BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

M E M O R A N D U M

TO: Christina Varner, Executive Director, Residential Rent Stabilization and Arbitration Board
Daniel Adams, Director, Mayor's Office of Housing and Community Development

FROM: John Carroll, Assistant Clerk, Land Use and Transportation Committee

DATE: September 19, 2024

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on September 10, 2024.

File No. 240880

Ordinance amending the Administrative Code to provide that newly constructed dwelling units that first received a certificate of occupancy between June 13, 1979, and November 5, 2024, shall be generally subject to rent control, to the extent authorized by a future modification or repeal of the Costa-Hawkins Rental Housing Act; and making certain changes to clarify existing law regarding rent control exemptions under Costa-Hawkins.

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: john.carroll@sfgov.org.

cc:
Offices of Chair Melgar and Supervisor Peskin
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
Kyra Geithman, Mayor's Office of Housing and Community Development

[Administrative Code - New Construction Exemption from Rent Control]

Ordinance amending the Administrative Code to provide that newly constructed dwelling units that first received a certificate of occupancy between June 13, 1979, and November 5, 2024, shall be generally subject to rent control, to the extent authorized by a future modification or repeal of the Costa-Hawkins Rental Housing Act; and making certain changes to clarify existing law regarding rent control exemptions under Costa-Hawkins.

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. Purpose and Findings.

(a) In 1979, the City adopted a residential rent control ordinance (Ordinance No. 276-79) to protect tenants from excessive rent increases while assuring landlords fair and adequate rents. The ordinance applied to certain then-existing dwelling units but not to newly constructed units that would receive their first certificate of occupancy after the ordinance's effective date (on or after June 13, 1979). It has been amended over time and is codified at Chapter 37 of the Administrative Code, entitled the Residential Rent Stabilization and Arbitration Ordinance.

(b) In 1995, the Legislature adopted the Costa-Hawkins Rental Housing Act, California Civil Code Section 1954.50 *et seq.*, which had the effect of freezing the City's new construction exemption in place – Costa-Hawkins extinguished the ability of cities that had new construction exemptions to ever update them. As a result, San Francisco has been unable to update the date for its new construction exemption since it was first set 45 years ago. Rental units built since 1979 are still treated in the rent control ordinance as "new," and an ever-increasing number of the City's tenants live in units that the City cannot protect from excessive rent increases.

(c) Costa-Hawkins currently ties the City's hands to resolve this problem, but the City can put itself on a path of extending rent control to more recently constructed units, in the event Costa-Hawkins is amended or repealed to permit such an extension of rent control. The People of the City and County of San Francisco declare that it is essential to extend rent control to more units in San Francisco, so that the City can replenish its aging rent-controlled housing, and tenants in newer housing can enjoy the same protections as those in older housing. This ordinance would modify the new construction exemption to apply to units that first received a certificate of occupancy up to and including November 5, 2024, to the fullest extent that State law allows. Residential units newly constructed after November 5, 2024 would remain exempt from rent control. Also, the ordinance clarifies existing law with regard to new construction and the exemption for condominiums in Costa-Hawkins, but it does not otherwise affect the Costa-Hawkins exemption for condominiums and single-family homes, or impose vacancy control.

Section 2. Chapter 37 of the Administrative Code is hereby amended by revising Section 37.3, to read as follows:

SEC. 37.3. RENT LIMITATIONS.

* * * *

(d) **Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50–*et seq.*).** Consistent with the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. *et seq.*) and regardless of whether otherwise provided under Chapter 37:

(1) **Property Owner Rights to Establish Initial and All Subsequent Rental Rates for Separately Alienable Parcels.**

(A) An owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or a unit which is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b), (d), or (f) of Section 11004.5 of the California Business and Professions Code. The owner's right to establish subsequent rental rates under this ~~*paragraph*~~ *subsection (d)(1)(A)* shall not apply to a dwelling or unit where *either of the following apply:*

(i) The unit is a condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value; but subsection (d)(1)(A) shall apply to a single unsold condominium dwelling or unit, if all the other condominium dwellings or units have been sold separately by the subdivider to bona fide purchasers for value, and the subdivider has occupied the remaining unsold condominium dwelling or unit as their principal residence for at least one year after the subdivision occurred.

