

28-09

FILE NO. 080822

ORDINANCE NO.

1 [Residential Rent Ordinance: Tenant Rights for Victims of Domestic Violence or Sexual
2 Assault or Stalking.]

3 **Ordinance amending Chapter 37 Residential Rent Stabilization and Arbitration**
4 **Ordinance by making Findings and amending Sections 37.2 and 37.9 to provide**
5 **protections for tenants who are victims of domestic violence or sexual assault or**
6 **stalking, including protection from evictions based on the actions of abusers or**
7 **stalkers, and confidentiality protections.**

8 Note: Additions are *single-underline italics Times New Roman font*;
9 deletions are *strikethrough italics Times New Roman font*.
10 Board amendment additions are double underlined Arial font.
11 Board amendment deletions are ~~strikethrough Arial font~~.

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

13 Section 1. The Board of Supervisors hereby makes the following Findings:

14 WHEREAS, Domestic violence is a widespread problem impacting one in three
15 households in the United States in all communities; and,

16 WHEREAS, Domestic Violence, sexual assault and stalking are primary threats to the
17 safety, health and welfare of women in San Francisco; and

18 WHEREAS, Domestic Violence is the leading cause of homicide for San Francisco
19 women; and

20 WHEREAS, Safe housing for domestic violence victims is a ~~basic victim's rights issue~~
21 essential for safe recovery; and

22 WHEREAS, Countless studies demonstrate that stable, safe housing is a public safety
23 issue, a critical element of ensuring the safety of domestic violence and stalking victims;

24 WHEREAS, Recent studies conclude that Domestic Violence is the second-leading
25 cause of homelessness among San Francisco women; and

1 WHEREAS, Landlords sometimes evict domestic violence, sexual assault or stalking
2 victims based upon complaints of noise, fighting, or repeated visits from the police to a
3 victim's residence even though the visits are the result of crimes committed against the victim;
4 and

5 WHEREAS, Domestic Violence, sexual assault or stalking victims should not lose their
6 housing because they are being abused and should not be forced to leave their homes in
7 order to report abuse; and

8 WHEREAS, San Francisco's domestic violence victims deserve as a class to receive
9 protection under the laws of our City; and

10 WHEREAS, The United States federal government and many other states, cities and
11 counties already have enacted comprehensive tenants' rights protections for victims of
12 domestic violence, sexual assault and stalking;

13 THEREFORE, The City and County of San Francisco enacts the following Ordinance
14 provisions.

15
16 Section 2. San Francisco Administrative Code Section 37.2 is hereby amended by
17 adding Subsection (w), to read as follows:

18 **SEC. 37.2. DEFINITIONS.**

19 (a) Base Rent.

20 (1) That rent which is charged a tenant upon initial occupancy plus any rent increase
21 allowable and imposed under this Chapter; provided, however, that base rent shall not include
22 increases imposed pursuant to Section 37.7, and base rent shall not include utility
23 passthroughs or water revenue bond passthroughs or general obligation bond passthroughs
24 pursuant to Sections 37.2(q), 37.3(a)(5)(B), and 37.3(a)(6). Base rent for tenants of RAP
25 rental units in areas designated on or after July 1, 1977, shall be that rent which was

1 established pursuant to Section 32.73-1 of the San Francisco Administrative Code. Rent
2 increases attributable to the City Administrator's amortization of an RAP loan in an area
3 designated on or after July 1, 1977, shall not be included in the base rent.

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

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

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

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

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

1 immediately prior to the expiration or termination of the tenant-based rental assistance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (o) Rehabilitation Work. Any rehabilitation or repair work done by the landlord with

1 regard to a rental unit, or to the common areas of the structure containing the rental unit,
2 which work was done in order to be in compliance with State or local law, or was done to
3 repair damage resulting from fire, earthquake or other casualty or natural disaster.

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

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

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

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

12 The term "rental units" shall not include:

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

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

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

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

14 (A) For purposes of Sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6, 37.9, 37.9A,
15 37.10A, 37.11A and 37.13, and the arbitration provisions of Sections 37.8 and 37.8A
16 applicable only to the provisions of Sections 37.3(a)(10)(A), the term "rental units" shall
17 include units occupied by recipients of tenant-based rental assistance where the tenant-based
18 rental assistance program does not establish the tenant's share of base rent as a fixed
19 percentage of a tenant's income, such as in the Section 8 voucher program and the "Over-
20 FMR Tenancy" program defined in 24 CFR Section 982.4;

