

File No. 100039

Committee Item No. _____

Board Item No. 16

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date 3/9/10

Cmte Board

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Completed by: Renee Craig

Date 3/4/10

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

1 [Just cause eviction protections for residential tenants, extend to non rent-controlled units that
 2 are subjected to foreclosure.]

3 Ordinance amending Administrative Code Chapter 37 "Residential Rent Stabilization
 4 and Arbitration Ordinance:" by amending Sections 37.2 and 37.3 adding new Section
 5 37.9D to extend just cause eviction requirements and protections to tenants in units
 6 that are not now subject to eviction controls (*e.g.*, most residential rental units with a
 7 certificate of occupancy issued after June 13, 1979), when those units are subjected to
 8 foreclosure; by amending Section 37.9 to provide that 37.9(a)(8)(vi) limitations on
 9 owner move-in evictions do not apply to these newly protected units (new Section
 10 37.9(a)(8)(viii)); by amending Section 37.9 to add a 16th just cause for eviction, to
 11 provide for eviction from a condominium unit with separable title that was rented by
 12 the developer for a limited time period prior to sale of the unit, where the developer has
 13 given specified advance notice to the renters (new Section 37.9(a)(16)); and by
 14 amending Chapter 37A "Rent Stabilization and Arbitration Fee" by amending Section
 15 37A.1 to extend the City's current residential rental unit fee to these units, and to
 16 provide for particular notice of rights to tenants in possession of a rental unit at the
 17 time of foreclosure, and that failure to provide the notice can be an affirmative defense
 18 in unlawful detainer proceedings; findings in support of the legislation; severability
 19 clause; technical corrections.

20 NOTE: Additions are *single-underline italics Times New Roman font*;
 21 deletions are *strike-through italics Times New Roman font*.
 22 Board amendment additions are double-underlined Arial font;
 23 Board amendment deletions are ~~strikethrough Arial font~~.

24 Be it ordained by the People of the City and County of San Francisco:
 25

1 Section 1. The San Francisco Administrative Code is hereby amended by amending
2 Section 37.2 to delete Sections 37.2(r)(5), (6), and (7), to read as follows:

3 SEC. 37.2. DEFINITIONS.

4 (a) Base Rent.

5 (1) That rent which is charged a tenant upon initial occupancy plus any rent increase
6 allowable and imposed under this Chapter; provided, however, that base rent shall not include
7 increases imposed pursuant to Section 37.7, and base rent shall not include utility
8 passthroughs or water revenue bond passthroughs or general obligation bond passthroughs
9 pursuant to Sections 37.2(q), 37.3(a)(5)(B), and 37.3(a)(6). Base rent for tenants of RAP
10 rental units in areas designated on or after July 1, 1977, shall be that rent which was
11 established pursuant to Section 32.73-1 of the San Francisco Administrative Code. Rent
12 increases attributable to the City Administrator's amortization of an RAP loan in an area
13 designated on or after July 1, 1977, shall not be included in the base rent.

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

17 (A) With respect to tenant-based rental assistance:

18 (i) For any tenant receiving tenant-based assistance as of the effective date of this
19 ordinance (except where the rent payable by the tenant is a fixed percentage of the tenant's
20 income, such as in the Section 8 certificate program and the rental subsidy program for the
21 HOPWA program), and continuing to receive tenant-based rental assistance following the
22 effective date of this ordinance, the base rent for each unit occupied by such tenant shall be
23 the rent payable for that unit under the Housing Assistance Payments contract, as amended,
24 between the San Francisco Housing Authority and the landlord (the "HAP contract") with
25 respect to that unit immediately prior to the effective date of this ordinance (the "HAP" contract

1 rent").

2 (ii) For any tenant receiving tenant-based rental assistance (except where the rent
3 payable by the tenant is a fixed percentage of the tenant's income, such as in the Section 8
4 certificate program and the rental subsidy program for the HOPWA program), and
5 commencing occupancy of a rental unit following the effective date of this ordinance, the base
6 rent for each unit occupied by such a tenant shall be the HAP contract rent in effect as of the
7 date the tenant commences occupancy of such unit.

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

12 (B) For any tenant occupying a unit upon the expiration or termination, for whatever
13 reason, of a project-based HAP contract under Section 8 of the United States Housing Act of
14 1937 (42 USC Section 1437f, as amended), the base rent for each such unit following
15 expiration or termination shall be the "contract rent" in effect for that unit immediately prior to
16 the expiration or termination of the project-based HAP contract.

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

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

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

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

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

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

11 (f.1) Reserved.

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

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

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

24 (j) Over FMR Tenancy Program. A regular certificate tenancy program whereby the
25 base rent, together with a utility allowance in an amount determined by HUD, exceeds the fair

1 market rent limitation for a particular unit size as determined by HUD.

2 (k) Payment Standard. An amount determined by the San Francisco Housing
3 Authority that is used to determine the amount of assistance paid by the San Francisco
4 Housing Authority on behalf of a tenant under the Section 8 Voucher Program (24 CFR Part
5 887).

6 (l) RAP. Residential Rehabilitation Loan Program (Chapter 32, San Francisco
7 Administrative Code).

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

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

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

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

20 (q) Rent Increases. Any additional monies demanded or paid for rent as defined in
21 item (p) above, or any reduction in housing services without a corresponding reduction in the
22 monies demanded or paid for rent; provided, however, that: (1) where the landlord has been
23 paying the tenant's utilities and the cost of those utilities increases, the landlord's passing
24 through to the tenant of such increased costs pursuant to this Chapter does not constitute a
25 rent increase; (2) where there has been a change in the landlord's property tax attributable to

1 a general obligation bond approved by the voters between November 1, 1996 and November
2 30, 1998, or after November 14, 2002, the landlord's passing through to the tenant of such
3 increased costs in accordance with this Chapter (see Section 37.3(a)(6)) does not constitute a
4 rent increase; (3) where there has been a change in the landlord's property tax attributable to
5 a San Francisco Unified School District or San Francisco Community College District general
6 obligation bond approved by the voters after November 1, 2006, the landlord's passing
7 through to the tenant of such increased costs in accordance with this Chapter (see Section
8 37.3(a)(6)) does not constitute a rent increase; and, (4) where water bill charges are
9 attributable to water rate increases resulting from issuance of water revenue bonds authorized
10 at the November 5, 2002 election, the landlord's passing through to the tenant of such
11 increased costs in accordance with this Chapter (see Section 37.3(a)(5)(B)) does not
12 constitute a rent increase.

