

BOARD of SUPERVISORS



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MEMORANDUM

TO: Rich Hillis, Director, Planning Department
Eric D. Shaw, Director, Mayor's Office of Housing and Community Development
Christina Varner, Acting Executive Director, Rent Board

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

DATE: March 3, 2023

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Ronen on February 28, 2022.

File No. 230216

Ordinance amending the Administrative Code to expand the Displaced Tenant Preference in City Affordable Housing Programs to cover tenants where the tenant's unlawful unit has been removed as a residential unit by a written approval by the Planning Commission of the demolition, conversion, or merger of the residential unit, or denial by the Planning Commission of an application to legalize the unlawful unit.

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

cc: Lydia Ely, Mayor's Office of Housing and Community Development
Brian Cheu, Mayor's Office of Housing and Community Development
Maria Benjamin, Mayor's Office of Housing and Community Development
Sheila Nickolopoulos, Mayor's Office of Housing and Community Development
Dan Sider, Planning Department
Corey Teague, Planning Department
Tina Tam, Planning Department
Lisa Gibson, Planning Department
Devyani Jain, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Elizabeth Watty, Planning Department

[Administrative Code - Displaced Tenant Preference in City Affordable Housing]

Ordinance amending the Administrative Code to expand the Displaced Tenant Preference in City Affordable Housing Programs to cover tenants where the tenant's unlawful unit has been removed as a residential unit by a written approval by the Planning Commission of the demolition, conversion, or merger of the residential unit, or denial by the Planning Commission of an application to legalize the unlawful unit.

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

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

Section 1. Chapter 47 of the Administrative Code is hereby amended by revising Sections 47.2 and 47.3, to read as follows:

SEC. 47.2. DEFINITIONS.

* * * *

"Displaced Tenant" shall mean any person who applies to MOHCD and who MOHCD determines qualifies under any of the categories below. If a person disputes MOHCD's determination that ~~they he or she~~ does not qualify as a "Displaced Tenant" under this Section 47.2, such person shall have the right to a hearing conducted by a Rent Board Administrative Law Judge (as defined in Administrative Code Section 37.2(f)), with MOHCD as the responding party:

1 Category 1: A tenant residing in San Francisco who on or after January 1, 2010
2 receives a Notice of Intent to Withdraw Rental Units ("Notice of Intent to Withdraw") pursuant
3 to the Ellis Act, California Government Code Sections 7060 et seq., and corresponding
4 provisions of the Rent Ordinance. MOHCD shall establish a process for a tenant to verify
5 ~~their~~~~his or her~~ status as a "Displaced Tenant" under Category 1 that, at a minimum, shall
6 require a tenant to show: (a) the landlord filed with the Rent Board a Notice of Intent to
7 Withdraw; and (b) the tenant either: (1) is listed on the Notice of Intent to Withdraw; (2) is
8 listed on the lease for the unit in question; or (3) has other evidence sufficient to establish, in
9 MOHCD's reasonable discretion, that ~~he or she~~~~the tenant~~ resided in the unit at the time the
10 Notice of Intent to Withdraw was filed. If the Rent Board grants a landlord's request to rescind
11 the Notice of Intent to Withdraw before a tenant moves out of ~~his or her~~ their unit, such tenant
12 shall no longer qualify as a "Displaced Tenant."

13 Category 2: A tenant residing in San Francisco who on or after January 1, 2010
14 receives a notice that ~~his or her~~ their landlord plans to recover possession of the unit under
15 Section 37.9(a)(8) of the Rent Ordinance. MOHCD shall establish a process for a tenant to
16 verify ~~his or her~~~~their~~ status as a "Displaced Tenant" under Category 2 that, at a minimum, shall
17 require a tenant to show: (a) the landlord filed with the Rent Board the notice to vacate, as
18 required under Rent Ordinance Section 37.9(c); and (b) the tenant either: (1) is listed on the
19 notice to vacate; (2) is listed on the lease for the unit in question; or (3) has other evidence
20 sufficient to establish, in MOHCD's reasonable discretion, that ~~he or she~~ the tenant resided in
21 the unit at the time the notice to vacate was filed.

