

BOARD of SUPERVISORS



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MEMORANDUM

TO: Robert Collins, Executive Director, Rent Board
Olson Lee, Director, Mayor's Office of Housing and Community Development
Nadia Sesay, Interim Executive Director, Office of Community Investment and Infrastructure

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

DATE: May 23, 2017

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed substitute legislation, introduced by Supervisor Farrell on May 16, 2017:

File No. 170349

Ordinance amending the Administrative Code to require a landlord seeking to recover possession of a rental unit based on an owner move-in ("OMI") or relative move-in ("RMI") to provide a declaration under penalty of perjury stating that the landlord intends to occupy the unit for use as the principal place of residence of the landlord or the landlord's relative for at least 36 continuous months; require a landlord seeking to recover possession of a rental unit based on an OMI or RMI to provide the tenant with a form prepared by the Rent Board to be used to advise the Rent Board of any change in address; require a landlord to file annual documentation with the Rent Board for three years after an OMI or RMI showing whether the landlord or relative is occupying the unit as his or her principal place of residence; require the Rent Board to annually notify the unit occupant of the maximum rent for the unit for three years after an OMI or RMI; and extend the statute of limitations for wrongful eviction claims based on an unlawful OMI or RMI from one year to three years.

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: alisa.somera@sfgov.org.

c: Eugene Flannery, Mayor's Office of Housing and Community Development
Kate Hartley, Mayor's Office of Housing and Community Development
Amy Chan, Mayor's Office of Housing and Community Development

1 [Administrative Code - Owner Move-In Reporting Requirements]

2
3 **Ordinance amending the Administrative Code to require a landlord seeking to recover**
4 **possession of a rental unit based on an owner move-in (“OMI”) or relative move-in**
5 **(“RMI”) to provide a declaration under penalty of perjury stating that the landlord**
6 **intends to occupy the unit for use as the principal place of residence of the landlord or**
7 **the landlord’s relative for at least 36 continuous months; require a landlord seeking to**
8 **recover possession of a rental unit based on an OMI or RMI to provide the tenant with a**
9 **form prepared by the Rent Board to be used to advise the Rent Board of any change in**
10 **address; require a landlord to file annual documentation with the Rent Board for three**
11 **years after an OMI or RMI showing whether the landlord or relative is occupying the**
12 **unit as his or her principal place of residence; require the Rent Board to annually notify**
13 **the unit occupant of the maximum rent for the unit for three years after an OMI or RMI;**
14 **and extend the statute of limitations for wrongful eviction claims based on an unlawful**
15 **OMI or RMI from one year to three years.**

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

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

25 Section 1. The Administrative Code is hereby amended by revising Sections 37.9 and
37.9B, to read as follows:

1 **SEC. 37.9. EVICTIONS.**

2 Notwithstanding Section 37.3, this Section 37.9 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 * * * *

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

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

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

17 * * * *

18 (v) The notice to vacate shall include a form prepared by the Rent Board that the tenant
19 can use to keep the Rent Board apprised of any future change in address, and a declaration executed by
20 the landlord under penalty of perjury stating that the landlord seeks to recover possession of the unit in
21 good faith, without ulterior reasons and with honest intent, for use or occupancy as the principal
22 residence of the landlord or the landlord's relative (identified by name and relation to the landlord),
23 for a period of at least 36 continuous months, as set forth in subsections 37.9(a)(8)(i) and (ii). The
24 landlord shall file the notice with the Rent Board pursuant to Section 37.9(c). Evidence of any of the
25 following shall create a rebuttable presumption that the landlord has not acted in good faith, unless

1 and until evidence is introduced that would support a finding that the landlord has acted in good faith,
2 in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from
3 the evidence and without regard to the presumption: (1) the landlord has refused to file the notice with
4 the Rent Board, (2) It shall be rebuttably presumed that the landlord has not acted in good faith if the
5 landlord or relative for whom the tenant was evicted ~~did~~ does not move into the rental unit
6 within three months after the landlord recovered possession and occupy said unit as that person's
7 principal residence for a minimum of 36 consecutive months after moving in, or (3) the landlord
8 rented the unit to a new tenant at a rent greater than that which would have been the rent had the
9 tenant who had been required to vacate remained in continuous occupancy and the rental unit
10 remained subject to this Chapter 37 as provided in Section 37.9B.

