

1 [~~Residential Rent Ordinance: Prohibiting owner move-in evictions of households with a child~~
2 ~~under the age of 18 families with children; and changing the definition of "disabled" tenants~~
3 ~~protected from owner move-in evictions.]~~

4 **Draft Ordinance amending Administrative Code Chapter 37 "Residential Rent**
5 **Stabilization and Arbitration Ordinance" by amending Section 37.9(i) to prohibit owner**
6 **move-in evictions of families with children, where a member of the household where**
7 **any tenant is under the age of 18 and a member of a household which has resided in**
8 **the unit for at least 12 months; and changing the definition of "disabled" tenants**
9 **protected from owner move-in evictions to be the definition in Government Code**
10 **Section 12955.3, in place of the current definition that is tied to federal Supplemental**
11 **Security Income and California State Supplemental Program (SSI/SSP) definitions.**

12 NOTE: Additions are *single-underline italics Times New Roman font*;
13 deletions are *strike-through italics Times New Roman font*.
14 Board amendment additions are double-underlined Arial font;
15 Board amendment deletions are ~~strikethrough Arial font~~.

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

17 Section 1. The San Francisco Administrative Code is hereby amended by amending
18 Section 37.9, to read as follows:

19 SEC. 37.9. EVICTIONS.

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

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

23 (1) The tenant:

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

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

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

9 (B) Habitually pays the rent late; or

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

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

16 (A) Provided that notwithstanding any lease provision to the contrary, a landlord shall
17 not endeavor to recover possession of a rental unit as a result of subletting of the rental unit
18 by the tenant if the landlord has unreasonably withheld the right to sublet following a written
19 request by the tenant, so long as the tenant continues to reside in the rental unit and the
20 sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to
21 respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written
22 request, the tenant's request shall be deemed approved by the landlord.

23 (B) Provided further that where a rental agreement or lease provision limits the
24 number of occupants or limits or prohibits subletting or assignment, a landlord shall not
25 endeavor to recover possession of a rental unit as a result of the addition to the unit of a

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

14 (i) Two persons in a studio unit, three persons in a one-bedroom unit, four persons in
15 a two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four-bedroom
16 unit; or

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

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

24 (4) The tenant is using or permitting a rental unit to be used for any illegal purpose; or
25

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

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

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

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

12 (i) For the landlord's use or occupancy as his or her principal residence for a period of
13 at least 36 continuous months;

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

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

1 least 10 percent. For purposes of this Section 37.9(a)(8) only, as to landlords who become
2 owners of record of the rental unit after February 21, 1991, the term "landlord" shall be
3 defined as an owner of record of at least 25 percent interest in the property or, for Section
4 37.9(a)(8)(i) only, two individuals registered as domestic partners as defined in San Francisco
5 Administrative Code Sections 62.1 through 62.8 whose combined ownership of record is at
6 least 25 percent.

7 (iv) A landlord may not recover possession under this Section 37.9(a)(8) if a
8 comparable unit owned by the landlord is already vacant and is available, or if such a unit
9 becomes vacant and available before the recovery of possession of the unit. If a comparable
10 unit does become vacant and available before the recovery of possession, the landlord shall
11 rescind the notice to vacate and dismiss any action filed to recover possession of the
12 premises. Provided further, if a noncomparable unit becomes available before the recovery of
13 possession, the landlord shall offer that unit to the tenant at a rent based on the rent that the
14 tenant is paying, with upward or downward adjustments allowed based upon the condition,
15 size, and other amenities of the replacement unit. Disputes concerning the initial rent for the
16 replacement unit shall be determined by the Rent Board. It shall be evidence of a lack of good
17 faith if a landlord times the service of the notice, or the filing of an action to recover
18 possession, so as to avoid moving into a comparable unit, or to avoid offering a tenant a
19 replacement unit.