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

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

24 The term "rental units" shall not include:

25 (1) Housing accommodations in hotels, motels, inns, tourist houses, rooming and

1 boarding houses, provided that at such time as an accommodation has been occupied by a
2 tenant for 32 continuous days or more, such accommodation shall become a rental unit
3 subject to the provisions of this Chapter; provided further, no landlord shall bring an action to
4 recover possession of such unit in order to avoid having the unit come within the provisions of
5 this Chapter. An eviction for a purpose not permitted under Section 37.9(a) shall be deemed
6 to be an action to recover possession in order to avoid having a unit come within the
7 provisions of this Chapter;

8 (2) Dwelling units in nonprofit cooperatives owned, occupied and controlled by a
9 majority of the residents or dwelling units solely owned by a nonprofit public benefit
10 corporation governed by a board of directors the majority of which are residents of the
11 dwelling units and where it is required in the corporate by-laws that rent increases be
12 approved by a majority of the residents;

13 (3) Housing accommodation in any hospital, convent, monastery, extended care
14 facility, asylum, residential care or adult day health care facility for the elderly which must be
15 operated pursuant to a license issued by the California Department of Social Services, as
16 required by California Health and Safety Chapters 3.2 and 3.3; or in dormitories owned and
17 operated by an institution of higher education, a high school, or an elementary school;

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

1 (A) For purposes of Sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6, 37.9, 37.9A,
2 37.10A, 37.11A and 37.13, and the arbitration provisions of Sections 37.8 and 37.8A
3 applicable only to the provisions of Sections 37.3(a)(10)(A), the term "rental units" shall
4 include units occupied by recipients of tenant-based rental assistance where the tenant-based
5 rental assistance program does not establish the tenant's share of base rent as a fixed
6 percentage of a tenant's income, such as in the Section 8 voucher program and the "Over-
7 FMR Tenancy" program defined in 24 CFR Section 982.4;

8 (B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9, 37.9A,
9 37.10A, 37.11A and 37.13, the term "rental units" shall include units occupied by recipients of
10 tenant-based rental assistance where the rent payable by the tenant under the tenant-based
11 rental assistance program is a fixed percentage of the tenant's income; such as in the Section
12 8 certificate program and the rental subsidy program for the Housing Opportunities for
13 Persons with Aids ("HOPWA") program (42 U.S.C. Section 12901 et seq., as amended);

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

18 (i) Where a tenant's occupancy of the unit began before the applicable LIHTC
19 regulatory agreement was recorded; and,

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

24 Nothing in this Section 37.2(r)(4)(C) precludes a landlord from seeking an exemption
25 from rent regulation on the basis of substantial rehabilitation under Sections 37.2(r)(6) 37.3(e)

1 and (f).

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

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

14 (6) Dwelling units in a building which has undergone substantial rehabilitation after the
15 effective date of this ordinance; provided, however, that RAP rental units are not subject to
16 this exemption; and except as provided for foreclosed units and dwellings by Section 37.9D.

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

21 (s) Substantial Rehabilitation. The renovation, alteration or remodeling of residential
22 units of 50 or more years of age which have been condemned or which do not qualify for
23 certificates of occupancy or which require substantial renovation in order to conform the
24 building to contemporary standards for decent, safe and sanitary housing. Substantial
25 rehabilitation may vary in degree from gutting and extensive reconstruction to extensive

1 improvements that cure substantial deferred maintenance. Cosmetic improvements alone
2 such as painting, decorating and minor repairs, or other work which can be performed safely
3 without having the unit vacated do not qualify as substantial rehabilitation.

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

6 (u) Tenant-Based Rental Assistance. Rental assistance provided directly to a tenant
7 or directly to a landlord on behalf of a particular tenant, which includes but shall not be limited
8 to certificates and vouchers issued pursuant to Section 8 of the United States Housing Act of
9 1937, as amended (42 U.S.C. Section 1437f) and the HOPWA program.

10 (v) Utilities. The term "utilities" shall refer to gas and electricity exclusively.
11
12

13 Section 2. The San Francisco Administrative Code is hereby amended by amending
14 Section 37.3 to add new Sections ~~37.3(e), (f), (g) and (h)~~, and renumber current Section
15 37.3(e) as 37.3(f)(i), to read as follows:

16 ~~SEC. 37.3. RENT LIMITATIONS.~~

17 (a) ~~Rent Increase Limitations for Tenants in Occupancy. Landlords may impose rent~~
18 ~~increases upon tenants in occupancy only as provided below and as provided by Subsection~~
19 ~~37.3(d):~~

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

25 (2) ~~Banking. A landlord who refrains from imposing an annual rent increase or any~~

1 ~~portion thereof may accumulate said increase and impose that amount on the tenant's~~
2 ~~subsequent rent increase anniversary dates. A landlord who, between April 1, 1982, and~~
3 ~~February 29, 1984, has banked an annual seven percent rent increase (or rent increases) or~~
4 ~~any portion thereof may impose the accumulated increase on the tenant's subsequent rent~~
5 ~~increase anniversary dates.~~

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

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

23 ~~(5) Water: Charges Related to Excess Water Use, and 50% Passthrough of Water Bill~~
24 ~~Charges Attributable to Water Rate Increases Resulting From Issuance of Water System~~
25 ~~Improvement Revenue Bonds Authorized at the November 2002 Election.~~

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

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

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

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

1 ~~imposed at any time for the period of the unrepaired leak.~~

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

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

13 ~~(ii) A tenant may file a hardship application with the Board, and be granted relief from~~
14 ~~all or part of such a cost passthrough.~~

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

18 ~~(iv) A landlord shall not impose a passthrough pursuant to Section 37.3(a)(5)(B) 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 rate increases resulting from issuance of any water revenue~~
22 ~~bonds authorized at the November 5, 2002 election was included in the comparison year cost~~
23 ~~totals.~~

24 ~~(v) Where a tenant alleges that a landlord has imposed a water revenue bond~~
25 ~~passthrough that is not in compliance with Section 37.3(a)(5)(B), 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.~~
3 ~~Any tenant petition challenging such a passthrough must be filed within one year of the~~
4 ~~effective date of the passthrough.~~

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

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

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

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

18 ~~(3) The dollar amount calculated under Section 37.3(a)(5)(B)(vii)(2) shall be divided~~
19 ~~by 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.~~

24 ~~(4) These passthroughs may be imposed on a monthly basis. These passthroughs~~
25 ~~shall not become part of a tenant's base rent. The amount of each passthrough may vary from~~

1 month to month, depending on the amount calculated under Sections 37.3(a)(5)(B)(vii)(1)
2 through (3).

3 (viii) ~~The Board may amend its rules and regulations as necessary to implement this~~
4 ~~Section 37.3(a)(5)(B).~~

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

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

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

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

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

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

24 (iii) ~~The dollar amount calculated under Subsection (ii) shall be divided by the total~~
25 ~~number of all units in each property, including commercial units. That figure shall be divided~~

1 by 12 months, to determine the monthly per unit costs for that tax year of the repayment of
2 general obligation bonds approved by the voters between November 1, 1996, and November
3 30, 1998.

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

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

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

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

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

20 (i) The Controller and the Board of Supervisors will determine the percentage of the
21 property tax rate, if any, in each tax year attributable to San Francisco Unified School District
22 or San Francisco Community College District general obligation bonds approved by the voters
23 after November 1, 2006 and repayable within such tax year.

