

1 [Authorizing the passthrough from landlord to residential tenant of specified percentages of
2 water and sewer services cost increases imposed through adoption of water and sewer rates
3 after July 1, 2002, to provide incentives for the conservation of water]

4 **Ordinance amending the San Francisco Administrative Code to encourage water**
5 **conservation by authorizing landlords to pass through to tenants fifty percent of**
6 **increased water and sewer bill charges resulting from the adoption of water and sewer**
7 **rates after July 1, 2002, and the passthrough to tenants of seventy percent of increased**
8 **water and sewer bill charges resulting from the adoption of water and sewer rates after**
9 **July 1, 2002, where specified water conservation devices have been installed in all**
10 **rental units and common areas of a building; and providing for passthrough**
11 **administration, noticing and enforcement procedures.**

12 Note: Additions are *single-underline italics Times New Roman*;
13 deletions are ~~*strikethrough italics Times New Roman*~~.
14 Board amendment additions are double underlined.
15 Board amendment deletions are ~~strikethrough normal~~.

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

17 Section 1. The San Francisco Administrative Code is hereby amended by amending
18 Section 37.2(a), to read as follows:

19 (a) Base Rent.

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

1 pursuant to Section 32.73-1 of the San Francisco Administrative Code. Rent increases
2 attributable to the City Administrator's amortization of an RAP loan in an area designated
3 on or after July 1, 1977, shall not be included in the base rent.

4 Section 2. The San Francisco Administrative Code is hereby amended by amending
5 Section 37.2(q), to read as follows:

6 (q) Rent Increases. Any additional monies demanded or paid for rent as defined in
7 item (p) above, or any reduction in housing services without a corresponding reduction in the
8 monies demanded or paid for rent; provided, however, that: (1) where the landlord has been
9 paying the tenant's utilities and the cost of those utilities increases, the landlord's passing
10 through to the tenant of such increased costs pursuant to this Chapter does not constitute a
11 rent increase; (2) where there has been a change in the landlord's property tax attributable to
12 a 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; and, (5) where water and sewer bill charges are attributable to water and
24 sewer rate increases adopted after July 1, 2002, the landlord's passing through to the tenant of such

1 increased costs in accordance with this Chapter (see Section 37.3(a)(5)(C)) does not constitute a rent
2 increase.

3 Section 3. The San Francisco Administrative Code is hereby amended by amending
4 Section 37.3, to read as follows:

5 Sec. 37.3. RENT LIMITATIONS.

6 (a) Rent Increase Limitations for Tenants in Occupancy. Landlords may impose rent
7 increases upon tenants in occupancy only as provided below and as provided by Subsection
8 37.3(d):

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

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

20 (3) Capital Improvements, Rehabilitation, and Energy Conservation Improvements, and
21 Renewable Energy Improvements. A landlord may impose rent increases based upon the
22 cost of capital improvements, rehabilitation, energy conservation improvements, or
23 renewable energy improvements, provided that such costs are certified pursuant to
24 Sections 37.7 and 37.8B below; provided further that where a landlord has performed
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1 seismic strengthening in accordance with Building Code Chapters 16B and 16C, no
2 increase for capital improvements (including but not limited to seismic strengthening) shall
3 exceed, in any 12 month period, 10 percent of the tenant's base rent, subject to rules
4 adopted by the Board to prevent landlord hardship and to permit landlords to continue to
5 maintain their buildings in a decent, safe and sanitary condition. A landlord may
6 accumulate any certified increase which exceeds this amount and impose the increase in
7 subsequent years, subject to the 10 percent limitation. Nothing in this subsection shall be
8 construed to supersede any Board rules or regulations with respect to limitations on
9 increases based upon capital improvements whether performed separately or in
10 conjunction with seismic strengthening improvements pursuant to Building Code Chapters
11 16B and 16C.

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

14 (5) Water and Sewer: Charges Related to Excess Water Use; ~~and~~ 50% Passthrough of
15 Water Bill Charges Attributable to Water Rate Increases Resulting From Issuance of Water
16 System Improvement Revenue Bonds Authorized at the November 2002 Election to Any
17 Unit That Is In Compliance With Any Applicable Laws Requiring Water Conservation Devices;
18 50% Passthrough To Any Unit of Increased Water and Sewer Bill Charges Resulting From the
19 Adoption of Water and Sewer Rates After July 1, 2002, and 70% Passthrough To Any Unit of
20 Increased Water and Sewer Bill Charges Resulting From the Adoption of Water and Sewer Rates
21 After July 1, 2002 Where Specified Water Conservation Devices Have Been Installed In All Rental
22 Units and Common Areas of a Building.