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

24 (vi) Once a landlord has successfully recovered possession of a rental unit pursuant
25 to Section 37.9(a)(8)(i), then no other current or future landlords may recover possession of

1 any other rental unit in the building under Section 37.9(a)(8)(i). It is the intention of this
2 Section that only one specific unit per building may be used for such occupancy under Section
3 37.9(a)(8)(i) and that once a unit is used for such occupancy, all future occupancies under
4 Section 37.9(a)(8)(i) must be of that same unit, provided that a landlord may file a petition with
5 the Rent Board, or at the landlord's option, commence eviction proceedings, claiming that
6 disability or other similar hardship prevents him or her from occupying a unit which was
7 previously occupied by the landlord.

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

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

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

23 (11) The landlord seeks in good faith to remove temporarily the unit from housing use
24 in order to be able to carry out capital improvements or rehabilitation work and has obtained
25 all the necessary permits on or before the date upon which notice to vacate is given, and does

1 so without ulterior reasons and with honest intent. Any tenant who vacates the unit under such
2 circumstances shall have the right to reoccupy the unit at the prior rent adjusted in
3 accordance with the provisions of this Chapter. The tenant will vacate the unit only for the
4 minimum time required to do the work. On or before the date upon which notice to vacate is
5 given, the landlord shall advise the tenant in writing that the rehabilitation or capital
6 improvement plans are on file with the Central Permit Bureau of the Department of Building
7 Inspection and that arrangements for reviewing such plans can be made with the Central
8 Permit Bureau. In addition to the above, no landlord shall endeavor to recover possession of
9 any unit subject to a RAP loan as set forth in Section 37.2(m) of this Chapter except as
10 provided in Section 32.69 of the San Francisco Administrative Code. The tenant shall not be
11 required to vacate pursuant to this Section 37.9(a)(11), for a period in excess of three months;
12 provided, however, that such time period may be extended by the Board or its Administrative
13 Law Judges upon application by the landlord. The Board shall adopt rules and regulations to
14 implement the application procedure. Any landlord who seeks to recover possession under
15 this Section 37.9(a)(11) shall pay relocation expenses as provided in Section 37.9C or

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

24 (13) The landlord wishes to withdraw from rent or lease all rental units within any
25 detached physical structure and, in addition, in the case of any detached physical structure

1 containing three or fewer rental units, any other rental units on the same lot, and complies in
2 full with Section 37.9A with respect to each such unit; provided, however, that guestrooms or
3 efficiency units within a residential hotel, as defined in Section 50519 of the Health and Safety
4 Code, may not be withdrawn from rent or lease if the residential hotel has a permit of
5 occupancy issued prior to January 1, 1990, and if the residential hotel did not send a notice of
6 intent to withdraw the units from rent or lease (Administrative Code Section 37.9A(f),
7 Government Code Section 7060.4(a)) that was delivered to the Rent Board prior to January 1,
8 2004; or

9 (14) The landlord seeks in good faith to temporarily recover possession of the unit
10 solely for the purpose of effecting lead remediation or abatement work, as required by San
11 Francisco Health Code Articles 11 or 26. The tenant will vacate the unit only for the minimum
12 time required to do the work. The relocation rights and remedies, established by San
13 Francisco Administrative Code Chapter 72, including but not limited to, the payment of
14 financial relocation assistance, shall apply to evictions under this Section 37.9(a)(14).

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

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

21 (c) A landlord shall not endeavor to recover possession of a rental unit unless at least
22 one of the grounds enumerated in Section 37.9(a) or (b) above is the landlord's dominant
23 motive for recovering possession and unless the landlord informs the tenant in writing on or
24 before the date upon which notice to vacate is given of the grounds under which possession is
25 sought and that advice regarding the notice to vacate is available from the Residential Rent

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

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

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

1 (f) Whenever a landlord wrongfully endeavors to recover possession or recovers
2 possession of a rental unit in violation of Sections 37.9 and/or 37.10 as enacted herein, the
3 tenant or Board may institute a civil proceeding for injunctive relief, money damages of not
4 less than three times actual damages, (including damages for mental or emotional distress),
5 and whatever other relief the court deems appropriate. In the case of an award of damages
6 for mental or emotional distress, said award shall only be trebled if the trier of fact finds that
7 the landlord acted in knowing violation of or in reckless disregard of Section 37.9 or 37.10A
8 herein. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant
9 to order of the court. The remedy available under this Section 37.9(f) shall be in addition to
10 any other existing remedies which may be available to the tenant or the Board.

