

File No. 191281 Committee Item No. 5
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date February 3, 2020

Board of Supervisors Meeting Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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Completed by: Erica Major Date January 30, 2020
Completed by: Erica Major Date _____

1 [Administrative Code - Tenant Buyout Agreements]

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

11
12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
13 **Additions to Codes** are in *single-underline italics Times New Roman font*.
14 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
15 **Board amendment additions** are in double-underlined Arial font.
16 **Board amendment deletions** are in ~~strikethrough Arial font~~.
17 **Asterisks (* * * *)** indicate the omission of unchanged Code
18 subsections or parts of tables.

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

20 Section 1. Findings and Purpose.

21 Adopted in 2014, the Buyout Ordinance (Administrative Code Section 37.9E) was
22 intended primarily to increase fairness to tenants in buyout negotiations and agreements with
23 landlords, and to help the City collect data about tenant buyout agreements. The Buyout
24 Ordinance does not apply to unlawful detainer settlements, which over time has developed
25 into a significant loophole. Elevating form over substance, some landlords will start buyout
negotiations, but then file unlawful detainer actions so that they can resolve the negotiations

1 as "settlements" rather than as "buyouts," and thereby avoid complying with the Buyout
2 Ordinance. This undermines the goals of the Buyout Ordinance. Another concern is that
3 some landlords continue to employ the high-pressure tactic of giving tenants very little time to
4 conduct buyout negotiations. Further, although the Buyout Ordinance requires landlords to
5 give tenants a set of written disclosures before buyout negotiations start, some landlords do
6 not do so until the negotiations are almost complete.

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

10
11 Section 2. The Administrative Code is hereby amended by revising Section 37.9E, to
12 read as follows:

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

14 * * * *

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

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

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

24 (d) **Disclosure Required Prior to Buyout Negotiations.** Prior to commencing
25 Buyout Negotiations for a rental unit, the landlord shall provide each tenant in that rental unit a

1 written disclosure, on a form developed and authorized by the Rent Board, that shall include
2 the following:

3 * * * *

4 (9) Any other information required by the Rent Board consistent with the
5 purposes and provisions of this Section 37.9E; *and*

6 (10) A space for *each the* tenant to sign and write the date the landlord provided
7 the tenant with the disclosure; *and*

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

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

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

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

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

22 (3) The address of the rental unit that may be the subject of Buyout
23 Negotiations; and

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

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

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

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

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

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

10 (4) Include the following statements in a size equal to at least 14-point type:
11 "Under Section 1396-(e)(4) of San Francisco's Subdivision Code, a property owner may not
12 convert a building into a condominium where: (A) a senior, disabled, or catastrophically ill
13 tenant has vacated a unit under a buyout agreement after October 31, 2014, or (B) two or
14 more tenants who are not senior, disabled, or catastrophically ill have vacated units under
15 buyout agreements, if the agreements were entered after October 31, 2014 and within the ten
16 years prior to the condominium conversion application. A 'senior' is a person who is 60 years
17 or older and has been residing in the unit for ten years or more at the time of the Buyout
18 Agreement; a 'disabled' tenant is a person who is disabled under the Americans with
19 Disabilities Act (Title 42 United States Code Section 12102) and has been residing in the unit
20 for ten years or more at the time of Buyout Agreement; and a 'catastrophically ill' tenant is a
21 person who is disabled under the Americans with Disabilities Act (Title 42 United States Code
22 Section 12102) and who is suffering from a life threatening illness and has been residing in
23 the unit for five years or more at the time of the Buyout Agreement. Do you believe that you
24 are senior, disabled, or catastrophically ill as those terms are defined above? Yes ____ No
25 ____ I don't know ____ I prefer not say ____." The question listed in this subsection (f)(4)

1 shall appear in the Buyout Agreement once for each tenant who is a party to the Buyout
2 Agreement. Next to each question shall be a line for the tenant to affix his or her initials.

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

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

17 (h) **Filing of Buyout Agreements.** The landlord shall file a copy of the Buyout
18 Agreement with the Rent Board no sooner than the 46th day after the Buyout Agreement is
19 executed by all parties, and no ~~more~~later than 59 days after the agreement is executed by all
20 parties. After the 59th day, either the landlord or the tenant may file a copy of the Buyout Agreement.
21 However, regardless of whether any party files the Buyout Agreement after the 59th day, if the landlord
22 had not filed a copy by the 59th day, any provision of the Buyout Agreement in which the tenant waived
23 their rights or released claims shall not be effective and shall be void at the option of the tenant, and
24 the tenant shall be entitled to all remedies authorized by law; provided, however, that said remedies
25

1 shall not include the displacement of a subsequent tenant in the unit. Buyout Agreements
2 rescinded under subsection (g) need not be filed with the Rent Board.

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

12 * * * *

13
14 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the "Note" that appears under
19 the official title of the ordinance.