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

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

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

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

3 (B) Fifty Percent (50%) Passthrough of Water Bill Charges Attributable to Water
4 Increases Resulting From Issuance of Water System Improvement Revenue Bonds
5 Authorized at the November 2002 Election. A landlord may pass through fifty percent
6 (50%) of the water bill charges attributable to water rate increases resulting from
7 issuance of Water System Improvement Revenue Bonds authorized at the November
8 2002 election (Proposition A), to any unit that is in compliance with any applicable laws
9 requiring water conservation devices. The landlord is not required to file a petition with
10 the Board for approval of such a cost passthrough. Such cost passthroughs are subject
11 to the following:

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

15 (1) The notice shall specify the dollar amount of the monthly passthrough, the period of time
16 covered by the water bills that are used to calculate the passthrough and the number of
17 months that the tenant is required to pay the passthrough.

18 (2) The notice shall explain that the passthrough is based on water bill charges attributable
19 to water rate increases resulting from issuance of water revenue bonds authorized at the
20 November 2002 election.

21 (3) The charges and the calculation of the passthrough shall be explained in writing on a
22 form provided by the Board, which form shall be attached to the notice.

23 (4) The notice shall state that the tenant is entitled to receive a copy of the applicable water
24 bills from the landlord upon request.

1 (5) The notice shall state that the unit is in compliance with any applicable laws requiring
2 water conservation devices.

3 (ii) A tenant may file a hardship application with the Board, and be granted relief from
4 all or part of such a cost passthrough. Any hardship application must be filed within one
5 year of the effective date of the passthrough. Payment of the passthrough set forth in the
6 hardship application shall be stayed until a decision is made by the Administrative Law Judge
7 after a hearing on the tenant's hardship application. Appeals of decisions on a tenant's
8 hardship application shall be governed by Section 37.8(f).

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

12 (iii) (iv) A landlord shall not impose a passthrough pursuant to Section 37.3(a)(5)(B) if
13 the landlord has filed for or received Board approval for a rent increase under Section
14 37.8(e)(4) for increased operating and maintenance expenses in which the same
15 increase in water bill charges attributable to water rate increases resulting from
16 issuance of any water revenue bonds authorized at the November 5, 2002 election was
17 included in the comparison year cost totals.

18 (iv) (v) Where a tenant alleges that a landlord has imposed a water revenue bond
19 passthrough that is not in compliance with Section 37.3(a)(5)(B), the tenant may
20 petition for a hearing under the procedures provided by Section 37.8. In such a hearing
21 the landlord shall have the burden of proving the accuracy of the calculation that is the
22 basis for the increase and that the tenant's rental unit is in compliance with any applicable
23 laws requiring water conservation devices. Any tenant petition challenging such a
24 passthrough must be filed within one year of the effective date of the passthrough. The
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1 filing of a petition by a tenant does not relieve the tenant of his or her obligation to pay the
2 passthrough pending a final determination by the Administrative Law Judge.

3 ~~(v)~~ ~~(vi)~~ A tenant who has received a notice of passthrough or a passthrough under this
4 Section 37.3(a)(5)(B) shall be entitled to receive a copy of the applicable water bill_s
5 from the landlord upon request.

6 ~~(vi)~~ ~~(vii)~~ The amount of permissible passthrough per unit under this Section
7 37.3(a)(5)(B) shall be determined as follows:

8 (1) The San Francisco Public Utilities Commission will determine the charge per
9 unit of water, if any, that is attributable to water rate increases resulting from
10 issuance of water system improvement revenue bonds authorized at the November
11 5, 2002 election.

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

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

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

5 (3) The landlord shall add up the water bill charges identified in Section
6 37.3(a)(5)(B)(vi)(2) for the prior calendar year and then divide that figure by two (since a
7 50% passthrough is permitted) in order to obtain the total amount permitted to be passed
8 through to tenants in the building. The water revenue bond passthrough shall be based on
9 actual costs incurred by the landlord during the prior calendar year, regardless of when the
10 water bills were received or paid. Charges for more than one calendar year may be
11 included in the calculation if the landlord did not already impose a water revenue bond
12 passthrough based on the charges for that calendar year.

13 (4) The landlord shall divide the amount determined in 37.3(a)(5)(B)(vi)(3) above by the
14 total number of units covered by the water bills, including commercial units, to obtain the
15 allowable passthrough per unit.