(ii) T~~t~~he preceding tenancy has been terminated by the owner by notice pursuant to California Civil Code Section 1946 or has been terminated upon a change in the terms of the tenancy noticed pursuant to California Civil Code Section 827; in such instances, the rent increase limitation provisions of Chapter 37 shall continue to apply for the duration of the new tenancy in that dwelling or unit.

* * * *

(g) **New Construction and Substantial Rehabilitation.**

(1) An owner of a residential dwelling or unit which is newly constructed and first received a certificate of occupancy after the effective date of Ordinance No. 276-79 (*i.e., on or after* June 13, 1979), or which the Rent Board has certified has undergone a substantial rehabilitation, may establish the initial and all subsequent rental rates for that dwelling or unit, except *where any of the following apply*:

(A) *W*~~w~~here rent restrictions apply to the dwelling or unit under Sections 37.3(d) or 37.3(f)~~;~~.

(B) *W*~~w~~here the dwelling or unit is a replacement unit under Section 37.9A(b)~~;~~.

(C) *A*~~a~~s provided for certain categories of units under Section 37.2(r)(4)(D)~~; and~~.

(D) *A*~~a~~s provided in a development agreement entered into by the City under Administrative Code Chapter 56.

(E) The Board of Supervisors acknowledges that at least through November 5, 2024, California Civil Code Sections 1954.52(a)(1)-(2) preclude the City from updating the June 13, 1979 new construction date specified in this subsection (g)(1). In the event State law is amended or repealed in this regard, said new construction date shall immediately cease to apply, and shall by operation of law pursuant to this subsection (g)(1)(E) be updated to reflect the latest date that State law may allow, up to and including November 5, 2024. The applicability of an updated new construction date under this subsection (g)(1)(E) shall not affect whether a unit is exempt under some other legal basis set forth in this Chapter 37. If no other exemption applies and a unit becomes covered by Chapter 37's rent increase limitations by operation of this subsection (g)(1)(E), the initial base rent shall be the lawful rent that applied as of the date of coverage. If no rent was in effect as of the date of coverage, then the initial base rent shall be the first lawful rent in effect after that date.

Section 3. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

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

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/
MANU PRADHAN
Deputy City Attorney
n:\legana\as2024\2500032\01785230.docx

FILE NO. 240880

LEGISLATIVE DIGEST

[Administrative Code - New Construction Exemption from Rent Control]

Ordinance amending the Administrative Code to provide that newly constructed dwelling units that first received a certificate of occupancy between June 13, 1979, and November 5, 2024, shall be generally subject to rent control, to the extent authorized by a future modification or repeal of the Costa-Hawkins Rental Housing Act; and making certain changes to clarify existing law regarding rent control exemptions under Costa-Hawkins.

Existing Law

The City's Rent Ordinance limits rent increases in certain types of residential units, but not in those that first received a certificate of occupancy on or after June 13, 1979. Those units are exempt as "new construction." The California Costa-Hawkins Rental Housing Act ("Costa-Hawkins") prevents the City from imposing rent control on units that are currently exempt as new construction.

Amendments to Current Law

The proposed ordinance would update the new construction date in the Rent Ordinance, if Costa-Hawkins were repealed or amended in a manner that allowed the City to do so. Upon such a change, the new construction date would automatically update to reflect the latest date that State law may then allow, up to and including November 5, 2024. In other words, units built between June 13, 1979 and potentially up to and including November 5, 2024 would no longer be exempt based on their date of construction, and would be subject to rent control going forward assuming no other exemption applied. Absent a change to Costa-Hawkins in this regard, the new construction date in the Rent Ordinance would remain the same.

The proposed ordinance also makes certain non-substantive changes to the Rent Ordinance, to clarify existing law regarding the new construction date and regarding when condominiums are exempt from rent control.

n:\legana\as2024\2500032\01785242.docx

Introduction Form

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

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

- [x] 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 _____ inquires…"
- [ ] 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):

Peskin, Preston, Chan, Ronen, Walton

Subject:

Administrative Code - New Construction Exemption From Rent Control

Long Title or text listed:

Ordinance amending the Administrative Code to provide that newly constructed dwelling units that first received a certificate of occupancy between June 13, 1979 and November 5, 2024 shall be generally subject to rent control, to the extent authorized by a future modification or repeal of the Costa-Hawkins Rental Housing Act; and making certain changes to clarify existing law regarding rent control exemptions under Costa-Hawkins.

Signature of Sponsoring Supervisor: //AP//