Board's
14 office, through its counseling telephone number, and on its website;

15 (7) A statement explaining the legal implications under Section 1396(e)(4) of the
16 Subdivision Code for a landlord who enters into one or more Buyout Agreements;

17 (8) If the landlord is an entity, the names of all people within that entity who will be
18 conducting the Buyout Negotiations, as well as the names of all people within that entity who will have
19 decision-making authority over the terms of the Buyout Agreement;

20 (9) Any other information required by the Rent Board consistent with the purposes and
21 provisions of this Section 37.9E; and

22 (10) A space for each tenant to sign and write the date the landlord provided the tenant
23 with the disclosure.

24 The landlord shall retain a copy of each signed disclosure form for five years, along with a
25 record of the date the landlord provided the disclosure to each tenant.

1 (e) Notification of the Rent Board. Prior to commencing Buyout Negotiations, the landlord
2 shall provide the following information to the Rent Board, on a form developed and authorized by the
3 Rent Board:

4 _____ (1) The landlord’s name, business address, business email address, and business
5 telephone number;

6 _____ (2) The name of each tenant with whom the landlord intends to enter into Buyout
7 Negotiations;

8 _____ (3) The address of the rental unit that may be the subject of Buyout Negotiations; and

9 _____ (4) A statement signed under penalty of perjury that the landlord provided each tenant
10 with the disclosure required by subsection (d) prior to commencing Buyout Negotiations.

11 The Rent Board shall make the information included on this form publically available, except
12 that the Rent Board shall redact all information regarding the identity of the tenants.

13 (f) Requirements for Buyout Agreements. Every Buyout Agreement shall:

14 _____ (1) Be in writing. The landlord shall give each tenant a copy of the Buyout Agreement
15 at the time the tenant executes the Agreement.

16 _____ (2) Include the following statement in bold letters in a size equal to at least 14-point type
17 in close proximity to the space reserved for the signature of the tenant(s). “You, the tenant, may cancel
18 this agreement at any time before the 45th day after all parties have signed this agreement. To cancel
19 this agreement, mail or deliver a signed and dated notice stating that you, the tenant, are cancelling
20 this agreement, or words of similar effect. The notice shall be sent to: _____ (Name of landlord)
21 at _____ (Address of landlord).” Immediately after this statement, there shall be a line for
22 each tenant to affix his or her initials.

23 _____ (3) Include the following statements in a size equal to at least 14-point type: “You, the
24 tenant, have a right not to enter into a buyout agreement”; “You, the tenant, may choose to consult
25 with an attorney and/or a tenants’ rights organization before signing this agreement. You can find a

1 list of tenants' rights organizations on the Rent Board's website – www.sfrb.org”; and “The Rent
2 Board has created a publically available, searchable database that may include information about
3 other buyout agreements in your neighborhood. You can search this database at the Rent Board's
4 office at 25 Van Ness Avenue, Suite 320.” Immediately after each statement, there shall be a line for
5 each tenant to affix his or her initials.

6 _____ (4) Include the following statements in a size equal to at least 14-point type: “Under
7 Section 1396(e)(4) of San Francisco's Subdivision Code, a property owner may not convert a building
8 into a condominium where: (A) a senior, disabled, or catastrophically ill tenant has vacated a unit
9 under a buyout agreement after October 31, 2014, or (B) two or more tenants who are not senior,
10 disabled, or catastrophically ill have vacated units under buyout agreements, if the agreements were
11 entered after October 31, 2014 and within the ten years prior to the condominium conversion
12 application. A 'senior' is a person who is 60 years or older and has been residing in the unit for ten
13 years or more at the time of Buyout Agreement; a 'disabled' tenant is a person who is disabled under
14 the Americans with Disabilities Act (Title 42 United States Code Section 12102) and has been residing
15 in the unit for ten years or more at the time of Buyout Agreement; and a 'catastrophically ill' tenant is
16 a person who is disabled under the Americans with Disabilities Act (Title 42 United States Code
17 Section 12102) and who is suffering from a life threatening illness and has been residing in the unit for
18 five years or more at the time of Buyout Agreement. Do you believe that you are senior, disabled, or
19 catastrophically ill as those terms are defined above? Yes _____ No _____ I don't know _____ I
20 prefer not say _____.” The question listed in this subsection (f)(4) shall appear in the Buyout
21 Agreement once for each tenant who is a party to the Buyout Agreement. Next to each question shall
22 be a line for the tenant to affix his or her initials.