16 (5) The landlord then shall divide the amount determined in 37.3(a)(5)(B)(vi)(4) above by
17 the number of months covered by the water bills that are used in the passthrough
18 calculation to determine the monthly passthrough amount for each unit.

19 (vii) The monthly passthrough amount determined in 37.3(a)(5)(B)(vi)(5) above can be imposed
20 only for the same number of months covered by the water bills that are used in the passthrough
21 calculation. For example, if the landlord imposes a water revenue bond passthrough based on
22 water bills for charges incurred during one calendar year, the monthly passthrough remains in
23 effect for twelve months. If the landlord imposes a water revenue bond passthrough based on
24 water bills for charges incurred during two calendar years, the monthly passthrough remains in
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1 effect for twenty-four months.

2 (viii) A water revenue bond passthrough may be imposed only at the time of an annual rent
3 increase. However, the water revenue bond passthrough shall not be included in the tenant's
4 base rent for purposes of calculation of the amount of rent increases allowable under the
5 Ordinance.

6 (ix) Only those tenants in residence during the calendar year in which the water bill charges
7 were incurred may be assessed the passthrough. If a tenancy commenced during said calendar
8 year, the landlord shall calculate the water revenue bond passthrough for that tenancy based
9 only on the billing periods during the calendar year that occurred after commencement of the
10 tenancy.

11 (x) The amount due from the tenant for any water revenue bond passthrough shall be due on the
12 same date as a rent payment normally would be due.

13 (xi) Nothing in this Section shall be interpreted as requiring any landlord to pass through any
14 water rate increases resulting from issuance of Water System Improvement Revenue Bonds
15 authorized at the November 5, 2002 election. However, the provisions of this Section shall be
16 deemed a part of every rental agreement or lease, written or oral, for the possession of a rental
17 unit subject to the Ordinance unless the landlord and tenant agree that the landlord will not
18 pass through any charges based on water rate increases resulting from issuance of Water
19 System Improvement Revenue Bonds authorized at the November 5, 2002 election, in which
20 case such agreement will be binding on the landlord and on any successor owner of the
21 building, unless such agreement is changed in accordance with applicable law.

22 (xii) Where a water revenue bond passthrough has been lawfully demanded of a tenant, a
23 change in the ownership of the building in which the tenant's unit is located will not affect the
24 tenant's liability to pay the amount passed through.

1 (xiii) The Board may amend its rules and regulations as necessary to implement this Section
2 37.3(a)(5)(B).

3 (C) Fifty Percent (50%) Passthrough to Any Unit of Increased Water and Sewer Bill Charges
4 Resulting From the Adoption of Water and Sewer Rates After July 1, 2002, and Seventy Percent
5 (70%) Passthrough to Any Unit of Increased Water and Sewer Bill Charges Resulting From the
6 Adoption of Water and Sewer Rates After July 1, 2002 Where Specified Water Conservation
7 Devices Have Been Installed in All Rental Units and Common Areas of a Building. A landlord
8 may pass through fifty percent (50%) of the water and sewer bill charges incurred after [the
9 effective date of this Section] that are attributable to water and sewer rate increases adopted after
10 July 1, 2002, to any rental unit in the building. Where a landlord has installed, and tenants are
11 operating, all low-flow fixtures and appliances included in guidelines issued by the General
12 Manager of the San Francisco Public Utilities Commission in effect at the time of the passthrough
13 in all of the rental units and common areas of the building, the landlord may pass through seventy
14 percent (70%) of the water and sewer bill charges incurred after [the effective date of this
15 Section] that are attributable to water and sewer rate increases adopted after July 1, 2002, to
16 any rental unit in the building. The landlord is not required to file a petition with the Board for
17 approval of such a cost passthrough. Such cost passthroughs are subject to the following:

18 (i) Affected tenants shall be given notice of any such passthrough as provided by applicable
19 notice of rent increase provisions of this Chapter 37, including but not limited to Section
20 37.3(b)(3).

21 (1) The notice shall specify the dollar amount of the monthly passthrough, the period of time
22 covered by the water bills that are used to calculate the passthrough and the number of
23 months that the tenant is required to pay the passthrough.

24 (2) The notice shall explain that the passthrough is based on water and sewer bill charges
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1 attributable to general water and sewer rate increases adopted after July 1, 2002.

2 (3) The charges and the calculation of the passthrough shall be explained in writing on a
3 form provided by the Board, which form shall be attached to the notice.

4 (4) The notice shall state that the tenant is entitled to receive a copy of the applicable water
5 bills from the landlord upon request.

