

1 [Landlord passthrough to residential tenants, 50% of property tax increase for general
2 obligation bonds: Controller's explanation of proposed bonds; passthroughs authorized in
3 CCSF bonds; passthroughs for School and Community College District bonds.]

4 **Ordinance: (1) amending the San Francisco Municipal Elections Code by amending**
5 **Section 520, to require that the Controller's financial analysis for a general obligation**
6 **bond proposal include an explanation of the 50-percent passthrough of the change in a**
7 **landlord's property tax under the proposed bond measure;**
8 **(2) amending the San Francisco Administrative Code by adding Section 2.40, to require**
9 **that a proposal for bonded indebtedness of the City and County of San Francisco**
10 **include a provision authorizing the 50-percent passthrough of the change in a**
11 **landlord's property tax provided in Administrative Code Section 37.3(a)(6); and,**
12 **(3) amending San Francisco Administrative Code Chapter 37 "Residential Rent**
13 **Stabilization and Arbitration Ordinance" by amending Sections 37.2(q) and 37.3(a)(6) to**
14 **provide that landlords may pass through to tenants 50-percent of the change in the**
15 **landlord's property tax resulting from the repayment of San Francisco Unified School**
16 **District or San Francisco Community College District general obligation bonds**
17 **approved by the voters after November 1, 2006.**

18 Note: Additions are *single-underline italics Times New Roman*;
19 deletions are *strikethrough italics Times New Roman*.
20 Board amendment additions are double underlined Arial font.
21 Board amendment deletions are ~~strikethrough Arial font~~.

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

23 Section 1. The San Francisco Municipal Elections Code is hereby amended by
24 amending Section 520, to read as follows:
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1 **SEC. 520. CONTROLLER'S FINANCIAL ANALYSIS.**

2 (a) The Controller shall prepare an impartial financial analysis of each measure
3 submitted to the voters. The Controller's financial analysis shall include the amount of any
4 increase or decrease in the cost of City and County government. The Controller's financial
5 analysis shall also include the effect of the measure upon the tax rate.

6 For any general obligation bond measure placed on the ballot, the Controller's financial
7 analysis shall include an explanation of the City's legal debt limit, as well as the impact of the
8 proposed bond measure on that limit. The Controller's financial analysis for a general obligation
9 bond measure placed on the ballot, including general obligation bond measures submitted by the San
10 Francisco Unified School District or San Francisco Community College District, also shall include an
11 explanation of the 50-percent passthrough of the change in a landlord's property tax resulting from the
12 repayment of such indebtedness provided in Administrative Code Section 37.3(a)(6), and an estimate of
13 the impact of that passthrough under the proposed bond measure.

14 (b) The Controller's financial analysis shall be in a form appropriate for inclusion in the
15 voter information pamphlet.

16 (c) The Controller's financial analysis of any measure shall be transmitted to the
17 Director of Elections no fewer than 85 days prior to the election to which it relates, for printing
18 and inclusion in the voter information pamphlet.

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1 Section 2. The San Francisco Administrative Code is hereby amended by adding
2 Section 2.40, to read as follows:

3 **SEC. 2.40. INCLUSION OF LANDLORD PASSTHROUGH LANGUAGE.**

4 Any proposal for bonded indebtedness submitted pursuant to this Article shall include, as a
5 provision of the ordinance submitting such proposal to the voters, language incorporating and
6 authorizing the 50-percent passthrough of the change in a landlord's property tax resulting from the
7 repayment of such indebtedness as provided in Administrative Code Section 37.3(a)(6).

8 A resolution determining that the public interest or necessity demands the acquisition,
9 construction or completion of the specific public improvement to be financed under such a proposal,
10 submitted to the Board pursuant to Section 2.31, shall contain a separate statement that the ordinance
11 submitting such proposal to the voters shall comply with this Section.

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14 Section 3. The San Francisco Administrative Code is hereby amended by amending
15 Section 37.2, to read as follows:

16 **SEC. 37.2. DEFINITIONS.**

17 (a) Base Rent.

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

1 designated on or after July 1, 1977, shall not be included in the base rent.

