

FILE NO. 080821

MOTION NO. *M08-121*

1 [Residential Rent Ordinance, defining and prohibiting tenant harassment and providing
2 remedies of rent reduction, criminal and civil penalties.]

3 **Motion ordering submitted to the voters an ordinance concerning tenant rights and**
4 **remedies against harassment under the City's residential rent ordinance, at an election**
5 **to be held on November 4, 2008.**

6
7 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
8 voters of the City and County of San Francisco, at an election to be held on November 4,
9 2008.

10
11 **Ordinance amending Administrative Code Chapter 37 Residential Rent Stabilization**
12 **and Arbitration Ordinance by: amending Section 37.2 to define harassment by or on**
13 **behalf of an owner; and by adding Section 37.10B "Tenant Harassment" to prohibit**
14 **defined harassment by landlords and to provide for enforcement by reduction in rent**
15 **on grounds of substantial and significant decrease in services, and to provide for**
16 **enforcement by criminal and civil penalties including punitive damages.**

17
18 Note: Additions are single-underline italics Times New Roman;
 deletions are ~~strikethrough italics Times New Roman~~.

19
20 Be it ordained by the People of the City and County of San Francisco:

21 Section 1. The San Francisco Administrative Code is hereby amended by amending
22 Section 37.2, to read as follows:

23 SEC. 37.2. DEFINITIONS.

24 (a) Base Rent.

25 (1) That rent which is charged a tenant upon initial occupancy plus any rent increase

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

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

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

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

22 (ii) For any tenant receiving tenant-based rental assistance (except where the rent
23 payable by the tenant is a fixed percentage of the tenant's income, such as in the Section 8
24 certificate program and the rental subsidy program for the HOPWA program), and
25 commencing occupancy of a rental unit following the effective date of this ordinance, the base

1 rent for each unit occupied by such a tenant shall be the HAP contract rent in effect as of the
2 date the tenant commences occupancy of such unit.

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

7 (B) For any tenant occupying a unit upon the expiration or termination, for whatever
8 reason, of a project-based HAP contract under Section 8 of the United States Housing Act of
9 1937 (42 USC Section 1437f, as amended), the base rent for each such unit following
10 expiration or termination shall be the "contract rent" in effect for that unit immediately prior to
11 the expiration or termination of the project-based HAP contract.

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

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

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

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

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

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

6 ~~(f.1.) Harassment. Any act or omission by or on behalf of an owner that causes or is~~
7 ~~intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such~~
8 ~~dwelling unit or to surrender or waive any rights in relation to such occupancy.~~

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

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

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

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

24 (k) Payment Standard. An amount determined by the San Francisco Housing
25 Authority that is used to determine the amount of assistance paid by the San Francisco

1 Housing Authority on behalf of a tenant under the Section 8 Voucher Program (24 CFR Part
2 887).

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

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

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

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

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

17 (q) Rent Increases. Any additional monies demanded or paid for rent as defined in
18 item (p) above, or any reduction in housing services without a corresponding reduction in the
19 monies demanded or paid for rent; provided, however, that: (1) where the landlord has been
20 paying the tenant's utilities and the cost of those utilities increases, the landlord's passing
21 through to the tenant of such increased costs pursuant to this Chapter does not constitute a
22 rent increase; (2) where there has been a change in the landlord's property tax attributable to
23 a general obligation bond approved by the voters between November 1, 1996 and November
24 30, 1998, or after November 14, 2002, the landlord's passing through to the tenant of such
25 increased costs in accordance with this Chapter (see Section 37.3(a)(6)) does not constitute a

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

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

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

21 The term "rental units" shall not include:

22 (1) Housing accommodations in hotels, motels, inns, tourist houses, rooming and
23 boarding houses, provided that at such time as an accommodation has been occupied by a
24 tenant for 32 continuous days or more, such accommodation shall become a rental unit
25 subject to the provisions of this Chapter; provided further, no landlord shall bring an action to