21 (B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9, 37.9A,
22 37.10A, 37.11A and 37.13, the term "rental units" shall include units occupied by recipients of
23 tenant-based rental assistance where the rent payable by the tenant under the tenant-based
24 rental assistance program is a fixed percentage of the tenant's income; such as in the Section
25 8 certificate program and the rental subsidy program for the Housing Opportunities for

1 Persons with Aids ("HOPWA") program (42 U.S.C. Section 12901 et seq., as amended);

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

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

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

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

14 This Section 37.2(r)(4)(C) definition of "rental unit" shall apply to any unit where the
15 qualifying tenant (see Section 37.2(r)(4)(C)(i)) is in possession of the unit on or after the
16 effective date of this ordinance (Ord. No. 281-06), including but not limited to any unit where
17 the tenant has been served with a notice to quit but has not vacated the unit and there is no
18 final judgment against the tenant for possession of the unit as of the effective date of this
19 ordinance (Ord. No. 281-06).

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

25 (6) Dwelling units in a building which has undergone substantial rehabilitation after the

1 effective date of this ordinance; provided, however, that RAP rental units are not subject to
2 this exemption.

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

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

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

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

22 (w) *Victims of Domestic Violence, Sexual Assault, or Stalking.*

23 (1) *"Victim of domestic violence or sexual assault or stalking" means any person who has*
24 *been, or is currently being, subjected to one or more of the following:*

25 (A) *"Domestic violence," as defined in Section 13700 of the Penal Code or Section 6211 of*

1 the Family Code;

2 (B) "Sexual assault" as defined in Sections 261, 261.5, 262, 286, 288a, or 289 of the Penal
3 Code; or

4 (C) "Stalking," as defined in Section 646.9 of the Penal Code or Section 1708.7 of the Civil
5 Code.

6 (2) "Protective order" means a temporary restraining order or emergency protective order
7 issued pursuant to Part 3 (commencing with Section 6240) or Part 4 (commencing with Section 6300)
8 or Part 5 (commencing with Section 6400) of the Family Code, Section 136.2 of the Penal Code,
9 Section 527.6 of the Code of Civil Procedure, or Section 213.5 of the Welfare and Institutions Code,
10 that protects the tenant or household member from further domestic violence, sexual assault, or
11 stalking.

12 (3) "Qualified third party" means a peace officer or victim advocate employed by a state or
13 local law enforcement agency, or Licensed Clinical Social Worker (LCSW) or Marriage and
14 Family Therapist (MFT), acting in his or her official capacity;

15 (4) "Written documentation from a qualified third party" means a document signed and
16 dated within the preceding 60 days by a qualified third party stating all of the following:

17 (A) That the tenant notified the qualified third party that he or she was a victim of domestic
18 violence or sexual assault or stalking;

19 (B) The time, date, and location of the act or acts that constitute the domestic violence or
20 sexual assault or stalking; and

21 (C) That the tenant informed the qualified third party of the name of the alleged perpetrator
22 of the act or acts of domestic violence or sexual assault or stalking, if known to the victim.

23
24 Section 3. San Francisco Administrative Code Section 37.9 is hereby amended by
25 adding Subsections 37.9(a)(3.1) and (3.2), to read as follows:

1 **SEC. 37.9. EVICTIONS.**

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

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

5 (1) The tenant:

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

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

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

16 (B) Habitually pays the rent late; or

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

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

23 (A) Provided that notwithstanding any lease provision to the contrary, a landlord shall
24 not endeavor to recover possession of a rental unit as a result of subletting of the rental unit
25 by the tenant if the landlord has unreasonably withheld the right to sublet following a written

1 request by the tenant, so long as the tenant continues to reside in the rental unit and the
2 sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to
3 respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written
4 request, the tenant's request shall be deemed approved by the landlord.

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

21 (i) Two persons in a studio unit, three persons in a one-bedroom unit, four persons in a
22 two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four-bedroom
23 unit; or

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

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

6 (3.1) Eviction Protection for Victims of Domestic Violence or Sexual Assault or Stalking:

7 (A) It shall be a defense to an action for possession of a unit under Subsection 37.9(a)(3) if
8 the court determines that:

9 (i) The tenant or the tenant's household member is a victim of an act or acts that constitute
10 domestic violence or sexual assault or stalking; and

11 (ii) The notice to vacate is substantially based upon the act or acts constituting domestic
12 violence or sexual assault or stalking against the tenant or a tenant's household member, including but
13 not limited to an action for possession based on complaints of noise, disturbances, or repeated
14 presence of police.