22 Category 3: A tenant residing in San Francisco who is required to vacate ~~his or her~~
23 their unit by a public safety official due to fire, and who can provide sufficient evidence to
24 MOHCD that demonstrates that they ~~he or she~~ cannot return to the unit within a period of six
25 months from the date of the order to vacate the unit. MOHCD shall establish a process for a

1 tenant to verify ~~his or her~~their status as a “Displaced Tenant” under Category 3 that, at a
2 minimum, shall require a tenant to show: (a) a public safety official provided an order to
3 vacate the unit to such tenant or to the owner of the unit; and (b) the tenant either: (1) is listed
4 on the order to vacate; (2) is listed on the lease for the unit in question; or (3) has other
5 evidence sufficient to establish, in MOHCD’s reasonable discretion, that ~~he or she~~ the tenant
6 resided in the unit at the time the order was provided.

7 Category 4: A tenant residing in San Francisco who is vacating the tenant’s unit
8 because MOHCD has verified that a multi-family residential property will no longer be
9 restricted to ensure affordability based on income under any regulatory agreement (including
10 a regulatory agreement based on the issuance of housing mortgage revenue bonds) or other
11 affordable housing agreement and/or recorded instrument within ~~5~~ five years, and the landlord
12 of such property has leased unrestricted residential rental units in the same building at a
13 market rent that is more than 40% of the tenant’s total annual gross household income.
14 MOHCD shall establish a process for a tenant to verify the tenant’s status as a “Displaced
15 Tenant” under Category 4 that, at a minimum, shall require the tenant to show: (a)
16 documentation of the tenant’s total gross household income on a form provided by MOHCD in
17 accordance with the Inclusionary Procedures Manual in effect at the time of application for a
18 “Displaced Tenant” housing preference; (b) evidence that market rate rent in the tenant’s
19 building will exceed 40% of the tenant’s current total annual gross household income; and (c)
20 the tenant either: (1) is listed on the lease for the unit in question; or (2) has other evidence
21 sufficient to establish, in MOHCD’s reasonable discretion, that ~~he or she~~ the tenant resides in
22 the unit at the time the landlord increased the tenant’s rent.

23 Category 5: A tenant residing in San Francisco who is vacating the tenant’s unit because
24 MOHCD has verified that the tenant’s unit will be removed as an unlawful residential unit based on
25 determinations by the Planning Commission and Planning Department. MOHCD shall establish a

1 process for a tenant to verify their status as a “Displaced Tenant” under Category 5 that, at a
2 minimum, shall require (a) MOHCD to obtain from the Planning Department the written approval by
3 the Planning Commission to remove the residential unit through demolition, conversion, or merger of
4 residential units, or denial by the Planning Commission of an application to legalize the unlawful unit,
5 and (b) a tenant to provide the following: (1) written documentation of a notice to vacate, notice to
6 quit, or other notice from the landlord that the tenant must relinquish their leasehold interest in the
7 residential unit due to the approval by the Planning Commission of an application to demolish, convert,
8 or merge existing residential units, or denial by the Planning Commission of an application to legalize
9 such tenant’s residential unit, and (2) either: (A) the tenant is listed on the lease for the unit in
10 question; or (B) the tenant has other evidence sufficient to establish, in MOHCD's reasonable
11 discretion, that they resided in the unit at the time the landlord obtained approval from the Planning
12 Commission to demolish, convert, or merge the residential unit, or denial of an application to legalize
13 the residential unit.

14 * * * *

16 **SEC. 47.3. APPLICATION OF PREFERENCE.**

17 Except to the extent prohibited by an applicable State or Federal funding source,
18 MOHCD shall give, or require project sponsors or their successors in interest funded through
19 MOHCD to give, preference in occupying units or receiving assistance under all City
20 Affordable Housing Programs after any priority given under Administrative Code Section 39.4.
21 If a Veteran has been verified by MOHCD as eligible for any preference enumerated below,
22 said Veteran shall receive priority for the applicable preference over any other applicants
23 eligible for the same preference in occupying units or receiving assistance under all City
24 Affordable Housing Programs.
25