1 recover possession of such unit in order to avoid having the unit come within the provisions of
2 this Chapter. An eviction for a purpose not permitted under Section 37.9(a) shall be deemed
3 to be an action to recover possession in order to avoid having a unit come within the
4 provisions of this Chapter;

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

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

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

23 (A) For purposes of Sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6, 37.9, 37.9A,
24 37.10A, 37.11A and 37.13, and the arbitration provisions of Sections 37.8 and 37.8A
25 applicable only to the provisions of Sections 37.3(a)(10)(A), the term "rental units" shall

1 include units occupied by recipients of tenant-based rental assistance where the tenant-based
2 rental assistance program does not establish the tenant's share of base rent as a fixed
3 percentage of a tenant's income, such as in the Section 8 voucher program and the "Over-
4 FMR Tenancy" program defined in 24 CFR Section 982.4;

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

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

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

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

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

23 This Section 37.2(r)(4)(C) definition of "rental unit" shall apply to any unit where the
24 qualifying tenant (see Section 37.2(r)(4)(C)(i)) is in possession of the unit on or after the
25 effective date of this ordinance (Ord. No. 281-06), including but not limited to any unit where

1 the tenant has been served with a notice to quit but has not vacated the unit and there is no
2 final judgment against the tenant for possession of the unit as of the effective date of this
3 ordinance (Ord. No. 281-06).

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

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

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

16 (s) Substantial Rehabilitation. The renovation, alteration or remodeling of residential
17 units of 50 or more years of age which have been condemned or which do not qualify for
18 certificates of occupancy or which require substantial renovation in order to conform the
19 building to contemporary standards for decent, safe and sanitary housing. Substantial
20 rehabilitation may vary in degree from gutting and extensive reconstruction to extensive
21 improvements that cure substantial deferred maintenance. Cosmetic improvements alone
22 such as painting, decorating and minor repairs, or other work which can be performed safely
23 without having the unit vacated do not qualify as substantial rehabilitation.

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

1 (u) Tenant-Based Rental Assistance. Rental assistance provided directly to a tenant
2 or directly to a landlord on behalf of a particular tenant, which includes but shall not be limited
3 to certificates and vouchers issued pursuant to Section 8 of the United States Housing Act of
4 1937, as amended (42 U.S.C. Section 1437f) and the HOPWA program.

5 (v) Utilities. The term "utilities" shall refer to gas and electricity exclusively.
6

7 Section 2. The San Francisco Administrative Code is hereby amended by adding
8 Section 37.10B, to read as follows:

9 Section 37.10B. Tenant Harassment.

10 (a) No landlord, and no agent, contractor, subcontractor or employee of the landlord,
11 shall, with respect to property used as a rental housing unit under any rental housing
12 agreement or other tenancy or estate at will, however created, do any of the following, with
13 malice in bad faith or with ulterior motive or without honest intent:

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

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

18 (3) Fail to exercise due diligence in completing repairs and maintenance once undertaken, or
19 fail to follow appropriate industry repair, containment or remediation protocols designed to
20 minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with
21 potentially harmful health impacts;

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

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

1 (65) Influence or attempt to influence a tenant to vacate a rental housing unit through fraud,
2 intimidation or coercion, including

3 (6) ~~a~~ Attempts to coerce the tenant to vacate with offer(s) of payments to vacate which are
4 accompanied with threats or intimidation;

5 (7) Continue to offer payments to vacate or which continue to be offered after the
6 tenant(s) has told the landlord that such offers of payment are unwelcome after tenant has
7 notified the landlord in writing that they no longer wish to receive further offers of payments to
8 vacate;

9 (7-8) Threaten the tenant, by word or gesture, with physical harm;

10 (89) Violate any law which prohibits discrimination based on actual or perceived race,
11 gender, sexual preference, sexual orientation, ethnic background, nationality, place of birth,
12 immigration or citizenship status, religion, age, parenthood, marriage, pregnancy, disability, AIDS
13 or occupancy by a minor child.