6 (5) For water/sewer general rate increase passthroughs based on 70% of the water and
7 sewer bill charges attributable to water and sewer rate increases adopted after July 1, 2002,
8 the notice shall state that the landlord has installed, and tenants are operating, all low-flow
9 fixtures and appliances included in guidelines issued by the General Manager of the San
10 Francisco Public Utilities Commission in effect at the time of the passthrough in all of the
11 rental units and common areas of the building.

12 (ii) A tenant may file a hardship application with the Board, and be granted relief from all or
13 part of such a cost passthrough. Any hardship application must be filed within one year of the
14 effective date of the passthrough. Payment of the passthrough set forth in the hardship
15 application shall be stayed until a decision is made by the Administrative Law Judge after a
16 hearing on the tenant's hardship application. Appeals of decisions on a tenant's hardship
17 application shall be governed by Section 37.8(f).

18 (iii) A landlord shall not impose a passthrough pursuant to Section 37.3(a)(5)(C) if the
19 landlord has filed for or received Board approval for a rent increase under Section 37.8(e)(4)
20 for increased operating and maintenance expenses in which the same increase in water bill
21 charges attributable to water and sewer rate increases adopted after July 1, 2002 was included
22 in the comparison year cost totals.

23 (iv) Where a tenant alleges that a landlord has imposed a water/sewer general rate increase
24 passthrough that is not in compliance with Section 37.3(a)(5)(C), the tenant may petition for a

1 hearing under the procedures provided by Section 37.8. In such a hearing the landlord shall
2 have the burden of proving the accuracy of the calculation that is the basis for the increase and,
3 for passthroughs based on 70% of the water and sewer bill charges attributable to water and
4 sewer rate increases adopted after July 1, 2002, that the landlord has installed, and tenants are
5 operating, all low-flow fixtures and appliances included in guidelines issued by the General
6 Manager of the San Francisco Public Utilities Commission in effect at the time of the
7 passthrough in all of the rental units and common areas of the building. Any tenant petition
8 challenging a water/sewer general rate increase passthrough must be filed within one year of
9 the effective date of the passthrough. The filing of a petition by a tenant does not relieve the
10 tenant of his or her obligation to pay the passthrough pending a final determination by the
11 Administrative Law Judge.

12 (v) A tenant who has received a notice of passthrough or a passthrough under this Section
13 37.3(a)(5)(C) shall be entitled to receive a copy of the applicable water and sewer bills from the
14 landlord upon request.

15 (vi) The amount of permissible passthrough per unit under this Section 37.3(a)(5)(C) shall be
16 determined as follows:

17 (1) The San Francisco Public Utilities Commission will determine the charge per unit of
18 water and/or wastewater discharge, if any, that is attributable to water and sewer rate
19 increases resulting from the adoption of water and sewer rates after July 1, 2002, exclusive
20 of water rate increases resulting from the issuance of Water System Improvement Revenue
21 Bonds authorized at the November 2002 election (Proposition A).

22 (2) The charges identified in Section 37.3(a)(5)(C)(vi)(1) shall be multiplied by the total
23 units of water and/or discharge volume used by each customer, for each water and sewer
24 bill issued after [the effective date of this Section]. The result is the total dollar amount of
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1 the water and sewer bill that is attributable to water and sewer rate increases resulting from
2 the adoption of water and sewer rates after July 1, 2002. That charge shall be shown on
3 each customer's water and sewer bill.

4 (3) The landlord shall add up the water and sewer bill charges identified in Section
5 37.3(a)(5)(C)(vi)(2) for the prior calendar year. Where the landlord has installed, and
6 tenants are operating, all low-flow fixtures and appliances included in guidelines issued by
7 the General Manager of the San Francisco Public Utilities Commission in effect at the time
8 of the passthrough in all of the rental units and common areas of the building, the landlord
9 shall multiply that figure by .70 (for a 70% passthrough) in order to obtain the total amount
10 permitted to be passed through to tenants in the building. In all other cases, the landlord
11 shall multiply that figure by .50 (for a 50% passthrough) in order to obtain the total amount
12 permitted to be passed through to tenants in the building. The water/sewer general rate
13 increase passthrough shall be based on actual costs incurred by the landlord during the
14 prior calendar year, regardless of when the water and sewer bills were received or paid.
15 Charges for more than one calendar year may be included in the calculation if the landlord
16 did not already impose a water/sewer general rate increase passthrough based on the
17 charges for that calendar year.