23 _____ A Buyout Agreement that does not satisfy all the requirements of this subsection (f) shall not be
24 effective and may be rescinded by the tenant at any time. A Buyout Agreement that does not include the
25 initials of each tenant next to each of the statements described in subsections (f)(2) and (f)(3) shall not

1 be effective and may be rescinded by the tenant at any time. A Buyout Agreement that does not contain
2 an answer from each tenant to the question listed in subsection (f)(4), as well as the initials of each
3 tenant next to his or answer to the question listed in subsection (f)(4), shall not be effective and may be
4 rescinded by the tenant at any time.

5 (g) Rescission of Buyout Agreements. A tenant shall have the right to rescind a Buyout
6 Agreement for up to and including 45 days after its execution by all parties. In order to rescind a
7 Buyout Agreement, the tenant must, on or before the 45th day following the execution of the Buyout
8 Agreement by all parties, hand deliver, email, or place in the mail a statement to the landlord
9 indicating that the tenant has rescinded the Buyout Agreement.

10 (h) Filing of Buyout Agreements. The landlord shall file a copy of the Buyout Agreement with
11 the Rent Board no sooner than the 46th day after the Buyout Agreement is executed by all parties, and
12 no more than 52 59 days after the agreement is executed by all parties. Buyout agreements rescinded
13 under subsection (g) need not be filed with the Rent Board. At the time of the filing required by this
14 subsection (h), the landlord shall pay a filing fee to be set by the Controller's Office that does
15 not exceed the Rent Board's costs related to the filing of Buyout Agreements and the posting
16 of Buyout Agreements as described in subsection (i). Any fees collected under this
17 subsection (h) shall be retained by the Rent Board.

18 (i) Posting of Buyout Agreements. The Rent Board shall create a searchable database with
19 information received from filings under subsection (h). The database shall be accessible to the public at
20 the Rent Board's office and shall include a copy of all filings received under subsection (h). Before
21 posting a copy of any filing received under subsection (h) on its database, the Rent Board shall redact
22 all information regarding the identity of the tenants.

23 (j) Annual report. The Rent Board shall provide an annual report to the Board of Supervisors
24 regarding the implementation of this Section 37.9E. The first report shall be completed by January 31,
25 2016, and subsequent reports shall be completed by January 31 in subsequent years. The report shall

1 include, but not be limited to, a list of all units that have been the subject of Buyout Agreements that
2 have been reported to the Rent Board under subsection (h). The Rent Board shall post each of these
3 annual reports on its website.

4 (k) Penalties and Enforcement.

5 (1) A tenant who has vacated a unit based on a Buyout Agreement may bring a civil
6 action against the landlord in San Francisco Superior Court for failure to comply with the
7 requirements set forth in subsections (d) and (f). The landlord shall be liable for the tenant's damages.
8 In addition, the penalty for a violation of subsection (d) shall be up to \$500. The penalty for a violation
9 of subsection (f) shall be up to 50% of the tenant's damages. The court shall award reasonable
10 attorneys' fees to any tenant who is the prevailing party in a civil action brought under this subsection
11 (k)(1).

12 (2) The City Attorney or any organization with tax exempt status under 26 United States
13 Code Section 501(c)(3) or 501(c)(4) and with a primary mission of protecting the rights of tenants in
14 San Francisco may bring a civil action against a landlord in San Francisco Superior Court for failure
15 to comply with subsection (h). A landlord who has violated subsection (h) shall pay to the City an
16 administrative penalty of up to \$100 per day for each document the landlord failed to file, but in no
17 event shall the landlord's total administrative penalty in a single civil action exceed \$20,000. Any
18 administrative penalties collected under this subsection (k)(2) shall be deposited in the General Fund
19 of the City and County of San Francisco. The court shall award reasonable attorney's fees and costs to
20 the City Attorney or a nonprofit organization that is the prevailing party in a civil action brought under
21 this subsection (k)(2).

22 (3) A tenant may not bring a civil action under subsection (k)(1) and the City Attorney
23 or a nonprofit organization may not bring a civil action under subsection (k)(2) more than four years
24 after the date of the alleged violation.

1 Section 2. The Subdivision Code is hereby amended by revising Section 1396, to read
2 as follows:

3 **SEC. 1396. ANNUAL CONVERSION LIMITATION.**

4 (a) This Section governing annual limitation shall apply only to ~~conversion~~ conversion
5 of residential units. This Section also is subject to the limitations established by Section
6 1396.5's suspension of the lottery.