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

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

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

22 (1) A landlord may not recover possession of a unit from a tenant under Section
23 37.9(a)(8) if the landlord has or receives notice, any time before recovery of possession, that
24 any tenant in the rental unit:
25

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

3 (B) Is disabled within the meaning of Section 37.9(i)(1)(B)(i) and has been residing in
4 the unit for 10 years or more, or is catastrophically ill within the meaning of Section
5 37.9(i)(1)(B)(ii) and has been residing in the unit for five years or more:

6 (i) A "disabled" tenant is defined for purposes of this Section 37.9(i)(1)(B) as a person
7 who is disabled or blind within the meaning of the federal Supplemental Security
8 Income/California State Supplemental Program (SSI/SSP), and who is determined by
9 SSI/SSP to qualify for that program or who satisfies such requirements through any other
10 method of determination as approved by the Rent Board ~~within the meaning of Section~~
11 ~~12955.3 of the California Government Code;~~

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

15 (C) Is under the age of 18 and a member of a household which has resided in the unit for at
16 least 12 months.

17 (2) The foregoing provisions of Sections 37.9(i)(1)(A) and (B) and (C) shall not apply
18 where there is only one rental unit owned by the landlord in the building, or where each of the
19 rental units owned by the landlord in the same building where the landlord resides (except the
20 unit actually occupied by the landlord) is occupied by a tenant otherwise protected from
21 eviction by Sections 37.9(i)(1)(A) or (B) or (C) and where the landlord's qualified relative who
22 will move into the unit pursuant to Section 37.9(a)(8) is 60 years of age or older or will be
23 moving in with a household member under the age of 18.

24 (3) The provisions established by this Section 37.9(i) include, but are not limited to,
25 any rental unit where a notice to vacate/quit has been served as of the date this amendment

1 takes effect but where the rental unit has not yet been vacated or an unlawful detainer
2 judgment has not been issued.

3 (4) Within 30 days of personal service by the landlord of a written request, or, at the
4 landlord's option, a notice of termination of tenancy under Section 37.9(a)(8), the tenant must
5 submit a statement, with supporting evidence, to the landlord if the tenant claims to be a
6 member of one of the classes protected by Section 37.9(i). The written request or notice shall
7 contain a warning that a tenant's failure to submit a statement within the 30 day period shall
8 be deemed an admission that the tenant is not protected by Section 37.9(i). The landlord shall
9 file a copy of the request or notice with the Rent Board within 10 days of service on the tenant.
10 A tenant's failure to submit a statement within the 30 day period shall be deemed an
11 admission that the tenant is not protected by Section 37.9(i). A landlord may challenge a
12 tenant's claim of protected status either by requesting a hearing with the Rent Board or, at the
13 landlord's option, through commencement of eviction proceedings, including service of a
14 notice of termination of tenancy. In the Rent Board hearing or the eviction action, the tenant
15 shall have the burden of proof to show protected status. No civil or criminal liability under
16 Section 37.9(e) or (f) shall be imposed upon a landlord for either requesting or challenging a
17 tenant's claim of protected status.

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

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

24 (1) Disclosure to Tenants By Seller of the Property. Before property containing rental
25 units subject to Section 37.9 may be sold, the owner/seller shall disclose to tenants of the

1 property the rights of tenants during and after the sale of the property. This disclosure shall be
2 in writing and shall include:

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

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

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

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

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

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

24 (2) Disclosure to Tenants by Purchaser of the Property. Within 30 days of acquiring
25 title to rental units subject to Section 37.9, the new purchaser/owner shall disclose to tenants

1 of the property the rights of tenants following this sale of the property. This disclosure shall be
2 in writing and shall include:

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

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

8 (C) A statement in bold type of at least 12 points that the rental agreements of tenants
9 cannot be materially changed solely because a new owner has purchased that property.

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

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

19

20

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

23 By: _____
24 MARIE C. BLITS
25 Deputy City Attorney