18 (4) The landlord shall divide the amount determined in 37.3(a)(5)(C)(vi)(3) above by the
19 total number of units covered by the water and sewer bills, including commercial units, to
20 obtain the allowable passthrough per unit.

21 (5) The landlord then shall divide the amount determined in 37.3(a)(5)(C)(vi)(4) above by
22 the number of months covered by the water and sewer bills that are used in the passthrough
23 calculation to determine the monthly passthrough amount for each unit.

24 (vii) The monthly passthrough amount determined in 37.3(a)(5)(C)(vi)(5) above can be
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1 imposed only for the same number of months covered by the water and sewer bills that are used
2 in the passthrough calculation. For example, if the landlord imposes a water/sewer general rate
3 increase passthrough based on water and sewer bills for charges incurred during one calendar
4 year, the monthly passthrough remains in effect for twelve months. If the landlord imposes a
5 water/sewer general rate increase passthrough based on water and sewer bills for charges
6 incurred during two calendar years, the monthly passthrough remains in effect for twenty-four
7 months.

8 (viii) A water/sewer general rate increase passthrough may be imposed only at the time of an
9 annual rent increase. However, the water/sewer general rate increase passthrough shall not be
10 included in the tenant's base rent for purposes of calculation of the amount of rent increases
11 allowable under the Ordinance.

12 (ix) Only those tenants in residence during the calendar year in which the water and sewer bill
13 charges were incurred may be assessed the passthrough. If a tenancy commenced during said
14 calendar year, the landlord shall calculate the water revenue bond passthrough for that tenancy
15 based only on the billing periods during the calendar year that occurred after commencement of
16 the tenancy.

17 (x) The amount due from the tenant for any water/sewer general rate increase passthrough shall
18 be due on the same date as a rent payment normally would be due.

19 (xi) Nothing in this Section shall be interpreted as requiring any landlord to pass through any
20 water or sewer rate increases resulting from the adoption of water and sewer rates after July 1,
21 2002. However, the provisions of this Section shall be deemed a part of every rental agreement
22 or lease, written or oral, for the possession of a rental unit subject to the Ordinance unless the
23 landlord and tenant agree that the landlord will not pass through any water or sewer charges
24 resulting from water and sewer rate increases adopted after July 1, 2002, in which case such
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1 agreement will be binding on the landlord and on any successor owner of the building, unless
2 such agreement is changed in accordance with applicable law.

3 (xii) Where a water/sewer general rate increase passthrough has been lawfully demanded of a
4 tenant, a change in the ownership of the building in which the tenant's unit is located will not
5 affect the tenant's liability to pay the amount passed through.

6 (xiii) The Board may amend its rules and regulations as necessary to implement this Section
7 37.3(a)(5)(C).

8 (6) Property Tax. A landlord may impose increases based upon a 100% passthrough of
9 the change in the landlord's property tax resulting from the repayment of general obligation
10 bonds of the City and County of San Francisco approved by the voters between November
11 1, 1996, and November 30, 1998 as provided in Section 37.2(q) above.

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

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

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

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

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

3 (iii) The dollar amount calculated under Subsection (ii) shall be divided by the total
4 number of all units in each property, including commercial units. That figure shall be
5 divided by 12 months, to determine the monthly per unit costs for that tax year of the
6 repayment of general obligation bonds approved by the voters between November 1,
7 1996, and November 30, 1998.

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

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

14 (ii) This percentage shall be multiplied by the total amount of the net taxable value for
15 the applicable tax year. The result is the dollar amount of property taxes for that tax
16 year for a particular property attributable to the repayment of general obligation bonds
17 approved by the voters after November 14, 2002.