15 (B) Evidence Required. In making the determination under Section 37.9(a)(3.1)(A) the
16 court shall consider evidence, which may include but is not limited to:

17 (i) A copy of a temporary restraining order or emergency protective order issued pursuant to
18 Part 3 (commencing with Section 6240) or Part 4 (commencing with Section 6300) or Part 5
19 (commencing with Section 6400) of the Family Code, Section 136.2 of the Penal Code, Section 527.6 of
20 the Code of Civil Procedure, or Section 213.5 of the Welfare and Institutions Code, that protects the
21 tenant or tenant's household member from further domestic violence, sexual assault, or stalking.

22 And/or,

23 (ii) A copy of a written report by a peace officer employed by a state or local law enforcement
24 agency acting in his or her official capacity, stating that the tenant or tenant's household member has
25 filed a report alleging that he or she is a victim of domestic violence, sexual assault, or stalking.

1 And/or,

2 (iii) Other written documentation from a qualified third party of the acts constituting
3 domestic violence or sexual assault or stalking.

4 (C) Mutual Allegations of Abuse Between Parties. If two or more co-tenants are parties
5 seeking relief under Subsection 37.9(a)(3.1)(A), and each alleges that he or she was a victim of
6 domestic violence or sexual assault or stalking perpetrated by another co-tenant who is also a party,
7 the court may determine whether a tenant acted as the dominant aggressor in the acts constituting a
8 domestic violence or sexual assault or stalking offense. In making the determination, the court shall
9 consider the factors listed in Section 13701(b)(1) of the Penal Code. A tenant who the court determines
10 was the dominant aggressor in the acts constituting a domestic violence or sexual assault or stalking
11 offense is not entitled to relief under Subsection 37.9(a)(3.1)(A).

12 (D) Limitations on Relief. Unless the tenant or the tenant's household member has obtained
13 a protective order against the alleged abuser to vacate or stay from the unit as a result of acts
14 constituting domestic violence or sexual assault or stalking against the tenant or tenant's household
15 member, the tenant may not obtain relief under Subsection 37.9(a)(3.1) if:

16 (i) The tenant was granted relief under Subsection 37.9(a)(3.1) in an action for possession of
17 the unit within the previous five years; and

18 (ii) A subsequent action for possession of the unit has now been filed; and

19 (iii) The notice to vacate in this subsequent action for possession is substantially based upon
20 new continuing acts constituting domestic violence or sexual assault or stalking by the same person
21 alleged to be the abuser in the previous action for possession.

22 (E) Nothing in this Subsection 37.9(a)(3.1) shall be construed to affect the tenant's liability
23 for delinquent rent or other sums owed to the landlord, or the landlord's remedies in recovering
24 against the tenant for such sums.

25 (F) The provisions of Subsection 37.9(a)(3.1) are intended for use consistent with Civil

1 Code Section 1946.7.

2 (3.2) Confidentiality of Information Received from Victims of Domestic Violence or Sexual
3 Assault or Stalking. A landlord shall retain in strictest confidence all information that is received in
4 confidence from a tenant or a tenant's household member who is a victim of domestic violence or
5 sexual assault or stalking, regarding that domestic violence or sexual assault or stalking, except to the
6 extent that such disclosure (A) is necessary to provide for a reasonable accommodation for the victim,
7 or (B) is otherwise required pursuant to applicable federal, state or local law. The victim may
8 authorize limited or general release of any information otherwise deemed confidential under this
9 Subsection 37.9(a)(3.2).

10 Or,

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

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

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

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

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

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

25 (ii) For the use or occupancy of the landlord's grandparents, grandchildren, parents,

1 children, brother or sister, or the landlord's spouse, or the spouses of such relations, as their
2 principal place of residency for a period of at least 36 months, in the same building in which
3 the landlord resides as his or her principal place of residency, or in a building in which the
4 landlord is simultaneously seeking possession of a rental unit under Section 37.9(a)(8)(i). For
5 purposes of this Section 37.9(a)(8)(ii), the term spouse shall include domestic partners as
6 defined in San Francisco Administrative Code Sections 62.1 through 62.8.

7 (iii) For purposes of this Section 37.9(a)(8) only, as to landlords who become owners of
8 record of the rental unit on or before February 21, 1991, the term "landlord" shall be defined
9 as an owner of record of at least 10 percent interest in the property or, for Section 37.9(a)(8)(i)
10 only, two individuals registered as domestic partners as defined in San Francisco
11 Administrative Code Sections 62.1 through 62.8 whose combined ownership of record is at
12 least 10 percent. For purposes of this Section 37.9(a)(8) only, as to landlords who become
13 owners of record of the rental unit after February 21, 1991, the term "landlord" shall be
14 defined as an owner of record of at least 25 percent interest in the property or, for Section
15 37.9(a)(8)(i) only, two individuals registered as domestic partners as defined in San Francisco
16 Administrative Code Sections 62.1 through 62.8 whose combined ownership of record is at
17 least 25 percent.