7 (b) Applications for conversion of residential units, whether vacant or occupied, shall
8 not be accepted by the Department of Public Works, except that a maximum of 200 units as
9 selected yearly by lottery by the Department of Public Works from all eligible applicants, may
10 be approved for conversion per year for the following categories of buildings:

11 (1) Buildings consisting of four units in which at least three of the units have
12 been occupied continuously by the applicant owners of record as their ~~principle~~ principal place
13 of residence for three years prior to the date of registration for the lottery as selected by the
14 Director;

15 (2) Buildings consisting of three units in which at least two of the units have
16 been occupied continuously by the applicant owners of record as their ~~principle~~ principal place
17 of residence for three years prior to the date of registration for the lottery as selected by the
18 Director;

19 (3) Buildings consisting of two units in which at least one unit has been
20 occupied continuously by the applicant owner of record as his or her ~~principle~~ principal place
21 of residence for three years prior to the date of registration for the lottery as selected by the
22 Director;

23 (4) Buildings consisting of five or six units that were subject to the requirements
24 of Section 1396.2(f) on or before April 15, 2013 where (A) no further evictions as set forth in
25 Section 1396.2 have occurred in the building after April 15, 2013, (B) the building and all

1 applicants first satisfied all the requirements for conversion under Section 1396.2(f) after
2 January 24, 2020 and before resumption of the lottery under ~~in accordance with the terms of~~
3 Section 1396.5; and (C) 50 percent or more of the units have been occupied continuously by
4 owners of record as their ~~principle~~ principal place of residence for ten years prior to the date of
5 registration for the lottery as selected by the Director. Applicants for such buildings must apply
6 for the lottery within five years of the resumption of the lottery under Section 1396.5(c) and
7 remain eligible until selected;

8 (5) If the Expedited Conversion program under Section 1396.4 has been
9 suspended until 2024 as a result of a successful lawsuit against the City and County of San
10 Francisco challenging Section 1396.4(g) or 1396.5: (A) buildings consisting of five or six units
11 that participated in but were not selected for the 2012 or 2013 condominium conversion lottery
12 in which 50 percent or more of the units have been occupied continuously by the applicant
13 owners of record for no less than six years prior to the date of registration for the lottery as
14 selected by the Director or (B) buildings consisting of five or six units in which: (i) 50 percent
15 or more of the units have been occupied continuously by the applicant owners of record for no
16 less than six years prior to the date of registration for the lottery as selected by the Director
17 and (ii) the eligible applicant owners of record have a fully executed written agreement as of
18 April 15, 2013 in which the owners each have an exclusive right of occupancy to individual
19 units in the building to the exclusion of the owners of the other units. Applicants for buildings
20 identified in this Subsection must first apply for the lottery within five years of the resumption
21 of the lottery under Section 1396.5(c) and remain eligible until selected; or

22 (6) Community apartments as defined in Section 1308 of this Code, which, on
23 or before December 31, 1982, met the criteria for community apartments in Section 1308 of
24 this Code and which were approved as a subdivision by the Department of Public Works on or
25 before December 31, 1982, and where 75 percent of the units have been occupied

1 continuously by the applicant owners of record for three years prior to the date of registration
2 for the lottery as selected by the Director.

3 (c) The conversion of a stock cooperative as defined in Section 1308 of this Code to
4 condominiums shall be exempt from the annual limitation imposed on the number of
5 conversions in this Section and from the requirement to be selected by lottery where 75
6 percent of the units have been occupied for the lottery as selected by the Director.

7 (d) No application for conversion of a residential building submitted by a registrant
8 shall be approved by the Department of Public Works to fill the unused portion of the 200-unit
9 annual limitation for the previous year.

10 (e) (1) Any application for a condominium conversion submitted after being
11 selected in the lottery must meet the following requirements applicable to Subdivision Code
12 Article 9, Conversions: Sections 1381, 1382, 1383, 1386, 1387, 1388, 1389, 1390, 1391(a)
13 and (b), 1392, 1393, 1394, and 1395.

14 (2) Any building subject to Section 1396.2 shall have all applicant(s) satisfy all
15 the requirements for conversion under Section 1396.2(f) in order be eligible to convert
16 pursuant to this Section 1396; provided, however, that any building subject to the prohibition
17 on conversion under Section 1396.2, in particular a property with the eviction(s) set forth in
18 Section 1396.2(b), is ineligible for conversion.