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

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

1 (i) The Controller and the Board of Supervisors will determine the percentage of the
2 property tax rate, if any, in each tax year attributable to San Francisco Unified School
3 District or San Francisco Community College District general obligation bonds
4 approved by the voters after November 1, 2006 and repayable within such tax year.
5 (ii) This percentage shall be multiplied by the total amount of the net taxable value for
6 the applicable tax year. The result is the dollar amount of property taxes for that tax
7 year for a particular property attributable to the repayment of San Francisco Unified
8 School District or San Francisco Community College District general obligation bonds
9 approved by the voters after November 1, 2006.
10 (iii) The dollar amount calculated under Subsection (ii) shall be divided by two, and
11 then by the total number of all units in each property, including commercial units. That
12 figure shall be divided by 12 months, to determine the monthly per unit costs for that
13 tax year of the repayment of San Francisco Unified School District or San Francisco
14 Community College District general obligation bonds approved by the voters after
15 November 1, 2006.
16 (D) Landlords may pass through to each unit in a particular property the dollar amount
17 calculated under these Subsections 37.3(a)(6)(A) and (B) and (C). These passthroughs
18 may be imposed only on the anniversary date of each tenant's occupancy of the
19 property. These passthroughs shall not become a part of a tenant's base rent. The
20 amount of each annual passthrough imposed pursuant to this Subsection (6) may vary
21 from year-to-year, depending on the amount calculated under Subsections (A) and (B)
22 and (C). Each annual passthrough shall apply only for the 12 month period after it is
23 imposed. A landlord may impose the passthroughs described in this Subsection (6) for a
24 particular tax year only with respect to those tenants who were residents of a particular
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1 property on November 1st of the applicable tax year. A landlord shall not impose a
2 passthrough pursuant to this Subsection (6) if the landlord has filed for or received Board
3 approval for a rent increase under Section 37.8(e)(4) for increased operating and
4 maintenance expenses in which the same increase in property taxes due to the
5 repayment of general obligation bonds was included in the comparison year cost totals.

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

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

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

20 (7) RAP Loans. A landlord may impose rent increases attributable to the City
21 Administrator's amortization of the RAP loan in an area designated on or after July 1,
22 1977, pursuant to Chapter 32 of the San Francisco Administrative Code.

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

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

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

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

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

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

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

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

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

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

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

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1 (3) Which portion of the rent increase reflects the passthrough of charges for: gas and
2 electricity; or the passthrough of increased water bill charges attributable to water rate
3 increases resulting from issuance of water revenue bonds authorized at the November
4 2002 election as provided by Section 37.3(a)(5)(B), which charges and calculations of
5 charges shall be explained in writing on a form provided by the Board; or the passthrough of
6 increased water and sewer bill charges attributable to general water and sewer rate increases
7 adopted after July 1, 2002 as provided by Section 37.3(a)(5)(C), which charges and calculations of
8 charges shall be explained in writing on a form provided by the Board; or the passthrough of
9 general obligation bond measure costs as provided by Section 37.3(a)(6), which charges
10 shall be explained in writing on a form provided by the Board as described in Section
11 37.3(a)(6)(E);

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

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

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

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

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

25

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

3 (A) An owner or residential real property may establish the initial and all subsequent
4 rental rates for a dwelling or a unit which is alienable separate from the title to any other
5 dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b),
6 (d), or (f) of Section 11004.5 of the California Business and Professions Code. The
7 owner's right to establish subsequent rental rates under this paragraph shall not apply to
8 a dwelling or unit where the preceding tenancy has been terminated by the owner by
9 notice pursuant to California Civil Code Section 1946 or has been terminated upon a
10 change in the terms of the tenancy noticed pursuant to California Civil Code Section 827;
11 in such instances, the rent increase limitation provisions of Chapter 37 shall continue to
12 apply for the duration of the new tenancy in that dwelling or unit.

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

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

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

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

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

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

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

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

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

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

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

12 (3) Termination or Nonrenewal of a Contract or Recorded Agreement with a Government
13 Agency Limiting Rent. An owner who terminates or fails to renew a contract or recorded
14 agreement with a governmental agency that provides for a rent limitation to a qualified
15 tenant, shall be subject to the following:

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

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

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

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

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

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

13 (e) Effect of Deferred Maintenance on Passthroughs for Lead Remediation Techniques.

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

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

6 Section 4. The San Francisco Administrative Code is hereby amended by amending
7 Section 37.8, to read as follows:

8 SEC. 37.8. ARBITRATION OF RENTAL INCREASE ADJUSTMENTS.

9 (a) Authority of Board and Administrative Law Judge. In accordance with such guidelines
10 as the Board shall establish, the Board and designated Administrative Law Judges shall
11 have the authority to arbitrate rental increase adjustments, and to administer the rent
12 increase protest procedures with respect to RAP rental units as set forth in Chapter 32 of
13 the San Francisco Administrative Code.

14 (b) Request for Arbitration.

15 (1) Landlords. Landlords who seek to impose rent increases which exceed the
16 limitations set forth in Section 37.3(a) above must request an arbitration hearing as set
17 forth in this Section. The burden of proof is on the landlord.

18 (2) Tenants.