20
21 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word
22 of this ordinance, or any application thereof to any person or circumstance, is held to be
23 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
24 shall not affect the validity of the remaining portions or applications of the ordinance. The
25 Board of Supervisors hereby declares that it would have passed this ordinance and each and

1 every section, subsection, sentence, clause, phrase, and word not declared invalid or
2 unconstitutional without regard to whether any other portion of this ordinance or application
3 thereof would be subsequently declared invalid or unconstitutional.
4

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

11 Section 7. Effective and Operative Dates.

12 (a) This ordinance shall become effective 30 days after enactment. Enactment
13 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or
14 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors
15 overrides the Mayor's veto of the ordinance.

16 (b) This ordinance shall become operative on March 1, 2020.
17

18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: 
21 MANU PRADHAN
22 Deputy City Attorney

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24
25

LEGISLATIVE DIGEST

[Administrative Code - Tenant Buyout Agreements]

Ordinance amending the Administrative Code to classify certain types of unlawful detainer settlement agreements as “Buyout Agreements;” require the Rent Board to provide more information on the disclosure form that landlords must give to tenants before buyout negotiations commence; require landlords to give the disclosure form to tenants a certain number of days before the Buyout Agreement is executed and to verify to the Rent Board that the disclosures were provided; and allow a tenant to invalidate any provision of the Buyout Agreement in which the tenant waived their rights if the landlord did not timely file the Buyout Agreement with the Rent Board.

Existing Law

Administrative Code Section 37.9E (“the Buyout Ordinance”) regulates how landlords and tenants negotiate and enter into tenant buyout agreements. A “Buyout Agreement” is defined to mean an agreement wherein the landlord pays the tenant money or other consideration to vacate the rental unit, but does not include agreements to settle pending unlawful detainer actions.

The Buyout Ordinance includes the following requirements: (1) the landlord must provide the tenant certain written disclosures before commencing buyout negotiations; (2) the landlord must verify to the Rent Board that it has provided the disclosures, and must retain a record of the date it provided the disclosures for five years; (3) the actual buyout agreement must also contain certain disclosures and must be signed by both parties; (4) the tenant has the option to rescind the agreement within 45 days after the date of signing; and (5) starting on the 46th day after the date of signing, the landlord has two weeks (i.e., until the 59th day) to file a copy of the final buyout agreement with the Rent Board.

Amendments to Current Law

The proposed ordinance would modify the Buyout Ordinance in the following ways:

- The term “Buyout Agreement” would be broadened to include agreements to settle unlawful detainer actions filed within 120 days after buyout negotiations started.
- The Rent Board would have to update the tenant disclosure form to include information regarding the impact of a buyout agreement on a tenant’s eligibility for the City’s affordable housing programs.
- The landlord’s verification to the Rent Board would have to show the date the landlord provided the tenant the disclosure form and the method of service used (e.g., hand

delivery, email, regular mail), and the landlord would need to retain a record of this information for five years.

- After starting buyout negotiations, the landlord and tenant would have to allow at least 30 days to elapse before the final agreement could be executed.
- If the landlord does not comply with its obligation to file a copy of the buyout agreement with the Rent Board within 59 days after the agreement was executed, any provision of the agreement in which the tenant waived their rights or released claims would be voidable at the option of the tenant (but the tenant's remedies would not include displacement of a subsequent tenant in the unit).

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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Robert Collins, Executive Director, Rent Board
Tom Hui, Director, Department on Building Inspection
Mohammed Nuru, Director, Public Works

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: December 31, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Ronen on December 17, 2019:

File No. 191281

Ordinance amending the Administrative Code to classify certain types of unlawful detainer settlement agreements as "Buyout Agreements;" require the Rent Board to provide more information on the disclosure form that landlords must give to tenants before buyout negotiations commence; require landlords to give the disclosure form to tenants a certain number of days before the Buyout Agreement is executed and to verify to the Rent Board that the disclosures were provided; and allow a tenant to invalidate any provision of the Buyout Agreement in which the tenant waived their rights if the landlord did not timely file the Buyout Agreement with the Rent Board.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: erica.major@sfgov.org.

c: William Strawn, Department of Building Inspection
Patty Lee, Department of Building Inspection
David Steinberg, Public Works
Jeremy Spitz, Public Works
Jennifer Blot, Public Works
John Thomas, Public Works
Lena Liu, Public Works

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2019 DEC 17 PM 5:58
Time Stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Ronen; Preston, Fewer, Haney, Peskin

Subject:

[Administrative Code - Tenant Buyout Agreements]

The text is listed:

Ordinance amending the Administrative Code to classify certain types of unlawful detainer settlement agreements as "Buyout Agreements," require the Rent Board to provide more information on the disclosure form that landlords must give to tenants before buyout negotiations commence, require landlords to give the disclosure form to tenants a certain number of days before the Buyout Agreement is executed and to verify to the Rent Board that the disclosures were provided, and allow a tenant to invalidate any provision of the Buyout Agreement in which the tenant waived their rights if the landlord did not timely file the Buyout Agreement with the Rent Board.

Signature of Sponsoring Supervisor:

Will Rone

For Clerk's Use Only