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

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

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

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

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

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

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

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

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

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

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

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

25 (g) Housing Services. Services provided by the landlord connected with the

1 use or occupancy of a rental unit including, but not limited to: repairs; replacement;
2 maintenance; painting; light; heat; water; elevator service; laundry facilities and privileges;
3 janitor service; refuse removal; furnishings; telephone; parking; rights permitted the tenant by
4 agreement, including the right to have a specific number of occupants, whether express or
5 implied, and whether or not the agreement prohibits subletting and/or assignment; and any
6 other benefits, privileges or facilities.

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

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

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

16 (k) Payment Standard. An amount determined by the San Francisco Housing
17 Authority that is used to determine the amount of assistance paid by the San Francisco
18 Housing Authority on behalf of a tenant under the Section 8 Voucher Program (24 CFR Part
19 887).

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

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

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

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

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

10 (q) Rent Increases. Any additional monies demanded or paid for rent as
11 defined in item (p) above, or any reduction in housing services without a corresponding
12 reduction in the monies demanded or paid for rent; provided, however, that: (1) where the
13 landlord has been paying the tenant's utilities and the cost of those utilities increases, the
14 landlord's passing through to the tenant of such increased costs pursuant to this Chapter does
15 not constitute a rent increase; (2) where there has been a change in the landlord's property
16 tax attributable to a general obligation bond approved by the voters between November 1,
17 1996 and November 30, 1998, or after November 14, 2002, the landlord's passing through to
18 the tenant of such increased costs in accordance with this Chapter (see Section 37.3(a)(6))
19 does not constitute a rent increase; (3) where there has been a change in the landlord's property
20 tax attributable to a San Francisco Unified School District or San Francisco Community College
21 District general obligation bond approved by the voters after November 1, 2006, the landlord's passing
22 through to the tenant of such increased costs in accordance with this Chapter (see Section 37.3(a)(6))
23 does not constitute a rent increase; and, ~~(3-4)~~ where water bill charges are attributable to water
24 rate increases resulting from issuance of water revenue bonds authorized at the November 5,
25 2002 election, the landlord's passing through to the tenant of such increased costs in

1 accordance with this Chapter (see Section 37.3(a)(5)(B)) does not constitute a rent increase.

2 (r) Rental Units. All residential dwelling units in the City and County of San
3 Francisco together with the land and appurtenant buildings thereto, and all housing services,
4 privileges, furnishings and facilities supplied in connection with the use or occupancy thereof,
5 including garage and parking facilities. The term shall not include:

6 (1) Housing accommodations in hotels, motels, inns, tourist houses, rooming
7 and boarding houses, provided that at such time as an accommodation has been occupied by
8 a tenant for 32 continuous days or more, such accommodation shall become a rental unit
9 subject to the provisions of this Chapter; provided further, no landlord shall bring an action to
10 recover possession of such unit in order to avoid having the unit come within the provisions of
11 this Chapter. An eviction for a purpose not permitted under Section 37.9(a) shall be deemed
12 to be an action to recover possession in order to avoid having a unit come within the
13 provisions of this Chapter;

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

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

24 (4) Except as provided in Subsections (A) and (B), dwelling units whose
25 rents are controlled or regulated by any government unit, agency or authority, excepting those

1 unsubsidized and/or unassisted units which are insured by the United States Department of
2 Housing and Urban Development; provided, however, that units in unreinforced masonry
3 buildings which have undergone seismic strengthening in accordance with Building Code
4 Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the
5 ordinance is not in conflict with the seismic strengthening bond program or with the program's
6 loan agreements or with any regulations promulgated thereunder;

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

14 (B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9,
15 37.9A, 37.10A, 37.11A and 37.13, the term "rental units" shall include units occupied by
16 recipients of tenant-based rental assistance where the rent payable by the tenant under the
17 tenant-based rental assistance program is a fixed percentage of the tenant's income; such as
18 in the Section 8 certificate program and the rental subsidy program for the Housing
19 Opportunities for Persons with Aids ("HOPWA") program (42 U.S.C. Section 12901 et seq., as
20 amended).

21 (5) Rental units located in a structure for which a certificate of occupancy
22 was first issued after the effective date of this ordinance, except as provided for certain
23 categories of units and dwellings by Section 37.3(d) and Section 37.9A(b) of this Chapter;

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

1 subject to this exemption.