19 (A) Notwithstanding Section 37.3, tenants of non-RAP rental units and tenants of
20 RAP rental units in areas designated on or after July 1, 1977, may request
21 arbitration hearings where a landlord has substantially decreased services without a
22 corresponding reduction in rent and/or has failed to perform ordinary repair and
23 maintenance under State or local law and/or has failed to provide the tenant with a
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1 clear explanation of the current charges for gas and electricity, or general obligation
2 bond measure costs or water revenue bond measure costs or water/sewer general rate
3 increase costs passed through to the tenant and/or imposed a nonconforming rent
4 increase which is null and void. The burden of proof is on the tenant.

5 (B) Tenants of RAP rental units in areas designated prior to July 1, 1977, may
6 petition for a hearing where the landlord has noticed an increase which exceeds the
7 limitations set forth in Section 32.73 of the San Francisco Administrative Code. After
8 a vacancy has occurred in a RAP rental unit in said areas, a new tenant of said unit
9 may petition for a hearing where the landlord has demanded and/or received a rent
10 for that unit which exceeds the rent increase limitations set forth in Section 32.73 of
11 the San Francisco Administrative Code. The burden of proof is on the landlord.

12 (c) Procedure for Landlord Petitioners.

13
14 (1) Filing. The request for arbitration must be filed on a petition form prescribed by the
15 Board and shall be accompanied by such supporting material as the Board shall
16 prescribe, including but not limited to, justification for the proposed rental increase.

17 (2) Filing Date. The petition must be filed prior to the mailing or delivering to the tenant
18 or tenants legal notice of the rental increase exceeding the limitations as defined in
19 Section 37.3.

20 (3) Effect of Timely Filing of Petition. Provided a completed petition is timely filed, that
21 portion of the requested rental increase which exceeds the limitations set forth in
22 Section 37.3 and has not been certified as a justifiable increase in accordance with
23 Section 37.7 is inoperative until such time as the Administrative Law Judge makes
24 findings of fact at the conclusion of the arbitration hearing.
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1 (4) Notice to Parties. The Board shall calendar the petition for hearing before a
2 designated Administrative Law Judge and shall give written notice of the date to the
3 parties at least 10 days prior to the hearing.

4 (d) Procedure for Tenant Petitioners.

5 (1) Filing; Limitation. The request for arbitration must be filed on a petition form
6 prescribed by the Board and must be accompanied by such supporting material as the
7 Board shall prescribe, including but not limited to, a copy of the landlord's notice of rent
8 increase. If the tenant petitioner has received certification findings regarding his rental
9 unit in accordance with Section 37.7, such findings must accompany the petition. If the
10 tenant petitioner has received a notification from the Chief Administrative Officer with
11 respect to base rent and amortization of a RAP loan, such notification must accompany
12 the petition. A tenant petition regarding a gas and electricity passthrough must be filed
13 within one year of the effective date of the passthrough or within one year of the date
14 the passthrough was required to be recalculated pursuant to rules and regulations
15 promulgated by the Board. A tenant petition regarding a water revenue bond
16 passthrough under Section 37.3(a)(5)(B) must be filed within one year of the effective
17 date of the passthrough. A tenant petition regarding a water/sewer general rate increase
18 passthrough under Section 37.3(a)(5)(C) must be filed within one year of the effective date of
19 the passthrough. A tenant petition regarding a general obligation bond cost passthrough
20 under Section 37.3(a)(6) must be filed within one year of the effective date of the
21 passthrough.
22

23 (2) Notice to Parties. The Board shall calendar the petition for hearing before a
24 designated Administrative Law Judge and shall give written notice of the date to the
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1 parties at least 10 days prior to the hearing. Responses to a petition for hearing may be
2 submitted in writing.

3 (e) Hearings.

4 (1) Time of Hearing. The hearing shall be held within 45 days of the filing of the
5 petition. The level of housing services provided to tenants' rental units shall not be
6 decreased during the period between the filing of the petition and the conclusion of the
7 hearing.
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9 (2) Consolidation. To the greatest extent possible, hearings with respect to a given
10 building shall be consolidated.

11 (3) Conduct of Hearing. The hearing shall be conducted by an Administrative Law
12 Judge designated by the Board. Both parties may offer such documents, testimony,
13 written declarations or other evidence as may be pertinent to the proceedings. A record
14 of the proceedings must be maintained for purposes of appeal.