1 Each preference enumerated below shall be applied as of the effective date of the
2 legislation establishing each preference. The City established preference for holders of
3 Certificates of Preference in Ordinance No. 232-08, for Displaced Tenants, Category 1 in
4 Ordinance No. 277-13, for Displaced Tenants, Category 2 and Neighborhood Residents in
5 Ordinance No. 204-15, for Displaced Tenants, Category 3 and persons who live or work in
6 San Francisco in Ordinance No. 164-16, ~~and~~ for Displaced Tenants, Category 4 in Ordinance
7 120-19, and for Displaced Tenants, Category 5 in Ordinance _____. The preference
8 requirements are intended to have prospective effect only, and shall not be interpreted to
9 impair the obligations of any pre-existing contract entered into by the City. Notwithstanding the
10 prior sentence, the preference requirements shall apply to contracts entered into by the City
11 on or after the effective date of the legislation establishing each preference, including
12 contracts materially amended on or after the effective date. Preference shall be given:

13 * * * *

14
15 Section 2. Effective Date; Retroactivity. This ordinance shall become effective 30 days
16 after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns
17 the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the
18 Board of Supervisors overrides the Mayor's veto of the ordinance. Upon its effective date, the
19 ordinance shall be retroactive to February 16, 2023.

20
21 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
22 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
23 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
24 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
25

additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: \S\
KEITH NAGAYAMA
Deputy City Attorney
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LEGISLATIVE DIGEST

[Administrative Code - Displaced Tenant Preference in City Affordable Housing]

Ordinance amending the Administrative Code to expand the Displaced Tenant Preference in City Affordable Housing Programs to cover tenants where the tenant's unlawful unit has been removed as a residential unit by a written approval by the Planning Commission of the demolition, conversion, or merger of the residential unit, or denial by the Planning Commission of an application to legalize the unlawful unit.

Existing Law

Current law provides preference in all City Affordable Housing Programs to certain "Displaced Tenants" residing in San Francisco under four categories: (1) tenants who have been evicted based on a Notice of Intent to Withdraw Units under the Ellis Act (California Government Code Sections 7060 *et seq*); (2) tenants who have been evicted based on an "Owner Move-In" under Administrative Code Section 37.9(a)(8); (3) tenants who are forced to vacate by a public safety official due to fire and cannot return to their units within six months; and (4) tenants who live in a multi-family residential building that is no longer restricted to ensure affordability based on income under a regulatory agreement or other affordable housing restriction, and the landlord of such residential building has increased the total annual rent to be more than 40% of the tenant's total annual household income.

Amendments to Current Law

The purpose of this ordinance is to expand the definition of "Displaced Tenant" to tenants who will be evicted because (a) the tenant resides in an unlawful residential unit, (b) the unlawful residential unit was approved by the Planning Commission to be removed by demolition, conversion, or merger of residential units, or denial by the Planning Commission of an application to legalize the unlawful unit, and (c) the tenant has received a notice to vacate the unlawful residential unit due to the Planning Commission's approval to remove the unlawful residential unit.

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Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

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

- ☒ 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- ☐ 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- ☐ 3. Request for Hearing on a subject matter at Committee
- ☐ 4. Request for Letter beginning with "Supervisor [] inquiries..."
- ☐ 5. City Attorney Request
- ☐ 6. Call File No. [] from Committee.
- ☐ 7. Budget and Legislative Analyst Request (attached written Motion)
- ☐ 8. Substitute Legislation File No. []
- ☐ 9. Reactivate File No. []
- ☐ 10. Topic submitted for Mayoral Appearance before the Board on []

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- ☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission
- ☐ Planning Commission ☐ Building Inspection Commission ☐ Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- ☐ Yes ☐ No

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

Sponsor(s):

Ronen

Subject:

[Administrative Code - Displaced Tenant Preference in City Affordable Housing]

Long Title or text listed:

Ordinance amending the Administrative Code to expand the Displaced Tenant Preference in City Affordable Housing Programs to cover tenants where the tenant's unlawful unit has been removed as a residential unit by a written approval by the Planning Commission of the demolition, conversion, or merger of the residential unit, or denial by the Planning Commission of an application to legalize the unlawful unit.

Signature of Sponsoring Supervisor: [s/ Hillary Ronen]