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

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

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

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

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

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

3 SEC. 37.3. RENT LIMITATIONS.

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

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

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

18 (3) Capital Improvements, Rehabilitation, and Energy Conservation
19 Improvements, and Renewable Energy Improvements. A landlord may impose rent increases
20 based upon the cost of capital improvements, rehabilitation, energy conservation
21 improvements, or renewable energy improvements, provided that such costs are certified
22 pursuant to Sections 37.7 and 37.8B below; provided further that where a landlord has
23 performed seismic strengthening in accordance with Building Code Chapters 16B and 16C,
24 no increase for capital improvements (including but not limited to seismic strengthening) shall
25 exceed, in any 12 month period, 10 percent of the tenant's base rent, subject to rules adopted

1 by the Board to prevent landlord hardship and to permit landlords to continue to maintain their
2 buildings in a decent, safe and sanitary condition. A landlord may accumulate any certified
3 increase which exceeds this amount and impose the increase in subsequent years, subject to
4 the 10 percent limitation. Nothing in this subsection shall be construed to supersede any
5 Board rules or regulations with respect to limitations on increases based upon capital
6 improvements whether performed separately or in conjunction with seismic strengthening
7 improvements pursuant to Building Code Chapters 16B and 16C.

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

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

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

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

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

25 (iii) (C) The landlord provides the tenants with a copy of the water bill for

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

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

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

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

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

6 (iv) A landlord shall not impose a passthrough pursuant to Section
7 37.3(a)(5)(B) if the landlord has filed for or received Board approval for a rent increase under
8 Section 37.8(e)(4) for increased operating and maintenance expenses in which the same
9 increase in water bill charges attributable to water rate increases resulting from issuance of
10 any water revenue bonds authorized at the November 5, 2002 election was included in the
11 comparison year cost totals.

12 (v) Where a tenant alleges that a landlord has imposed a water revenue
13 bond passthrough that is not in compliance with Section 37.3(a)(5)(B), the tenant may petition
14 for a hearing under the procedures provided by Section 37.8. In such a hearing the landlord
15 shall have the burden of proving the accuracy of the calculation that is the basis for the
16 increase. Any tenant petition challenging such a passthrough must be filed within one year of
17 the effective date of the passthrough.

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

21 (vii) The amount of permissible passthrough per unit under this Section
22 37.3(a)(5)(B) shall be determined as follows:

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

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

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

12 (4) These passthroughs may be imposed on a monthly basis. These
13 passthroughs shall not become part of a tenant's base rent. The amount of each passthrough
14 may vary from month to month, depending on the amount calculated under Sections
15 37.3(a)(5)(B)(vii)(1) through (3).

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

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

22 A landlord may impose increases based upon a 50% passthrough of the change
23 in the landlord's property tax resulting from the repayment of general obligation bonds of the
24 City and County of San Francisco approved by the voters after November 14, 2002 as
25 provided in Section 37.2(q) above, and subject to the following requirement: Any rent

1 increase for bonds approved after the effective date of this initiative ordinance [November
2 2000 Proposition H, effective December 20, 2000] must be disclosed and approved by the
3 voters.

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

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

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

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

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

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

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

1 approved by the voters:

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

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

9 (iii) The dollar amount calculated under Subsection (ii) shall be divided by
10 two, and then by the total number of all units in each property, including commercial units.
11 That figure shall be divided by 12 months, to determine the monthly per unit costs for that tax
12 year of the repayment of general obligation bonds approved by the voters after November 14,
13 2002.

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

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 San Francisco Unified School District or San
18 Francisco Community College District general obligation bonds approved by the voters after
19 November 1, 2006 and repayable within such tax year.

20 (ii) This percentage shall be multiplied by the total amount of the net taxable value
21 for 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 San Francisco Unified School District or San
23 Francisco Community College District general obligation bonds approved by the voters after
24 November 1, 2006.

25 (iii) The dollar amount calculated under Subsection (ii) shall be divided by two, and

1 then by the total number of all units in each property, including commercial units. That figure shall be
2 divided by 12 months, to determine the monthly per unit costs for that tax year of the repayment of San
3 Francisco Unified School District or San Francisco Community College District general obligation
4 bonds approved by the voters after November 1, 2006.