15 (4) Determination of the Administrative Law Judge: Rental Units. Based upon the
16 evidence presented at the hearing and upon such relevant factors as the Board shall
17 determine, the Administrative Law Judge shall make findings as to whether or not the
18 landlord's proposed rental increase exceeding the limitations set forth in Section 37.3 is
19 justified or whether or not the landlord has effected a rent increase through a reduction
20 in services or has failed to perform ordinary repair and maintenance as required by
21 State or local law; and provided further that, where a landlord has imposed a
22 passthrough for property taxes pursuant to Section 37.3(a)(6)(D), or for water bill
23 charges attributable to water rate increases resulting from issuance of Water System
24 Improvement Revenue Bonds authorized at the November 2002 election pursuant to Section
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1 37.3(a)(5)(B), or for increased water and sewer bill charges resulting from the adoption of
2 water and sewer rates after July 1, 2002 pursuant to Section 37.3(a)(5)(C), the same increase
3 in property taxes and/or water and sewer charges shall not be included in the calculation
4 of increased operating and maintenance expenses pursuant to this Subsection (4). In
5 making such findings, the Administrative Law Judge shall take into consideration the
6 following factors:

7 (A) Increases or decreases in operating and maintenance expenses, including, but
8 not limited to, real estate taxes, sewer service charges, janitorial service, refuse
9 removal, elevator service, security system, and debt service; provided, however,
10 when a unit is purchased after the effective date of this ordinance, and this
11 purchase occurs within two years of the date of the previous purchase,
12 consideration shall not be given to that portion of increased debt service which has
13 resulted from a selling price which exceeds the seller's purchase price by more than
14 the percentage increase in the "Consumer Price Index for All Urban Consumers for
15 the San Francisco-Oakland Metropolitan Area, U.S. Department of Labor" between
16 the date of previous purchase and the date of the current sale, plus the cost of
17 capital improvements or rehabilitation work made or performed by the seller.

18 (B) The past history of increases in the rent for the unit and the comparison of the
19 rent for the unit with rents for comparable units in the same general area.

20 (C) Any findings which have been made pursuant to Section 37.7 with respect to
21 the unit.

22 (D) Failure to perform ordinary repair, replacement and maintenance in
23 compliance with applicable State and local law.
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1 (E) Any other such relevant factors as the Board shall specify in rules and
2 regulations.

3 (5) Determination of the Administrative Law Judge: RAP Rental Units.

4 (A) RAP Rental Units in RAP Areas Designated Prior to July 1, 1977. The
5 Administrative Law Judge shall make findings as to whether or not the noticed or
6 proposed rental increase exceeds the rent increase limitations set forth in Section
7 32.73 of the San Francisco Administrative Code. In making such findings, the
8 Administrative Law Judge shall apply the rent increase limitations set forth in
9 Chapter 32 of the San Francisco Administrative Code and all rules and regulations
10 promulgated pursuant thereto. The Administrative Law Judge shall consider the
11 evidence presented at the hearing. The burden of proof shall be on the landlord.

12 (B) RAP Rental Units in RAP Areas Designated On or After July 1, 1977. The
13 Administrative Law Judge shall make findings with respect to rent increases
14 exceeding the limitations as set forth in Section 37.3 of this Chapter. In making such
15 findings, the Administrative Law Judge shall take into consideration the factors set
16 forth in Subsection (4) above and shall consider evidence presented at the hearing.
17 The burden of proof is on the landlord.

18 (6) Findings of Fact. The Administrative Law Judge shall make written findings of fact,
19 copies of which shall be mailed to the parties within 30 days of the hearing.

20 (7) Payment or Refund of Rents to Implement Arbitration Decision. Upon finding that
21 all or any portion of the rent increase is or is not justified, or that any nonconforming
22 rent increase is null and void, the Administrative Law Judge may order payment or
23 refund of all or a portion of that cumulative amount within 15 days of the mailing of the
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1 findings of fact or may order the amount added to or offset against future rents;
2 provided, however, that any such order shall be stayed if an appeal is timely filed by
3 the aggrieved party. The Administrative Law Judge may order refunds of rent
4 overpayments resulting from rent increases which are null and void for no more than
5 the three-year period preceding the month of the filing of a landlord or tenant petition,
6 plus the period between the month of filing and the date of the Administrative Law
7 Judge's decision. In any case, calculation of rent overpayments and re-setting of the
8 lawful base rent shall be based on a determination of the validity of all rent increases
9 imposed since April 1, 1982, in accordance with Sections 37.3(b)(5) and 37.3(a)(2)
10 above.

11 (8) Finality of Administrative Law Judge's Decision. The decision of the Administrative
12 Law Judge shall be final unless the Board vacates his decision on appeal.
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16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By: _____
19 John Roddy
20 Deputy City Attorney
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