18 (iv) A landlord may not recover possession under this Section 37.9(a)(8) if a
19 comparable unit owned by the landlord is already vacant and is available, or if such a unit
20 becomes vacant and available before the recovery of possession of the unit. If a comparable
21 unit does become vacant and available before the recovery of possession, the landlord shall
22 rescind the notice to vacate and dismiss any action filed to recover possession of the
23 premises. Provided further, if a noncomparable unit becomes available before the recovery of
24 possession, the landlord shall offer that unit to the tenant at a rent based on the rent that the
25 tenant is paying, with upward or downward adjustments allowed based upon the condition,

1 size, and other amenities of the replacement unit. Disputes concerning the initial rent for the
2 replacement unit shall be determined by the Rent Board. It shall be evidence of a lack of good
3 faith if a landlord times the service of the notice, or the filing of an action to recover
4 possession, so as to avoid moving into a comparable unit, or to avoid offering a tenant a
5 replacement unit.

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

10 (vi) Once a landlord has successfully recovered possession of a rental unit pursuant to
11 Section 37.9(a)(8)(i), then no other current or future landlords may recover possession of any
12 other rental unit in the building under Section 37.9(a)(8)(i). It is the intention of this Section
13 that only one specific unit per building may be used for such occupancy under Section
14 37.9(a)(8)(i) and that once a unit is used for such occupancy, all future occupancies under
15 Section 37.9(a)(8)(i) must be of that same unit, provided that a landlord may file a petition with
16 the Rent Board, or at the landlord's option, commence eviction proceedings, claiming that
17 disability or other similar hardship prevents him or her from occupying a unit which was
18 previously occupied by the landlord.

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

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

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

9 (11) The landlord seeks in good faith to remove temporarily the unit from housing use
10 in order to be able to carry out capital improvements or rehabilitation work and has obtained
11 all the necessary permits on or before the date upon which notice to vacate is given, and does
12 so without ulterior reasons and with honest intent. Any tenant who vacates the unit under such
13 circumstances shall have the right to reoccupy the unit at the prior rent adjusted in
14 accordance with the provisions of this Chapter. The tenant will vacate the unit only for the
15 minimum time required to do the work. On or before the date upon which notice to vacate is
16 given, the landlord shall advise the tenant in writing that the rehabilitation or capital
17 improvement plans are on file with the Central Permit Bureau of the Department of Building
18 Inspection and that arrangements for reviewing such plans can be made with the Central
19 Permit Bureau. In addition to the above, no landlord shall endeavor to recover possession of
20 any unit subject to a RAP loan as set forth in Section 37.2(m) of this Chapter except as
21 provided in Section 32.69 of the San Francisco Administrative Code. The tenant shall not be
22 required to vacate pursuant to this Section 37.9(a)(11), for a period in excess of three months;
23 provided, however, that such time period may be extended by the Board or its Administrative
24 Law Judges upon application by the landlord. The Board shall adopt rules and regulations to
25 implement the application procedure. Any landlord who seeks to recover possession under

1 this Section 37.9(a)(11) shall pay relocation expenses as provided in Section 37.9C or

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

10 (13) The landlord wishes to withdraw from rent or lease all rental units within any
11 detached physical structure and, in addition, in the case of any detached physical structure
12 containing three or fewer rental units, any other rental units on the same lot, and complies in
13 full with Section 37.9A with respect to each such unit; provided, however, that guestrooms or
14 efficiency units within a residential hotel, as defined in Section 50519 of the Health and Safety
15 Code, may not be withdrawn from rent or lease if the residential hotel has a permit of
16 occupancy issued prior to January 1, 1990, and if the residential hotel did not send a notice of
17 intent to withdraw the units from rent or lease (Administrative Code Section 37.9A(f),
18 Government Code Section 7060.4(a)) that was delivered to the Rent Board prior to January 1,
19 2004; or

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

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

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

7 (c) A landlord shall not endeavor to recover possession of a rental unit unless at least
8 one of the grounds enumerated in Section 37.9(a) or (b) above is the landlord's dominant
9 motive for recovering possession and unless the landlord informs the tenant in writing on or
10 before the date upon which notice to vacate is given of the grounds under which possession is
11 sought and that advice regarding the notice to vacate is available from the Residential Rent
12 Stabilization and Arbitration Board, before endeavoring to recover possession. A copy of all
13 notices to vacate except three-day notices to vacate or pay rent and a copy of any additional
14 written documents informing the tenant of the grounds under which possession is sought shall
15 be filed with the Board within 10 days following service of the notice to vacate. The District
16 Attorney shall determine whether the units set forth on the list compiled in accordance with
17 Section 37.6(k) are still being occupied by the tenant who succeeded the tenant upon whom
18 the notice was served. In cases where the District Attorney determines that Section 37.9(a)(8)
19 has been violated, the District Attorney shall take whatever action he deems appropriate
20 under this Chapter or under State law.