24 (ii) This percentage shall be multiplied by the total amount of the net taxable value for
25 the applicable tax year. The result is the dollar amount of property taxes for that tax year for a

1 particular property attributable to the repayment of San Francisco Unified School District or
2 San Francisco Community College District general obligation bonds approved by the voters
3 after November 1, 2006.

4 ~~(iii) The dollar amount calculated under Subsection (ii) shall be divided by two, and~~
5 ~~then by the total number of all units in each property, including commercial units. That figure~~
6 ~~shall be divided by 12 months, to determine the monthly per unit costs for that tax year of the~~
7 ~~repayment of San Francisco Unified School District or San Francisco Community College~~
8 ~~District general obligation bonds approved by the voters after November 1, 2006.~~

9 ~~(D) Landlords may pass through to each unit in a particular property the dollar amount~~
10 ~~calculated under these Subsections 37.3(a)(6)(A) and (B) and (C). These passthroughs may~~
11 ~~be imposed only on the anniversary date of each tenant's occupancy of the property. These~~
12 ~~passthroughs shall not become a part of a tenant's base rent. The amount of each annual~~
13 ~~passthrough imposed pursuant to this Subsection (6) may vary from year to year, depending~~
14 ~~on the amount calculated under Subsections (A) and (B) and (C). Each annual passthrough~~
15 ~~shall apply only for the 12 month period after it is imposed. A landlord may impose the~~
16 ~~passthroughs described in this Subsection (6) for a particular tax year only with respect to~~
17 ~~those tenants who were residents of a particular property on November 1st of the applicable~~
18 ~~tax year. A landlord shall not impose a passthrough pursuant to this Subsection (6) 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 property~~
21 ~~taxes due to the repayment of general obligation bonds was included in the comparison year~~
22 ~~cost totals.~~

23 ~~(E) The Board will have available a form which explains how to calculate the~~
24 ~~passthrough.~~

25 ~~(F) Landlords must provide to tenants, on or before the date that notice is served on~~

1 the tenant of a passthrough permitted under this Subsection (6), a copy of the completed form
2 described in Subsection (E). This completed form shall be provided in addition to the Notice of
3 Rent Increase required under Section 37.3(b)(5). Where a tenant alleges that a landlord has
4 imposed a charge which exceeds the limitations set forth in this Subsection (6), the tenant
5 may petition for a hearing under the procedures provided by Section 37.8. In such a hearing,
6 the landlord shall have the burden of proving the accuracy of the calculation that is the basis
7 for the increase. Any tenant petitions challenging such a passthrough must be filed within one
8 year of the effective date of the passthrough.

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

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

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

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

25 When rent increases are authorized by this Subsection 37.3(a)(9), the total rent

1 increase for both operating and maintenance expenses and capital improvements shall not
2 exceed 10 percent in any 12-month period. If allowable rent increases due to the costs of lead
3 remediation and abatement work exceed 10 percent in any 12-month period, an
4 Administrative Law Judge shall apply a portion of such excess to approved operating and
5 maintenance expenses for lead remediation work, and the balance, if any, to certified capital
6 improvements, provided, however, that such increase shall not exceed 10 percent. A landlord
7 may accumulate any approved or certified increase which exceeds this amount, subject to the
8 10 percent limit.

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

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

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

16 (ii) ~~If the base rent is less than the payment standard, the rent increase limitations of~~
17 ~~this Chapter shall not apply; provided, however, that any rent increase which would result in~~
18 ~~the base rent being equal to or greater than the payment standard shall not result in a new~~
19 ~~base rent that exceeds the payment standard plus the increase allowable under Section~~
20 ~~37.3(a)(1).~~

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

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

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

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

11 ~~(3) Which portion of the rent increase reflects the passthrough of charges for: gas and~~
12 ~~electricity; or the passthrough of increased water bill charges attributable to water rate~~
13 ~~increases resulting from issuance of water revenue bonds authorized at the November 2002~~
14 ~~election as provided by Section 37.3(a)(5)(B), which charges and calculations of charges shall~~
15 ~~be explained in writing on a form provided by the Board; or the passthrough of general~~
16 ~~obligation bond measure costs as provided by Section 37.3(a)(6), which charges shall be~~
17 ~~explained in writing on a form provided by the Board as described in Section 37.3(a)(6)(E);~~

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

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

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

25 ~~(c) Initial Rent Limitation for Subtenants. A tenant who subleases his or her rental unit~~

1 may charge no more rent upon initial occupancy of the subtenant or subtenants than that rent
2 which the tenant is currently paying to the landlord.

3 ~~(d) Costa Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.)~~

4 ~~Consistent with the Costa Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.)~~
5 ~~and regardless of whether otherwise provided under Chapter 37:~~

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

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

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

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

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

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

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

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

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

22 ~~(ii) The citation was issued at least 60 days prior to the date of the vacancy; and,~~

23 ~~(iii) The cited violation had not been abated when the prior tenant vacated and had~~
24 ~~remained unabated for 60 days or for a longer period of time. However, the 60-day time~~
25 ~~period may be extended by the appropriate governmental agency that issued the 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 at~~
5 ~~the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit.~~
6 ~~Nothing contained in this Subsection 37.3(d)(2) shall be construed to enlarge or diminish an~~
7 ~~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~~
9 ~~prevent 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 notice~~
11 ~~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~~
13 ~~Government Agency Limiting Rent. An owner who terminates or fails to renew a contract or~~
14 ~~recorded agreement with a governmental agency that provides for a rent limitation to a~~
15 ~~qualified tenant, shall be subject to the following:~~

16 ~~(A) The tenant(s) who were beneficiaries of the contract or recorded agreement shall~~
17 ~~be 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 or~~
20 ~~nonrenewal.~~

21 ~~(B) The owner shall not be eligible to set an initial rent for three years following the~~
22 ~~date 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~~
24 ~~that vacated dwelling or unit shall be at the same rate as the rent under the terminated or~~
25 ~~nonrenewed contract or recorded agreement, plus any increases authorized under this~~

1 Chapter 37 after the date of termination/non-renewal.

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

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

10 ~~(5) This Subsections 37.3(d), (e), (f) and (g) is are intended to be and shall be~~
11 ~~construed to be consistent with the Costa-Hawkins Rental Housing Act (Civil Code Sections~~
12 ~~1954.50, et seq.).~~

13 ~~(e) An owner of residential real property may establish the initial and all subsequent rental~~
14 ~~rates for a dwelling or a unit located in a structure for which a certificate of occupancy was first issued~~
15 ~~after the effective date of Ordinance 276-79 (June 13, 1979), except:~~

16 ~~(A) 1) Where rent restrictions are provided for certain categories of units and dwellings by~~
17 ~~Section 37.3(d) of this Chapter (e.g., Section 37.3(d)(1)(A) last sentence, (d)(1)(B)(i), (d)(1)(C),~~
18 ~~(d)(2)(A)(i) - (iii), and (d)(3)), consistent with the Costa-Hawkins Rental Housing Act (California~~
19 ~~Civil Code Sections 1954.50, et seq.);:~~

20 ~~(B) 2) Where rent restrictions are provided by Section 37.9A(b) of this Chapter, consistent~~
21 ~~with the Ellis Act (California Government Code Sections 7060, et seq.); and,~~

22 ~~(C) 3) As provided in a development agreement entered into by the City under San Francisco~~
23 ~~Administrative Code Chapter 56.~~

24 ~~(f) An owner of residential real property may establish the initial and all subsequent~~
25 ~~rental rates for dwelling units in a building which has undergone substantial rehabilitation after~~

1 the effective date of Ordinance 276-79 (June 13, 1979); provided, however, that RAP rental
2 units are not subject to this exemption from the rent increase limitations of Chapter 37.