5 (~~C~~-D) Landlords may pass through to each unit in a particular property the
6 dollar amount calculated under these Subsections 37.3(a)(6)(A) and (B) and (C). These
7 passthroughs may be imposed only on the anniversary date of each tenant's occupancy of the
8 property. These passthroughs shall not become a part of a tenant's base rent. The amount of
9 each annual passthrough imposed pursuant to this Subsection (6) may vary from year-to-
10 year, depending on the amount calculated under Subsections (A) and (B) and (C). Each
11 annual passthrough shall apply only for the 12 month period after it is imposed. A landlord
12 may impose the passthroughs described in this Subsection (6) for a particular tax year only
13 with respect to those tenants who were residents of a particular property on November 1st of
14 the applicable tax year. A landlord shall not impose a passthrough pursuant to this
15 Subsection (6) if the landlord has filed for or received Board approval for a rent increase under
16 Section 37.8(e)(4) for increased operating and maintenance expenses in which the same
17 increase in property taxes due to the repayment of general obligation bonds was included in
18 the comparison year cost totals.

19 (~~D~~-E) The Board will have available a form which explains how to calculate the
20 passthrough.

21 (~~E~~-F) Landlords must provide to tenants, on or before the date that notice is
22 served on the tenant of a passthrough permitted under this Subsection (6), a copy of the
23 completed form described in Subsection (~~D~~-E). This completed form shall be provided in
24 addition to the Notice of Rent Increase required under Section 37.3(b)(5). Where a tenant
25 alleges that a landlord has imposed a charge which exceeds the limitations set forth in this

1 Subsection (6), the tenant may petition for a hearing under the procedures provided by
2 Section 37.8. In such a hearing, the landlord shall have the burden of proving the accuracy of
3 the calculation that is the basis for the increase. Any tenant petitions challenging such a
4 passthrough must be filed within one year of the effective date of the passthrough.

5 (~~F~~ G) The Board may amend its rules and regulations as necessary to
6 implement this Subsection (6).

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

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

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

21 When rent increases are authorized by this Subsection 37.3(a)(9), the total rent
22 increase for both operating and maintenance expenses and capital improvements shall not
23 exceed 10 percent in any 12 month period. If allowable rent increases due to the costs of lead
24 remediation and abatement work exceed 10 percent in any 12 month period, an
25 Administrative Law Judge shall apply a portion of such excess to approved operating and

1 maintenance expenses for lead remediation work, and the balance, if any, to certified capital
2 improvements, provided, however, that such increase shall not exceed 10 percent. A landlord
3 may accumulate any approved or certified increase which exceeds this amount, subject to the
4 10 percent limit.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (d) Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et

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

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

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

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

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

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

23 (C) An owner's right to establish subsequent rental rates under Subsection
24 37.3(d)(1) shall not apply to a dwelling or unit which contains serious health, safety, fire or
25 building code violations, excluding those caused by disasters, for which a citation has been

1 issued by the appropriate governmental agency and which has remained unabated for six
2 months or longer preceding the vacancy.

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

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

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

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

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

24 (B) This Subsection 37.3(d)(2) shall not apply to partial changes in
25 occupancy of a dwelling or unit where one or more of the occupants of the premises, pursuant

1 to the agreement with the owner provided for above (37.3(d)(2)), remains an occupant in
2 lawful possession of the dwellings or unit, or where a lawful sublessee or assignee who
3 resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling
4 or unit. Nothing contained in this Subsection 37.3(d)(2) shall be construed to enlarge or
5 diminish an owner's right to withhold consent to a sublease or assignment.

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

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

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

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

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

25 (D) The provisions of Subsections 37.3(d)(3)(B) and (C) shall not apply to any

1 new tenancy of 12 months or more duration established after January 1, 2000, pursuant to the
2 owner's contract or recorded agreement with a governmental agency that provides for a rent
3 limitation to a qualified tenant unless the prior vacancy in that dwelling or unit was pursuant to
4 a nonrenewed or canceled contract or recorded agreement with a governmental agency that
5 provides for a rent limitation to a qualified tenant.

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

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

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

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

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

1 currently required would have been lessened had maintenance been performed in a more
2 timely manner.

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4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: MARIE CORLETT BLITS
7 Deputy City Attorney

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