21 (d) No landlord may cause a tenant to quit involuntarily or threaten to bring any action
22 to recover possession, or decrease any services, or increase the rent, or take any other action
23 where the landlord's dominant motive is retaliation for the tenant's exercise of any rights under
24 the law. Such retaliation shall be a defense to any action to recover possession. In an action
25 to recover possession of a rental unit, proof of the exercise by the tenant of rights under the

1 law within six months prior to the alleged act of retaliation shall create a rebuttable
2 presumption that the landlord's act was retaliatory.

3 (e) It shall be unlawful for a landlord or any other person who willfully assists the
4 landlord to endeavor to recover possession or to evict a tenant except as provided in Section
5 37.9(a) and (b). Any person endeavoring to recover possession of a rental unit from a tenant
6 or evicting a tenant in a manner not provided for in Section 37.9(a) or (b) without having a
7 substantial basis in fact for the eviction as provided for in Section 37.9(a) shall be guilty of a
8 misdemeanor and shall be subject, upon conviction, to the fines and penalties set forth in
9 Section 37.10A. Any waiver by a tenant of rights under this Chapter except as provided in
10 Section 37.10A(g), shall be void as contrary to public policy.

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

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

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

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

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

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

11 or

12 (B) Is disabled within the meaning of Section 37.9(i)(1)(B)(i) and has been residing in
13 the unit for 10 years or more, or is catastrophically ill within the meaning of Section
14 37.9(i)(1)(B)(ii) and has been residing in the unit for five years or more:

15 (i) A "disabled" tenant is defined for purposes of this Section 37.9(i)(1)(B) as a person
16 who is disabled or blind within the meaning of the federal Supplemental Security
17 Income/California State Supplemental Program (SSI/SSP), and who is determined by
18 SSI/SSP to qualify for that program or who satisfies such requirements through any other
19 method of determination as approved by the Rent Board;

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

23 (2) The foregoing provisions of Sections 37.9(i)(1)(A) and (B) shall not apply where
24 there is only one rental unit owned by the landlord in the building, or where each of the rental
25 units owned by the landlord in the same building where the landlord resides (except the unit

1 actually occupied by the landlord) is occupied by a tenant otherwise protected from eviction by
2 Sections 37.9(i)(1)(A) or (B) and where the landlord's qualified relative who will move into the
3 unit pursuant to Section 37.9(a)(8) is 60 years of age or older.

4 (3) The provisions established by this Section 37.9(i) include, but are not limited to, any
5 rental unit where a notice to vacate/quit has been served as of the date this amendment takes
6 effect but where the rental unit has not yet been vacated or an unlawful detainer judgment has
7 not been issued.

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


23 (5) This Section 37.9(i) is severable from all other sections and shall be of no force or
24 effect if any temporary moratorium on owner/relative evictions adopted by the Board of
25 Supervisors after June 1, 1998 and before October 31, 1998 has been invalidated by the

1 courts in a final decision.

2
3 Section 4. Severability.

4 If any provision or clause of this Ordinance No. _____ or the application thereof to any person
5 or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent
6 jurisdiction, such invalidity shall not affect other Ordinance No. _____ provisions, and clauses of this
7 Ordinance No. 28-09 are declared to be severable.

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

12 By: 
13 MARIE CORLETT BLITS
14 Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 080822

Date Passed:

Ordinance amending Chapter 37 Residential Rent Stabilization and Arbitration Ordinance by making findings and amending Sections 37.2 and 37.9 to provide protections for tenants who are victims of domestic violence or sexual assault or stalking, including protection from evictions based on the actions of abusers or stalkers, and confidentiality protections.

February 3, 2009 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

February 3, 2009 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

February 10, 2009 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

Excused: 1 - Alioto-Pier

File No. 080822

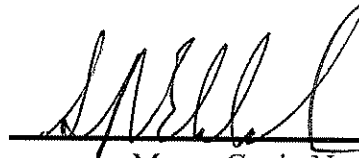
I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on February 10, 2009 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board

2/20/09

Date Approved



Mayor Gavin Newsom

FOR