

1 [Administrative Code - Tenant Buyout Agreements]

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3 **Ordinance amending the Administrative Code to (1) classify certain types of unlawful**
4 **detainer settlement agreements as “Buyout Agreements,” (2) require the Rent Board to**
5 **provide more information on the disclosure form that landlords must give to tenants**
6 **before buyout negotiations commence, (3) require landlords to give the disclosure**
7 **form to tenants a certain number of days before the Buyout Agreement is executed and**
8 **to verify to the Rent Board that the disclosures were provided, (4) require landlords to**
9 **include in the final Buyout Agreement identifying information about the location of the**
10 **unit, and (5) allow a tenant to invalidate any provision of the Buyout Agreement in**
11 **which the tenant waived their rights if the landlord did not timely file the Buyout**
12 **Agreement with the Rent Board.**

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

18

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

20

21 Section 1. Findings and Purpose.

22 Adopted in 2014, the Buyout Ordinance (Administrative Code Section 37.9E) was
23 intended primarily to increase fairness to tenants in buyout negotiations and agreements with
24 landlords, and to help the City collect data about tenant buyout agreements. The Buyout
25 Ordinance does not apply to unlawful detainer settlements, which over time has developed

1 into a significant loophole. Elevating form over substance, some landlords will start buyout
2 negotiations, but then file unlawful detainer actions so that they can resolve the negotiations
3 as “settlements” rather than as “buyouts,” and thereby avoid complying with the Buyout
4 Ordinance. This undermines the goals of the Buyout Ordinance. Another concern is that
5 some landlords continue to employ the high-pressure tactic of giving tenants very little time to
6 conduct buyout negotiations. Further, although the Buyout Ordinance requires landlords to
7 give tenants a set of written disclosures before buyout negotiations start, some landlords do
8 not do so until the negotiations are almost complete.

9 In light of these various problems, this ordinance revises the Buyout Ordinance to
10 modify certain pre-notification disclosure rules, so that the process is fairer and so that the
11 City can better monitor compliance.

12
13 Section 2. The Administrative Code is hereby amended by revising Section 37.9E, to
14 read as follows:

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

16 * * * *

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

19 "Buyout Agreement" means an agreement wherein the landlord pays the tenant money
20 or other consideration to vacate the rental unit. The term “Buyout Agreement” includes an
21 agreement to settle a pending unlawful detainer action if the action was filed within 120 days after
22 Buyout Negotiations commenced. In all other instances, Aan agreement to settle a pending
23 unlawful detainer action shall not be a "Buyout Agreement."

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

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

5 * * * *

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

8 (10) A space for ~~each~~ the tenant to sign and write the date the landlord provided
9 the tenant with the disclosure; and

10 (11) Information provided by the Mayor's Office of Housing and Community
11 Development regarding the impact of the buyout on the tenant's eligibility for the City's affordable
12 housing programs.

13 The landlord shall retain a copy of each signed disclosure form for five years, along
14 with a record of the date the landlord provided the disclosure to each tenant and the method of
15 service that the landlord used (regular mail, electronic mail, hand delivery, etc.).

16 (e) **Notification of the Rent Board.** After providing the disclosures required by subsection
17 (d) and pPrior to commencing Buyout Negotiations, the landlord shall file a declaration executed
18 under penalty of perjury with the Rent Board, on a form prepared by the Rent Board, that provides the
19 following information ~~to the Rent Board, on a form developed and authorized by the Rent Board:~~

20 (1) The landlord's name, business address, business email address, and
21 business telephone number;

22 (2) The name of each tenant (if known) with whom the landlord intends to enter
23 into Buyout Negotiations;

1 (3) The address of the rental unit that may be the subject of Buyout
2 Negotiations, along with the Assessor's Parcel Number (lot and block) of the building where
3 the unit is located; and

4 (4) ~~A statement signed under penalty of perjury that~~ The date that the landlord
5 provided each tenant with the disclosure required by subsection (d), and the method of service
6 that the landlord used prior to commencing Buyout Negotiations.

7 The Rent Board shall make the information included on this form ~~publically~~publicly
8 available, except that the Rent Board shall redact all information regarding the identity of the
9 tenants.

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

11 (1) Be in writing. The Agreement may be executed no sooner than 30 days after
12 Buyout Negotiations commenced. The landlord shall give each tenant a copy of the Buyout
13 ~~at~~Agreement at the time the tenant executes the Agreement.

14 (2) Include the following statement in bold letters in a size equal to at least 14-
15 point type in close proximity to the space reserved for the signature of the tenant(s). "You, the
16 tenant, may cancel this agreement at any time on or before the 45th day after all parties have
17 signed this agreement. To cancel this agreement, mail or deliver a signed and dated notice
18 stating that you, the tenant, are cancelling this agreement, or words of similar effect. The
19 notice shall be sent to: _____ (Name of landlord) at _____ (Address of landlord). If
20 you do not cancel this agreement by the 45th day after all parties have signed the agreement, the
21 landlord will be required to file a copy of the agreement with the Rent Board no later than the 59th day
22 after all parties have signed the agreement. If the landlord does not file the agreement by the 59th day,
23 you may file a copy, and you shall also have the option to void any language in the agreement in which
24 you have waived your rights or released claims. Any provision of this agreement that purports to
25 excuse the landlord from filing the agreement by the 59th day, or that purports to limit, restrict, or

1 prevent you from filing a copy and/or exercising these options if the landlord has not filed by the 59th
2 day, shall be void and unenforceable." Immediately after this statement, there shall be a line for
3 each tenant to affix his or her initials.