3 (g) An owner of residential real property may establish the initial and all subsequent
4 rental rates for residential dwellings or units otherwise subject to Chapter 37 that are
5 exempted from the rent increase limitations of Chapter 37 by the Costa-Hawkins Rental
6 Housing Act (California Civil Code Sections 1954.50, et seq.).

7 (h) Subsections 37.3(e), (f) and (g) do not affect the authority of the City and County of
8 San Francisco to regulate or monitor the basis or grounds for eviction.

9 (e)(f)(i) Effect of Deferred Maintenance on Passthroughs for Lead Remediation
10 Techniques.

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

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

1 Section 3 2. ~~The San Francisco Administrative Code is hereby amended by amending~~
2 Section 37A.1, to read as follows:

3 SEC. 37A.1. SCOPE.

4 This Chapter is applicable to all residential units in the City and County of San
5 Francisco, including residential units which are exempt from the rent increase limitation
6 provisions (but not other provisions) of Chapter 37 pursuant to the Costa-Hawkins Rental
7 Housing Act (Civil Code §§ 1954.50. et seq.) and/or San Francisco Administrative Code
8 Section 37.3(d), and/or Sections 37.3(e), (f) or (g) 37.9D. For purposes of this Chapter,
9 "residential units" are dwelling units and guest rooms as those terms are defined in Sections
10 400 and 401 of the San Francisco Housing Code. The term shall not include:

11 (a) ~~Guest rooms exempted or excluded from regulation under Chapter 41 of this~~
12 Code;

13 (b) ~~Dwelling units in nonprofit cooperatives owned, occupied and controlled by a~~
14 majority of the residents or dwelling units solely owned by a nonprofit public benefit
15 corporation governed by a board of directors the majority of which are residents of the
16 dwelling units and where it is required in the corporate by laws that rent increases be
17 approved by a majority of the residents;

18 (c) ~~Housing accommodations in any hospital, convent, monastery, extended care~~
19 facility, asylum, residential care or adult day health care facility for the elderly which must be
20 operated pursuant to a license issued by the California Department of Social Services, as
21 required by California Health and Safety Chapters 3.2 and 3.3, or in dormitories owned and
22 operated by an institution of higher education, a high school, or an elementary school;

23 (d) ~~Dwelling units whose rents are controlled or regulated by any government unit,~~
24 agency or authority, excepting those units which are subject to the jurisdiction of the
25 Residential Rent Stabilization and Arbitration Board. However, Section 8 certificate, voucher

1 and related programs administered by the San Francisco Housing Authority, which are subject
2 in whole or part to the jurisdiction of the Residential Rent Stabilization and Arbitration Board
3 shall remain exempt from the fee;

4 (e) ~~Any dwelling unit for which the owner has on file with the Assessor a current~~
5 ~~homeowner's exemption;~~

6 (f) ~~Any dwelling unit which is occupied by an owner of record on either a full-time or~~
7 ~~part-time basis and which is not rented at any time, provided that the owner file with the Tax~~
8 ~~Collector an affidavit so stating;~~

9 (g) ~~Dwelling units located in a structure for which a certificate of final completion and~~
10 ~~occupancy was first issued by the Bureau of Building Inspection after June 13, 1979, except~~
11 ~~that any such units shall be subject to this Chapter 37A if so designated in a development~~
12 ~~agreement entered into by the City under Chapter 56 of the San Francisco Administrative~~
13 ~~Code; and except as provided for certain categories of units and dwellings by Section 37.9D;~~

14 (h) ~~Dwelling units in a building which, after June 13, 1979, has undergone substantial~~
15 ~~rehabilitation as that term is defined in Chapter 37 of this Code; except as provided for certain~~
16 ~~categories of units and dwellings by Section 37.9D.~~

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1 Section 4 ~~3~~. The San Francisco Administrative Code is hereby amended by amending
2 Section 37.9 to add 37.9(a)(8)(viii), and to add Section 37.9(a)(16), as follows:

3 SEC. 37.9. EVICTIONS.

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

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

7 (1) The tenant:

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

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

12 (ii) Except that, commencing August 10, 2001, to and including February 10, 2003, a
13 landlord shall not endeavor to recover or recover possession of a rental unit for failure of a
14 tenant to pay that portion of rent attributable to a capital improvement passthrough certified
15 pursuant to a decision issued after April 10, 2000, where the capital improvement passthrough
16 petition was filed prior to August 10, 2001, and a landlord shall not impose any late fee(s)
17 upon the tenant for such non-payment of capital improvements costs; or

18 (B) Habitually pays the rent late; or

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

21 (2) The tenant has violated a lawful obligation or covenant of tenancy other than the
22 obligation to surrender possession upon proper notice or other than an obligation to pay a
23 charge prohibited by Police Code Section 919.1, and failure to cure such violation after having
24 received written notice thereof from the landlord.

25 (A) Provided that notwithstanding any lease provision to the contrary, a landlord shall

1 not endeavor to recover possession of a rental unit as a result of subletting of the rental unit
2 by the tenant if the landlord has unreasonably withheld the right to sublet following a written
3 request by the tenant, so long as the tenant continues to reside in the rental unit and the
4 sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to
5 respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written
6 request, the tenant's request shall be deemed approved by the landlord.