11 * * * *

12 (vii) A landlord who has recovered possession of a unit pursuant to Section 37.9(a)(8)
13 must complete a statement of occupancy under penalty of perjury on a form to be prepared by the Rent
14 Board. The landlord shall file the statement of occupancy with the Rent Board three months after
15 recovery of possession of the unit, and shall file updated statements of occupancy 12 months, 24
16 months, and 36 months after the recovery of possession of the unit. The statement, including the
17 updates, shall identify whether the unit is (1) occupied as the principal place of residence of the
18 landlord or the relative (identified by name and relation to the landlord) for whom the tenant was
19 evicted, (2) occupied by another person, or (3) unoccupied. If the unit is occupied by a person other
20 than the landlord or relative for whom the tenant was evicted, the statement of occupancy shall also
21 disclose the current rent for the unit; and the Rent Board shall make all reasonable efforts to send the
22 displaced tenant a copy of the statement of occupancy within 30 days of the date of filing, or a notice
23 that the landlord did not file a statement of occupancy if no statement of occupancy was filed. If the
24 unit is occupied by the landlord or the relative for whom the tenant was evicted, the landlord shall also
25 simultaneously file with the Rent Board at least two forms of documentation in which the unit is listed

1 as the landlord or relative's place of residence. Acceptable forms of this documentation shall include
2 at least two of the following categories: (1) current utility services contract or utility billing records
3 from within 45 days of the date of filing; (2) current motor vehicle registration and insurance policy for
4 the vehicle; (3) current homeowner's or renter's insurance policy; (4) correspondence from within 45
5 days of the date of filing from any government agency, including federal, state, and local taxing
6 authorities; (5) current voter registration; (6) current driver's license; (7) proof that the individual has
7 obtained a homeowner's exemption from property taxes for the unit; or (8) any other credible
8 documentary evidence showing that the landlord or relative actually occupies the rental unit as his or
9 her principal place of residence. Evidence that the landlord did not timely file a statement of
10 occupancy and supporting documentation with the Rent Board shall create a rebuttable presumption
11 that the landlord did not recover possession of the unit in good faith, unless and until evidence is
12 introduced that would support a finding that the landlord did recover possession of the unit in good
13 faith, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact
14 from the evidence and without regard to the presumption.

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

19 * * * *

20 (f) Whenever a landlord wrongfully endeavors to recover possession or recovers
21 possession of a rental unit in violation of Sections 37.9 and/or 37.10~~A~~ as enacted herein, the
22 tenant or Rent Board may institute a civil proceeding for injunctive relief, money damages of
23 not less than three times actual damages, (including damages for mental or emotional
24 distress as specified below), and whatever other relief the court deems appropriate. If the
25 landlord has recovered possession pursuant to Section 37.9(a)(8), such action shall be brought no later

1 than three years after the date of recovery of possession. In the case of an award of damages for
2 mental or emotional distress, said award shall only be trebled if the trier of fact finds that the
3 landlord acted in knowing violation of or in reckless disregard of Section 37.9 or 37.10A
4 herein. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant
5 to order of the court. The remedy available under this Section 37.9(f) shall be in addition to
6 any other existing remedies which may be available to the tenant or the Board.

7 * * * *

8
9 **SEC. 37.9B. TENANT RIGHTS IN EVICTIONS UNDER SECTION 37.9(a)(8).**

10 (a) Any rental unit which a tenant vacates after receiving a notice to quit based on
11 Section 37.9(a)(8), and which is subsequently no longer occupied as a principal residence by
12 the landlord or the landlord's grandparent, parent, child, grandchild, brother, sister, or the
13 landlord's spouse, or the spouses of such relations must, if offered for rent during the three-
14 year period following service of the notice to quit under Section 37.9(a)(8), be rented in good
15 faith at a rent not greater than that which would have been the rent had the tenant who had
16 been required to vacate remained in continuous occupancy and the rental unit remained
17 subject to this Chapter 37. If it is asserted that a rent increase could have taken place during
18 the occupancy of the rental unit by the landlord if the rental unit had been subjected to this
19 Chapter, the landlord shall bear the burden of proving that the rent could have been legally
20 increased during the period. If it is asserted that the increase is based in whole or in part upon
21 any grounds other than that set forth in Section 37.3(a)(1), the landlord must petition the Rent
22 Board pursuant to the procedures of this Chapter. Displaced tenants shall be entitled to
23 participate in and present evidence at any hearing held on such a petition. Tenants displaced
24 pursuant to Section 37.9(a)(8) shall make all reasonable efforts to keep the Rent Board
25 apprised of their current address. The Rent Board shall provide notice of any proceedings

1 before the Rent Board to the displaced tenant at the last address provided by the tenant. No
2 increase shall be allowed on account of any expense incurred in connection with the
3 displacement of the tenant.

4 * * * *

5 (e) Within 30 days after the effective date of a written notice to vacate that is filed with
6 the Rent Board under Section 37.9B(c) the Rent Board shall record a notice of constraints with
7 the County Recorder identifying each unit on the property that is the subject of the Section
8 37.9B(c) notice to vacate, stating the nature and dates of applicable restrictions under
9 Sections 37.9(a)(8) and 37.9B. The Rent Board shall also send a notice to the unit that states the
10 maximum rent for that unit under Sections 37.9(a)(8) and 37.9B, and shall send an updated notice to
11 the unit 12 months, 24 months, and 36 months thereafter, or within 30 days of such date. If a notice of
12 constraints is recorded but the tenant does not vacate the unit, the landlord may apply to the
13 Rent Board for a rescission of the recorded notice of constraints. The Rent Board shall not be
14 required to send any further notices to the unit pursuant to this subsection (e) if the constraints on the
15 unit are rescinded.