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

16 (1011) Refuse to accept or acknowledge receipt of a tenant's lawful rent payment;

17 (12) Refuse to cash a rent check for over 30 days;

18 (143) Interfere with a tenant's right to privacy.

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

21 (14) Request information that violates a tenant's right to privacy, including but not
22 limited to residence or citizenship status or social security number.

23 (125) Other repeated acts or omissions of such significance as to substantially interfere with or
24 disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such
25 dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled

1 to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in
2 relation to such occupancy.

3 (b) Nothing in this Chapter Section 37.10B shall be construed as to prevent the lawful
4 eviction of a tenant by appropriate legal means nor shall anything in this Chapter apply to
5 occupancies defined by subdivision (b) of Civil Code Section 1940.

6 (c) Enforcement and penalties.

7 (1) Rent Board. Violation of this Section 37.10B is a substantial and significant decrease in
8 services as defined in Section 37.2(g) and tenants may file a petition with the Rent Board for a
9 reduction in rent.

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

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

18 (4) Injunction. Any person who commits an act, proposes to commit an act, or engages in any
19 pattern and practice which violates this Section 37.10B may be enjoined therefrom by any court of
20 competent jurisdiction. An action for injunction under this subsection may be brought by any aggrieved
21 person, by the City Attorney, or by any person or entity who will fairly and adequately represent the
22 interest of the protected class.

23 (5) Penalties and Other Monetary Awards. Any person who violates or aids or incites another
24 person to violate the provisions of this Chapter Section is liable for each and every such offense for
25 money damages of not less than three times actual damages suffered by an aggrieved party

1 (including damages for mental or emotional distress), the actual damages suffered by any
2 aggrieved party or for statutory damages in the sum of one thousand dollars, whichever is
3 greater, and whatever other relief the court deems appropriate, and shall be liable for such
4 attorney's fees and costs as may be determined by the court in addition thereto. In the case
5 of an award of damages for mental or emotional distress, said award shall only be trebled if
6 the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of
7 Section 37.9, 37.10A, or 37.10B herein. In addition, a prevailing plaintiff shall be entitled to
8 reasonable attorney's fees and costs pursuant to order of the court. The court trier of fact
9 may also award punitive damages to any plaintiff, including the City, in a proper case as defined by
10 Civil Code Section 3294. The remedies available under this Section shall be in addition to any
11 other existing remedies which may be available to the tenant or the City.

12 (6) Defending Eviction Lawsuits. In any action to recover possession of a rental unit
13 subject to the Chapter, unless the sole basis of the notice to quit is Section 37.9(b), the court
14 shall award the tenant reasonable attorney fees and costs incurred in defending the action
15 upon a finding that the tenant is the prevailing party under Code of Civil Procedure Section
16 1032(a)(4).

17 (d) Severability. If any provision or clause of this Section 37.10B, or Section 37.2(g),
18 or the application thereof to any person or circumstance is held to be unconstitutional or to be
19 otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other
20 provisions of this Section 37.10B or Section 37.2(g) and all clauses of these Sections are
21 declared to be severable.

22 APPROVED AS TO FORM:
23 DENNIS J. HERRERA, City Attorney

24 By: 
25 MARIAM MORLEY
Deputy City Attorney

SUPERVISOR DALY
BOARD OF SUPERVISORS



City and County of San Francisco

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**Tails
Motion**

File Number: 080821

Date Passed: July 29, 2008

Motion ordering submitted to the voters an ordinance concerning tenant rights and remedies against harassment under the City's residential rent ordinance, at an election to be held on November 4, 2008.

June 17, 2008 Board of Supervisors — SUBSTITUTED

July 29, 2008 Board of Supervisors — APPROVED

Ayes: 7 - Ammiano, Daly, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

Noes: 4 - Alioto-Pier, Chu, Dufty, Elsbernd

File No. 080821

I hereby certify that the foregoing Motion was APPROVED on July 29, 2008 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board