7 (B) Provided further that where a rental agreement or lease provision limits the number
8 of occupants or limits or prohibits subletting or assignment, a landlord shall not endeavor to
9 recover possession of a rental unit as a result of the addition to the unit of a tenant's child,
10 parent, grandchild, grandparent, brother or sister, or the spouse or domestic partner (as
11 defined in Administrative Code Sections 62.1 through 62.8) of such relatives, or as a result of
12 the addition of the spouse or domestic partner of a tenant, so long as the maximum number of
13 occupants stated in Section 37.9(a)(2)(B)(i) and (ii) is not exceeded, if the landlord has
14 unreasonably refused a written request by the tenant to add such occupant(s) to the unit. If
15 the landlord fails to respond to the tenant in writing within fourteen (14) days of receipt of the
16 tenant's written request, the tenant's request shall be deemed approved by the landlord. A
17 landlord's reasonable refusal of the tenant's written request may not be based on the
18 proposed additional occupant's lack of creditworthiness, if that person will not be legally
19 obligated to pay some or all of the rent to the landlord. A landlord's reasonable refusal of the
20 tenant's written request may be based on, but is not limited to, the ground that the total
21 number of occupants in a unit exceeds (or with the proposed additional occupant(s) would
22 exceed) the lesser of (i) or (ii):

23 (i) Two persons in a studio unit, three persons in a one-bedroom unit, four persons in a
24 two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four-bedroom
25 unit; or

1 ~~(ii) The maximum number permitted in the unit under state law and/or other local codes~~
2 ~~such as the Building, Fire, Housing and Planning Codes; or~~

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

8 ~~(3.1) Eviction Protection for Victims of Domestic Violence or Sexual Assault or Stalking:~~

9 ~~(A) It shall be a defense to an action for possession of a unit under Subsection~~
10 ~~37.9(a)(3) if the court determines that:~~

11 ~~(i) The tenant or the tenant's household member is a victim of an act or acts that~~
12 ~~constitute domestic violence or sexual assault or stalking; and~~

13 ~~(ii) The notice to vacate is substantially based upon the act or acts constituting~~
14 ~~domestic violence or sexual assault or stalking against the tenant or a tenant's household~~
15 ~~member, including but not limited to an action for possession based on complaints of noise,~~
16 ~~disturbances, or repeated presence of police.~~

17 ~~(B) Evidence Required. In making the determination under Section 37.9(a)(3.1)(A) the~~
18 ~~court shall consider evidence, which may include but is not limited to:~~

19 ~~(i) A copy of a temporary restraining order or emergency protective order issued~~
20 ~~pursuant to Part 3 (commencing with Section 6240) or Part 4 (commencing with Section 6300)~~
21 ~~or Part 5 (commencing with Section 6400) of the Family Code, Section 136.2 of the Penal~~
22 ~~Code, Section 527.6 of the Code of Civil Procedure, or Section 213.5 of the Welfare and~~
23 ~~Institutions Code, that protects the tenant or tenant's household member from further~~
24 ~~domestic violence, sexual assault, or stalking. And/or.~~

25 ~~(ii) A copy of a written report by a peace officer employed by a state or local law~~

1 enforcement agency acting in his or her official capacity, stating that the tenant or tenant's
2 household member has filed a report alleging that he or she is a victim of domestic violence,
3 sexual assault, or stalking. And/or.

4 (iii) Other written documentation from a qualified third party of the acts constituting
5 domestic violence or sexual assault or stalking.

6 (C) Mutual Allegations of Abuse Between Parties. If two or more co-tenants are parties
7 seeking relief under Subsection 37.9(a)(3.1)(A), and each alleges that he or she was a victim
8 of domestic violence or sexual assault or stalking perpetrated by another co-tenant who is
9 also a party, the court may determine whether a tenant acted as the dominant aggressor in
10 the acts constituting a domestic violence or sexual assault or stalking offense. In making the
11 determination, the court shall consider the factors listed in Section 13701(b)(1) of the Penal
12 Code. A tenant who the court determines was the dominant aggressor in the acts constituting
13 a domestic violence or sexual assault or stalking offense is not entitled to relief under
14 Subsection 37.9(a)(3.1)(A).

15 (D) Limitations on Relief. Unless the tenant or the tenant's household member has
16 obtained a protective order against the alleged abuser to vacate or stay from the unit as a
17 result of acts constituting domestic violence or sexual assault or stalking against the tenant or
18 tenant's household member, the tenant may not obtain relief under Subsection 37.9(a)(3.1) if:

19 (i) The tenant was granted relief under Subsection 37.9(a)(3.1) in an action for
20 possession of the unit within the previous five years; and

21 (ii) A subsequent action for possession of the unit has now been filed; and

22 (iii) The notice to vacate in this subsequent action for possession is substantially based
23 upon continuing acts constituting domestic violence or sexual assault or stalking by the same
24 person alleged to be the abuser in the previous action for possession.

25 (E) Nothing in this Subsection 37.9(a)(3.1) shall be construed to affect the tenant's

1 liability for delinquent rent or other sums owed to the landlord, or the landlord's remedies in
2 recovering against the tenant for such sums.

3 ~~(F) The provisions of Subsection 37.9(a)(3.1) are intended for use consistent with Civil~~
4 ~~Code Section 1946.7.~~

5 ~~(3.2) Confidentiality of Information Received from Victims of Domestic Violence or~~
6 ~~Sexual Assault or Stalking. A landlord shall retain in strictest confidence all information that is~~
7 ~~received in confidence from a tenant or a tenant's household member who is a victim of~~
8 ~~domestic violence or sexual assault or stalking, regarding that domestic violence or sexual~~
9 ~~assault or stalking, except to the extent that such disclosure (A) is necessary to provide for a~~
10 ~~reasonable accommodation for the victim, or (B) is otherwise required pursuant to applicable~~
11 ~~federal, state or local law. The victim may authorize limited or general release of any~~
12 ~~information otherwise deemed confidential under this Subsection 37.9(a)(3.2); or~~

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

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

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

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

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

25 ~~(i) For the landlord's use or occupancy as his or her principal residence for a period of~~

1 at least 36 continuous months;

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

9 (iii) ~~For purposes of this Section 37.9(a)(8) only, as to landlords who become owners of~~
10 ~~record of the rental unit on or before February 21, 1991, the term "landlord" shall be defined~~
11 ~~as an owner of record of at least 10 percent interest in the property or, for Section 37.9(a)(8)(i)~~
12 ~~only, two individuals registered as domestic partners as defined in San Francisco~~
13 ~~Administrative Code Sections 62.1 through 62.8 whose combined ownership of record is at~~
14 ~~least 10 percent. For purposes of this Section 37.9(a)(8) only, as to landlords who become~~
15 ~~owners of record of the rental unit after February 21, 1991, the term "landlord" shall be~~
16 ~~defined as an owner of record of at least 25 percent interest in the property or, for Section~~
17 ~~37.9(a)(8)(i) only, two individuals registered as domestic partners as defined in San Francisco~~
18 ~~Administrative Code Sections 62.1 through 62.8 whose combined ownership of record is at~~
19 ~~least 25 percent.~~

20 (iv) ~~A landlord may not recover possession under this Section 37.9(a)(8) if a~~
21 ~~comparable unit owned by the landlord is already vacant and is available, or if such a unit~~
22 ~~becomes vacant and available before the recovery of possession of the unit. If a comparable~~
23 ~~unit does become vacant and available before the recovery of possession, the landlord shall~~
24 ~~rescind the notice to vacate and dismiss any action filed to recover possession of the~~
25 ~~premises. Provided further, if a noncomparable unit becomes available before the recovery of~~

1 possession, the landlord shall offer that unit to the tenant at a rent based on the rent that the
2 tenant is paying, with upward or downward adjustments allowed based upon the condition,
3 size, and other amenities of the replacement unit. Disputes concerning the initial rent for the
4 replacement unit shall be determined by the Rent Board. It shall be evidence of a lack of good
5 faith if a landlord times the service of the notice, or the filing of an action to recover
6 possession, so as to avoid moving into a comparable unit, or to avoid offering a tenant a
7 replacement unit.