4 (3) Include the following statements in a size equal to at least 14-point type:
5 "You, the tenant, have a right not to enter into a buyout agreement"; "You, the tenant, may
6 choose to consult with an attorney and/or a tenants' rights organization before signing this
7 agreement. You can find a list of tenants' rights organizations on the Rent Board's website –
8 www.sfrb.org"; and "The Rent Board has created a ~~publically~~publicly available, searchable
9 database that may include information about other buyout agreements in your neighborhood.
10 You can search this database at the Rent Board's office at 25 Van Ness Avenue, Suite 320."
11 Immediately after each statement, there shall be a line for each tenant to affix his or her
12 initials.

13 (4) Include the following statements in a size equal to at least 14-point type:
14 "Under Section 1396-(e)(4) of San Francisco's Subdivision Code, a property owner may not
15 convert a building into a condominium where: (A) a senior, disabled, or catastrophically ill
16 tenant has vacated a unit under a buyout agreement after October 31, 2014, or (B) two or
17 more tenants who are not senior, disabled, or catastrophically ill have vacated units under
18 buyout agreements, if the agreements were entered after October 31, 2014 and within the ten
19 years prior to the condominium conversion application. A 'senior' is a person who is 60 years
20 or older and has been residing in the unit for ten years or more at the time of the Buyout
21 Agreement; a 'disabled' tenant is a person who is disabled under the Americans with
22 Disabilities Act (Title 42 United States Code Section 12102) and has been residing in the unit
23 for ten years or more at the time of Buyout Agreement; and a 'catastrophically ill' tenant is a
24 person who is disabled under the Americans with Disabilities Act (Title 42 United States Code
25 Section 12102) and who is suffering from a life threatening illness and has been residing in

1 the unit for five years or more at the time of the Buyout Agreement. Do you believe that you
2 are senior, disabled, or catastrophically ill as those terms are defined above? Yes ____ No
3 ____ I don't know ____ I prefer not say ____." The question listed in this subsection (f)(4)
4 shall appear in the Buyout Agreement once for each tenant who is a party to the Buyout
5 Agreement. Next to each question shall be a line for the tenant to affix his or her initials.

6 (5) Include the address of the rental unit in question, as well as the Assessor's
7 Parcel Number (lot and block) of the building where the unit is located.

8 A Buyout Agreement that does not satisfy all the requirements of ~~this subsections~~
9 ~~(f)(1)-(4)~~ shall not be effective and may be rescinded by the tenant at any time. A Buyout
10 Agreement that does not include the initials of each tenant next to each of the statements
11 described in subsections ~~(f)(2)-(4), and (f)(3) shall not be effective and may be rescinded by the~~
12 ~~tenant at any time. A Buyout Agreement that does not contain an answer from each tenant to the~~
13 ~~question listed in subsection (f)(4),~~ as well as the initials of each tenant next to his or answer to
14 the question listed in subsection (f)(4), shall not be effective and may be rescinded by the
15 tenant at any time.

16 (g) **Rescission of Buyout Agreements.** A tenant shall have the right to rescind a
17 Buyout Agreement for up to and including 45 days after its execution by all parties. In order to
18 rescind a Buyout Agreement under this subsection (g), the tenant must, on or before the 45th
19 day following the execution of the Buyout Agreement by all parties, hand deliver, email, or
20 place in the mail a statement to the landlord indicating that the tenant has rescinded the
21 Buyout Agreement.

22 (h) **Filing of Buyout Agreements.** The landlord shall file a copy of the Buyout
23 Agreement with the Rent Board no sooner than the 46th day after the Buyout Agreement is
24 executed by all parties, and no ~~more~~later than 59 days after the agreement is executed by all
25 parties. After the 59th day, either the landlord or the tenant may file a copy of the Buyout Agreement.

1 However, regardless of whether any party files the Buyout Agreement after the 59th day, if the landlord
2 had not filed a copy by the 59th day, any provision of the Buyout Agreement in which the tenant waived
3 their rights or released claims shall not be effective and shall be void at the option of the tenant, and
4 the tenant shall be entitled to all remedies authorized by law; provided, however, that said remedies
5 shall not include the displacement of a subsequent tenant in the unit. Buyout ~~A~~reements
6 rescinded under subsection (g) need not be filed with the Rent Board.

7 (i) **Posting of Buyout Agreements.** The Rent Board shall create a searchable
8 database with information received from filings under subsection (h). The database shall be
9 accessible to the public at the Rent Board's office and shall include a copy of all filings
10 received under subsection (h). Before posting a copy of any filing received under subsection
11 (h) on its database, the Rent Board shall redact all information regarding the identity of the
12 tenants. The party who filed the Buyout Agreement shall inform the Rent Board whether the Buyout
13 Agreement concerned an unlawful detainer action. If so, the Rent Board shall also redact from the
14 posted Buyout Agreement any information concerning the unlawful detainer action that may be
15 confidential under California Code of Civil Procedure 1161.2.

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

1 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word
2 of this ordinance, or any application thereof to any person or circumstance, is held to be
3 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
4 shall not affect the validity of the remaining portions or applications of the ordinance. The
5 Board of Supervisors hereby declares that it would have passed this ordinance and each and
6 every section, subsection, sentence, clause, phrase, and word not declared invalid or
7 unconstitutional without regard to whether any other portion of this ordinance or application
8 thereof would be subsequently declared invalid or unconstitutional.

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10 Section 6. Undertaking for the General Welfare. In enacting and implementing this
11 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
12 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
13 is liable in money damages to any person who claims that such breach proximately caused
14 injury.

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1 Section 7. Effective Date and ~~Operative Dates~~.

2 (a) — This ordinance shall become effective 30 days after enactment. Enactment
3 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or
4 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors
5 overrides the Mayor’s veto of the ordinance.

6 (b) — ~~This ordinance shall become operative on March 1, 2020.~~

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8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: _____
11 MANU PRADHAN
12 Deputy City Attorney

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