19 (3) (A) In addition, the applicant(s) shall certify that to the extent any tenant
20 vacated his or her unit within the seven years prior to the date of registration for the lottery as
21 selected by the Director and before recordation of the final parcel or subdivision map, such
22 tenant did so voluntarily or if an eviction or eviction notice occurred it was not pursuant to
23 Administrative Code Sections 37.9(a)(8)-(14) unless such eviction or eviction notice complied
24 with the requirements of Subsections (B)-(D) below.

1 (B) If the evicting owner(s) recovered possession of the unit under
2 Administrative Code Sections 37.9(a)(11) or 37.9(a)(14), then the applicant(s) shall certify that
3 the original tenant reoccupied or was given an opportunity to reoccupy the unit after the
4 temporary eviction.

5 (C) If the evicting owner(s) recovered possession of the unit under
6 Administrative Code Section 37.9(a)(10), then the applicant(s) shall certify that the
7 Department of Building Inspection required the unit be demolished or permanently removed
8 from housing use pursuant to a Notice of Violation or Emergency Order or similar notice,
9 order, or act; all the necessary permits for demolition or removal were obtained; that the
10 evicting owner(s) complied in full with Administrative Code Section 37.9(a)(10) and (c); and
11 that an additional unit or replacement unit was not constructed in the building after the
12 demolition or removal of the unit previously occupied by the evicted tenant.

13 (D) If the evicting owner(s) recovered possession of a unit under
14 Administrative Code Section 37.9(a)(8), then the applicants shall certify that: (i) only one unit
15 in the building was the subject of such eviction during the seven year period, (ii) any surviving
16 owner or relative named as the intended resident of the unit in the Section 37.9(a)(8) eviction
17 notice also is presently an owner applying for the conversion of the same unit, and (iii) the
18 subject applicant owner has occupied the unit continuously as his or her ~~principle~~ principal
19 residence for three years prior to the date of registration for the lottery as selected by the
20 Director.

21 (4) Notwithstanding any provisions in this Code to the contrary, the Department of
22 Public Works shall not sell residential condominium conversion lottery tickets to, shall not accept a
23 residential condominium conversion subdivision application from, and shall deny a tentative or final
24 subdivision or parcel map for residential condominium conversion submitted by the owner(s) of a
25 building if, on or after October 31, 2014, (A) a senior, disabled, or catastrophically ill tenant in the

1 building entered into a Buyout Agreement, as defined in Administrative Code Section 37.9E, for any
2 unit in the building, or (B) two or more tenants entered into Buyout Agreements during the period
3 beginning ten years prior to the date of the application and ending on the date of the final or parcel
4 map approval. This Subsection (e)(4) shall apply without regard to whether the current owner(s) was a
5 party to the Buyout Agreement, provided that the Buyout Agreement was reported to the Rent Board as
6 provided in Administrative Code Section 37.9E prior to the current owner(s) purchasing the building.
7 For purposes of this subsection, a “senior” shall be a person who is 60 years or older and has been
8 residing in the unit for ten years or more at the time of Buyout Agreement; a “disabled” tenant shall be
9 a person who is disabled within the meaning of Title 42 United States Code Section 12102 and has
10 been residing in the unit for ten years or more at the time of Buyout Agreement; and a
11 “catastrophically ill” tenant shall be a person who is disabled within the meaning of Title 42 United
12 States Code Section 12102 and who is suffering from a life threatening illness as certified by his or her
13 primary care physician and has been residing in the unit for five years or more at the time of Buyout
14 Agreement.

15 (f) The Department shall review all available records, including eviction notices and
16 records maintained by the Rent Board for compliance with Subsection (e). If the Department
17 finds that a violation of Subsection (e) occurred prior to recordation of the final map or final
18 parcel map, the Department shall disapprove the application or subject map. If the
19 Department finds that a violation of Subsection (e) occurred after recordation of the final map
20 or parcel map, the Department shall take such actions as are available and within its authority
21 to address the violation.

22

23 Section 3. Effective and Operative Dates.

24 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
25 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not

1 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
2 Mayor’s veto of the ordinance.

3 (b) This ordinance shall become operative ~~90~~ 120 days after enactment.
4

5 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
6 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
7 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
8 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
9 additions, and Board amendment deletions in accordance with the “Note” that appears under
10 the official title of the ordinance.
11

12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By: _____
15 Joshua S. White
16 Deputy City Attorney

17 n:\legana\as2014\1400214\00965472.doc
18
19
20
21
22
23
24
25