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

12 (vi) Once a landlord has successfully recovered possession of a rental unit pursuant to
13 Section 37.9(a)(8)(i), then no other current or future landlords may recover possession of any
14 other rental unit in the building under Section 37.9(a)(8)(i). It is the intention of this Section
15 that only one specific unit per building may be used for such occupancy under Section
16 37.9(a)(8)(i) and that once a unit is used for such occupancy, all future occupancies under
17 Section 37.9(a)(8)(i) must be of that same unit, provided that a landlord may file a petition with
18 the Rent Board, or at the landlord's option, commence eviction proceedings, claiming that
19 disability or other similar hardship prevents him or her from occupying a unit which was
20 previously occupied by the landlord.

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

25 (viii) If a unit is exempt from Chapter 37 limits on rent increases pursuant to Section

1 ~~37.3(e), (f) or (g) 37.2(r) or 37.9D, then a landlord may seek to recover possession of the unit~~
2 ~~without regard to the limitations provided in Section 37.9(a)(8)(vi). Or,~~

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

6 ~~(10) The landlord seeks to recover possession in good faith in order to demolish or to~~
7 ~~otherwise permanently remove the rental unit from housing use and has obtained all the~~
8 ~~necessary permits on or before the date upon which notice to vacate is given, and does so~~
9 ~~without ulterior reasons and with honest intent; provided that a landlord who seeks to recover~~
10 ~~possession under this Section 37.9(a)(10) shall pay relocation expenses as provided in~~
11 ~~Section 37.9C except that a landlord who seeks to demolish an unreinforced masonry building~~
12 ~~pursuant to Building Code Chapters 16B and 16C must provide the tenant with the relocation~~
13 ~~assistance specified in Section 37.9A(f) below prior to the tenant's vacating the premises; or~~

14 ~~(11) The landlord seeks in good faith to remove temporarily the unit from housing use~~
15 ~~in order to be able to carry out capital improvements or rehabilitation work and has obtained~~
16 ~~all the necessary permits on or before the date upon which notice to vacate is given, and does~~
17 ~~so without ulterior reasons and with honest intent. Any tenant who vacates the unit under such~~
18 ~~circumstances shall have the right to reoccupy the unit at the prior rent adjusted in~~
19 ~~accordance with the provisions of this Chapter. The tenant will vacate the unit only for the~~
20 ~~minimum time required to do the work. On or before the date upon which notice to vacate is~~
21 ~~given, the landlord shall advise the tenant in writing that the rehabilitation or capital~~
22 ~~improvement plans are on file with the Central Permit Bureau of the Department of Building~~
23 ~~Inspection and that arrangements for reviewing such plans can be made with the Central~~
24 ~~Permit Bureau. In addition to the above, no landlord shall endeavor to recover possession of~~
25 ~~any unit subject to a RAP loan as set forth in Section 37.2(m) of this Chapter except as~~

1 provided in ~~Section 32.69 of the San Francisco Administrative Code. The tenant shall not be~~
2 ~~required to vacate pursuant to this Section 37.9(a)(11), for a period in excess of three months;~~
3 ~~provided, however, that such time period may be extended by the Board or its Administrative~~
4 ~~Law Judges upon application by the landlord. The Board shall adopt rules and regulations to~~
5 ~~implement the application procedure. Any landlord who seeks to recover possession under~~
6 ~~this Section 37.9(a)(11) shall pay relocation expenses as provided in Section 37.9C or~~

7 ~~(12) The landlord seeks to recover possession in good faith in order to carry out~~
8 ~~substantial rehabilitation, as defined in Section 37.2(s), and has obtained all the necessary~~
9 ~~permits on or before the date upon which notice to vacate is given, and does so without~~
10 ~~ulterior reasons and with honest intent. Notwithstanding the above, no landlord shall endeavor~~
11 ~~to recover possession of any unit subject to a RAP loan as set forth in Section 37.2(m) of this~~
12 ~~Chapter except as provided in Section 32.69 of the San Francisco Administrative Code; Any~~
13 ~~landlord who seeks to recover possession under this Section 37.9(a)(12) shall pay relocation~~
14 ~~expenses as provided in Section 37.9C; or~~

15 ~~(13) The landlord wishes to withdraw from rent or lease all rental units within any~~
16 ~~detached physical structure and, in addition, in the case of any detached physical structure~~
17 ~~containing three or fewer rental units, any other rental units on the same lot, and complies in~~
18 ~~full with Section 37.9A with respect to each such unit; provided, however, that guestrooms or~~
19 ~~efficiency units within a residential hotel, as defined in Section 50519 of the Health and Safety~~
20 ~~Code, may not be withdrawn from rent or lease if the residential hotel has a permit of~~
21 ~~occupancy issued prior to January 1, 1990, and if the residential hotel did not send a notice of~~
22 ~~intent to withdraw the units from rent or lease (Administrative Code Section 37.9A(f),~~
23 ~~Government Code Section 7060.4(a)) that was delivered to the Rent Board prior to January 1,~~
24 ~~2004; or~~

25 ~~(14) The landlord seeks in good faith to temporarily recover possession of the unit~~

1 solely for the purpose of effecting lead remediation or abatement work, as required by San
2 Francisco Health Code Articles 11 or 26. The tenant will vacate the unit only for the minimum
3 time required to do the work. The relocation rights and remedies, established by San
4 Francisco Administrative Code Chapter 72, including but not limited to, the payment of
5 financial relocation assistance, shall apply to evictions under this Section 37.9(a)(14).

6 ~~(15) The landlord seeks to recover possession in good faith in order to demolish or to~~
7 ~~otherwise permanently remove the rental unit from housing use in accordance with the terms~~
8 ~~of a development agreement entered into by the City under Chapter 56 of the San Francisco~~
9 ~~Administrative Code:~~

10 ~~(16) The landlord intends, in good faith, with honest intent, and without ulterior motives~~
11 ~~to sell the unit, and all of the following are true:~~

12 ~~(A) The unit has not been sold or that title of the unit has not otherwise been~~
13 ~~transferred by the developer to a third party member of the public, excluding transfer of title to~~
14 ~~spouse, domestic partner as defined in San Francisco Administrative Code Chapter 62.1~~
15 ~~62.8, pursuant to a court order, or a successor legal entity with the formation partners or~~
16 ~~incorporators as the initial legal entity that developed the building, prior to issuance of the~~
17 ~~certificate of occupancy. This provision may only be utilized once to vacate any unit it would~~
18 ~~apply to.~~

19 ~~(B) The units to the building are condominiums and that title to the unit may be~~
20 ~~separable from the title to any other unit.~~

21 ~~(C) Written notice was given to the tenant that the unit was built with intent to sell and~~
22 ~~that the rental is intended to be of limited duration. This notice shall state that the landlord~~
23 ~~may evict the tenant based on the grounds stated in section 37.9(a)(16), and shall include a~~
24 ~~copy of Section 37.9(a)(16)~~

25 ~~Such notice shall be given to any prospective tenant before a rental agreement is~~

1 finalized. For units rented prior to the effective date of this ordinance, such notice to the
2 tenants shall be given within 90 days of the effective date of this ordinance.