16
17 Section 2. Effective Date. This ordinance shall become effective 30 days after
18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
19 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
20 of Supervisors overrides the Mayor's veto of the ordinance.

21
22 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
23 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
24 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
25 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment


1 additions, and Board amendment deletions in accordance with the "Note" that appears under
2 the official title of the ordinance.

3

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

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By: 
8 MANU PRADHAN
9 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Substituted, 5/16/2017)

[Administrative Code - Owner Move-In Reporting Requirements]

Ordinance amending the Administrative Code to require a landlord seeking to recover possession of a rental unit based on an owner move-in (“OMI”) or relative move-in (“RMI”) to provide a declaration under penalty of perjury stating that the landlord intends to occupy the unit for use as the principal place of residence of the landlord or the landlord’s relative for at least 36 continuous months; require a landlord seeking to recover possession of a rental unit based on an OMI or RMI to provide the tenant with a form prepared by the Rent Board to be used to advise the Rent Board of any change in address; require a landlord to file annual documentation with the Rent Board for three years after an OMI or RMI showing whether the landlord or relative is occupying the unit as his or her principal place of residence; require the Rent Board to annually notify the unit occupant of the maximum rent for the unit for three years after an OMI or RMI; and extend the statute of limitations for wrongful eviction claims based on an unlawful OMI or RMI from one year to three years.

Existing Law

The City’s Residential Rent Stabilization and Arbitration Ordinance allows a landlord to recover possession of a rental unit if the landlord has a good faith intent to occupy the rental unit as its principal residence for a period of at least 36 continuous months (an “Owner Move-In,” or “OMI”). Under certain conditions, a landlord can also recover a rental unit based on the landlord’s good faith intent to use the unit as the principal residence of the landlord’s family members for a period of at least 36 continuous months (a “Relative Move-In,” or “RMI”).

A landlord formally initiates the OMI or RMI process by serving the tenant a notice to vacate, and must then file a copy of the notice to vacate with the Rent Board. This filing triggers the Rent Board’s recording of a three-year notice of constraints on the unit (among other things). If a landlord offers a unit for rent during the three-year period following service of a notice to vacate, the landlord must offer the unit in good faith at a rent not greater than the rent the original tenant would have been required to pay had the original tenant remained in continuous occupancy of the unit.

If the OMI or RMI leads to an unlawful detainer action, it falls to a court to determine issues such as whether the landlord served the notice to vacate, and whether the landlord satisfies the underlying requirement of having a good faith intent to occupy the unit as the landlord or the relative’s principal residence for a period of 36 continuous months.

Landlords are not currently required to report to the Rent Board regarding the use of a rental unit following an OMI or RMI. A tenant who has been evicted due to an OMI or RMI may sue

for wrongful eviction if the tenant comes to believe that the eviction was unlawful. A wrongful eviction action must be brought within one year after the recovery of possession of the unit.

Amendments to Current Law

The legislation would require the notice to vacate for an OMI or RMI to include a form prepared by the Rent Board that the tenant can use to advise the Rent Board of any change in address, and a declaration executed by the landlord under penalty of perjury stating that the landlord intends to recover possession of the unit in good faith for use as the principal residence of the landlord or the landlord's relative for a period of at least 36 continuous months.

The legislation would create a rebuttable presumption that the landlord did not perform the OMI or RMI in good faith, if (1) the landlord has refused to file the notice to vacate with the Rent Board; (2) the landlord or relative did not move into the unit within three months after the recovery of possession and then occupy the unit as their principal residence for at least 36 continuous months; or (3) the landlord within three years after service of the notice rented the unit to a new tenant at a rent greater than what the original tenant would have been required to pay had the original tenant remained in the unit. These rebuttable presumptions merely describe the initial burden of producing evidence in unlawful detainer and wrongful eviction actions. They are preliminary assumptions intended to facilitate the determination of whether a landlord has met the underlying requirement of good faith. They do not alter the burden of proof in such cases. Thus, if a landlord introduced evidence that would support a finding of good faith, the trier of fact would have to determine whether there was good faith based on all the evidence and without regard to the initial presumption.

The legislation would also require a landlord to file an annual "statement of occupancy" with the Rent Board for three years after recovery of possession for an OMI or RMI. The landlord would need to execute the statement of occupancy under penalty of perjury and identify whether the unit was occupied as the principal residence of the landlord or relative, and if so, also provide supporting documentation. If the unit was not occupied by the landlord or relative, the statement of occupancy would need to disclose the current rent for the unit. A landlord's failure to file a statement of occupancy (and supporting documentation, if applicable) would create a rebuttable presumption of a lack of good faith, similar to the presumption discussed above.

The Rent Board would be required to send the original tenant a copy of each statement of occupancy filing. The Rent Board would also be required to send the new unit occupant a notice stating the maximum rent for the unit, for three years after the OMI or RMI.

Finally, the legislation would extend the statute of limitations for wrongful eviction actions following an OMI or RMI to three years after the landlord recovered possession of the unit.