3 (D) At the landlord's option, either:

4 (i) No fewer than ninety days prior to serving a notice to vacate based on the grounds
5 stated in Section 37.9(a)(16), the landlord notified the tenant of their intent to sell the unit and
6 of the date the tenant will be required to vacate the premises; or

7 (ii) The landlord pays relocation benefits as provided in Section 37.9C.

8 (E) If the unit is not actually sold after the landlord serves the notice required by
9 Section 37.9(a)(16)(F-D) 37.9D and if the unit is no longer listed for sale, the landlord shall
10 offer the tenant the option to re-rent. All other remedies concerning the landlord-tenant
11 relationship shall apply.

12 (F) The unit is exempt from limits on rent increases pursuant to Section 37.3(e) 37.2(r)
13 and/or Section 37.9D.

14 (G) For owners with 10 or more units per building, multiple units must be vacated at
15 one time. In buildings with ten (10) or more units, if Section 37.9(a)(16) is utilized, it shall be
16 utilized to vacate at least two or more units at one time.

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

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

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

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

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

23 ~~(f) Whenever a landlord wrongfully endeavors to recover possession or recovers~~
24 ~~possession of a rental unit in violation of Sections 37.9 and/or 37.10 as enacted herein, the~~
25 ~~tenant or Board may institute a civil proceeding for injunctive relief, money damages of not~~

1 less than three times actual damages, (including damages for mental or emotional distress),
2 and whatever other relief the court deems appropriate. In the case of an award of damages
3 for mental or emotional distress, said award shall only be trebled if the trier of fact finds that
4 the landlord acted in knowing violation of or in reckless disregard of Section 37.9 or 37.10A
5 herein. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant
6 to order of the court. The remedy available under this Section 37.9(f) shall be in addition to
7 any other existing remedies which may be available to the tenant or the Board.

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

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

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

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

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

23 or

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

1 37.9(i)(1)(B)(ii) and has been residing in the unit for five years or more:

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

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

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

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

20 (4) Within 30 days of personal service by the landlord of a written request, or, at the
21 landlord's option, a notice of termination of tenancy under Section 37.9(a)(8), the tenant must
22 submit a statement, with supporting evidence, to the landlord if the tenant claims to be a
23 member of one of the classes protected by Section 37.9(i). The written request or notice shall
24 contain a warning that a tenant's failure to submit a statement within the 30 day period shall
25 be deemed an admission that the tenant is not protected by Section 37.9(i). The landlord shall

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

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

14 (j) Disclosure of Rights to Tenants Before and After Sale of Rental Units Subject to
15 Section 37.9.

16 (1) Disclosure to Tenants By Seller of the Property. Before property containing rental
17 units subject to Section 37.9 may be sold, the owner/seller shall disclose to tenants of the
18 property the rights of tenants during and after the sale of the property. This disclosure shall be
19 in writing and shall include:

20 (A) A statement in bold type of at least 12 points that tenants can not be evicted or
21 asked to move solely because a property is being sold or solely because a new owner has
22 purchased that property.

23 (B) A statement in bold type of at least 12 points that tenants cannot have their rent
24 increased above that permitted by Chapter 37 solely because a property is being sold or
25 solely because a new owner has purchased that property.

1 ~~(C) A statement in bold type of at least 12 points that the rental agreements of tenants~~
2 ~~cannot be materially changed solely because a property is being sold or solely because a new~~
3 ~~owner has purchased that property.~~

4 ~~(D) A statement that the owner's right to show units to prospective buyers is governed~~
5 ~~by California Civil Code section 1954, including a statement that tenants must receive notice~~
6 ~~as provided by Section 1954, and a statement that a showing must be conducted during~~
7 ~~normal business hours unless the tenant consents to an entry at another time.~~

8 ~~(E) A statement that tenants are not required to complete or sign any estoppel~~
9 ~~certificates or estoppel agreements, except as required by law or by that tenant's rental~~
10 ~~agreement. The statement shall further inform tenants that tenant rights may be affected by~~
11 ~~an estoppel certificate or agreement and that the tenants should seek legal advice before~~
12 ~~completing or signing an estoppel certificate or agreement.~~

13 ~~(F) A statement that information on these and other tenant's rights are available at the~~
14 ~~San Francisco Rent Board, 25 Van Ness Ave, San Francisco, California, and at the~~
15 ~~counseling telephone number of the Rent Board and at its web site.~~

16 ~~(2) Disclosure to Tenants by Purchaser of the Property. Within 30 days of acquiring title~~
17 ~~to rental units subject to Section 37.9, the new purchaser/owner shall disclose to tenants of~~
18 ~~the property the rights of tenants following this sale of the property. This disclosure shall be in~~
19 ~~writing and shall include:~~

20 ~~(A) A statement in bold type of at least 12 points that tenants cannot be evicted or~~
21 ~~asked to move solely because a new owner has purchased that property.~~

22 ~~(B) A statement in bold type of at least 12 points that tenants cannot have their rent~~
23 ~~increased above that permitted by Chapter 37 solely because a new owner has purchased~~
24 ~~that property.~~

25 ~~(C) A statement in bold type of at least 12 points that the rental agreements of tenants~~

1 cannot be materially changed solely because a new owner has purchased that property.

2 ~~(D) A statement in bold type of at least 12 points that any tenants, sub-tenants or~~
3 ~~roommates who were lawful occupants at the time of the sale remain lawful occupants.~~

4 ~~(E) A statement in bold type of at least 12 points: that tenants' housing services as~~
5 ~~defined in Section 37.2(r) first paragraph cannot be changed or severed from the tenancy~~
6 ~~solely because a new owner has purchased that property; and that tenants' housing services~~
7 ~~as defined in Section 37.2(r) second paragraph that were supplied in connection with the use~~
8 ~~or occupancy of a unit at the time of sale (such as laundry rooms, decks, or storage space)~~
9 ~~cannot be severed from the tenancy by the new purchaser/owner without just cause as~~
10 ~~required by Section 37.9(a).~~

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1 Section 4-3 2. The San Francisco Administrative Code is hereby amended by adding new
2 Section 37.9D, as follows:

3 Section 37.9D. Foreclosure Evictions.

4 (a) Foreclosure is not one of the just causes for eviction under Chapter 37.

5 (b) Foreclosure is defined for purposes of this Section 37.9D as the reversion or
6 transfer of title to a property to a lender, mortgagee, or beneficiary of a deed of trust, or an
7 agent thereof, in full or partial satisfaction of a defaulted obligation. This definition of
8 "foreclosure" includes but is not limited to the definitions in California Civil Code sections 1161
9 and 2924.

10 (c) When foreclosure of a residential dwelling or unit occurs and Any residential
11 tenant who was in possession of a rental unit at the time of foreclosure, where that dwelling or
12 unit is otherwise exempted from the eviction control provisions of Chapter 37 by Sections
13 37.2(r)(5), (6) or (7), no tenant in such dwelling or unit may not be evicted except for just
14 cause as provided in Section 37.9 and related provisions of Chapter 37.

15 (d) Foreclosed residential dwellings or units are subject to the residential unit fee
16 requirements as provided in Chapter 37A.

17 (e) To the extent permissible under state and federal law, any residential tenant who
18 has a valid lease or rental agreement at the time of foreclosure may enforce that rental
19 agreement after foreclosure.

20 (f) A tenant whose landlord recovers possession or endeavors to recover possession
21 of the unit in violation of this section may exercise any remedies available under this Chapter
22 or under other applicable law.

23 (g) Within 15 days after foreclosure of a residential property subject to this Section
24 37.9D, the person or entity that takes title must provide to the tenant or tenants in the property
25 (see Subsection 37.9D(b)) notice of their rights under this Section 37.9D.

1 (i) The notice shall be in the following form in bold type of at least 14 points:

2 **NOTICE UNDER SAN FRANCISCO ADMINISTRATIVE CODE SECTION 37.9D.**

3 **To all tenants residing at: _____ (property address).**

4 **Date: _____.**

5 **The person or entity named below obtained title through foreclosure to**
6 **the property in which you reside, on: _____ (date).**

7 **You are hereby advised that under San Francisco Administrative Code**
8 **Section 37.9 you may not be evicted from the rental unit in which you reside**
9 **unless the landlord has a just cause for eviction under Section 37.9(a) of the**
10 **San Francisco Administrative Code.**

11 **Additional information on your tenant rights under this ordinance is**
12 **available from the San Francisco Residential Rent Stabilization and Arbitration**
13 **Board, 25 Van Ness Avenue, San Francisco, California, telephone number**
14 **(415) 252-4602.**

15 **Name of lender and contact telephone number: _____.**

16 **(ii) Notice required by this Section 37.9D shall be provided either: by both posting a**
17 **copy of the notice in a conspicuous place on the property and by first-class mail to each**
18 **affected residential unit--; or by posting a copy of the notice in a conspicuous place on the**
19 **property and in a prominent place on each affected residential unit.**

20 **(iii) It shall be a defense to an eviction utilizing the just cause provisions of**
21 **Section 37.9, if a landlord who is required to provide the notice required by this Section 37.9D**
22 **endeavors to recover possession prior to providing this notice and the notice required by Civil**
23 **Code section 1962.**

1 Section 4-3. The Board of Supervisors hereby finds:

2 1. The City's Residential Rent Stabilization and Arbitration Ordinance (Administrative
3 Code Chapter 37) applies to most residential rental units in a structure with a certificate of
4 occupancy issued prior to June 13, 1979 and requires just cause for eviction from residential
5 rental units subject to Chapter 37, in addition to providing rent controls on those units.

6 Chapter 37 lists 15 permissible just causes for eviction. Just causes for eviction include non-
7 payment of rent, maintenance of a nuisance, and owner move-in evictions. Change of
8 ownership alone is not a just cause for eviction under Chapter 37, even when the change of
9 ownership is due to foreclosure; so, residential renters in a foreclosed property that is subject
10 to Chapter 37 are protected from eviction due to the foreclosure.

11 2. Testimony before the Board's Land Use Committee stated that approximately
12 179,000 residential rental units built before June 1979 are currently covered by the just cause
13 eviction protections of Chapter 37 (and most are also covered by the rent control provisions of
14 Chapter 37). Other presentations before the Committee noted that that the number of units
15 covered by Chapter 37 is diminishing over time, due to events such as demolitions,
16 condominium conversions, and owner move-in evictions.

17 3. Most San Francisco residential rental units in structures that were built after June
18 1979 are not currently subject to the Chapter 37 eviction protections (or to the rent control
19 provisions). Testimony before the Board's Land Use Committee estimated that currently an
20 estimated 16,200 – 23,000 residential rental units built after June 1979 are not covered by the
21 Chapter 37 just cause eviction protections; and that new construction is currently planned for
22 an estimated additional 7,000 – 10,000 residential rental units, which will not be covered by
23 the eviction protections either.

24 4. Renters organizations, people from City organizations that counsel and assist
25 tenants, and individual renters, told the Land Use Committee of evictions and threats of

1 evictions from the post-1979 units, where tenants are not now protected by the Chapter 37
2 just cause eviction provisions.

3 4- 5. Evictions without just cause from these post-1979 residential rental units are a
4 growing concern for the City and its residential tenants, due to all evictions without just cause,
5 but particularly due to the increasing number of no-fault evictions following property
6 foreclosures. Presentations at the Land Use Committee noted that eviction of tenants from
7 foreclosed properties is a typical practice of lending institutions.

8 5. 6. According to information presented at the Land Use Committee hearing, the
9 City's Assessor-Recorder identified 667 foreclosures in San Francisco in 2008, compared with
10 81 in 2006 and 286 in 2007, which was a 723% increase in foreclosures over that time period.
11 According to testimony, the Assessor-Recorder has estimated that renters occupy
12 approximately one-quarter of all buildings that receive default notices, the first stage of
13 foreclosure; and in the first two months of a program to notify renters of possible foreclosure
14 (February and March 2009) the Assessor-Recorder's office sent out notices to 75 buildings.

15 6. 7. As a matter of fairness to all residential renters, just cause eviction protections
16 should be extended to units with a certificate of occupancy first issued after June 13 1979.

17 8-7. This legislation is intended to extend the existing just cause eviction protections
18 of Chapter 37 to foreclosed residential rental units with a certificate of occupancy first issued
19 after the effective date of Ordinance 276-79 (June 13, 1979) or designated as having
20 undergone substantial rehabilitation after June 13, 1979, with certain limitations to those
21 eviction protections as stated in the legislative provisions. This legislation is not intended to
22 limit or expand or otherwise change the existing rent limitation provisions of Chapter 37.

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1 Section 5- 4. Severability Clause.

2 If any provision of this Ordinance, or the application thereof to any person or
3 circumstance, is for any reason held to be invalid or unconstitutional by a decision of any court
4 of competent jurisdiction, the validity of the remainder of those provisions, including the
5 application of such provisions to persons or circumstances other than those to which it is held
6 invalid, shall not be affected thereby and they shall continue in full force and effect. To this
7 end, the provisions of this Ordinance are severable, and the Board of Supervisors hereby
8 declares that it would have passed this Ordinance and each and every provision not declared
9 invalid or unconstitutional without regard to whether any provision of this Ordinance or its
10 application to any person or circumstance would be subsequently declared invalid or
11 unconstitutional.

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15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By:


18 MARIE CORLETT BLITS
19 Deputy City Attorney
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