

1 [Administrative, Subdivision Codes - Tenant Buy-Out Agreements]

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3 **Ordinance amending the Administrative Code to require landlords to provide tenants**
 4 **with a disclosure of the tenant's rights at least 45 days before the landlord commences**
 5 **buy-out negotiations; to require landlords to file a summary of the disclosure, as well**
 6 **as buy-out agreements, with the Rent Board; to require the Rent Board to post the**
 7 **summary disclosures and the buy-out agreements on its website; to authorize**
 8 **administrative enforcement proceedings, resulting in a fine for violations; to authorize**
 9 **tenants to bring civil actions for actual damages and a fine against landlords who fail**
 10 **to provide the required disclosure of tenants' rights; to require the Rent Board to**
 11 **provide an annual report to the Board of Supervisors regarding tenant buy-outs; and**
 12 **amending the Subdivision Code to prohibit buildings from entering the condominium**
 13 **conversion lottery if the owners of the building have entered certain tenant buy-out**
 14 **agreements.**

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

20

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

22

23 Section 1. The Administrative Code is hereby amended by adding Section 37.9E, to
 24 read as follows:

25

SEC. 37.9E. TENANT BUY-OUT AGREEMENTS.

1 (a) Applicability of Section. Notwithstanding Section 37.3 or any other provision in City law,
2 this Section 37.9E shall apply to all landlords and tenants of rental units as defined in Section 37.2(r).

3 (b) Definitions. For purposes of this Section 37.9E, the following definitions shall apply:

4 “Buy-out Agreement” means an agreement, whether written or oral, wherein the landlord pays
5 the tenant money or other consideration to vacate the rental unit. An agreement to settle a pending
6 unlawful detainer action shall not be a “Buy-out Agreement.”

7 “Buy-out Negotiations” means any discussion or bargaining, whether oral or written, between
8 a landlord and tenant regarding the possibility of entering into a Buy-out Agreement.

9 “Material terms” shall include but not be limited to any terms of a Buy-out Agreement
10 regarding consideration received by the tenant in exchange for vacating the rental unit, waiver of
11 claims and/or release of liability, disposition of the security deposit, whether the landlord will provide
12 a reference for the tenant, schedule for payments under the Buy-out Agreement, and enforcement of the
13 Buy-out Agreement.

14 (c) Disclosure required prior to Buy-out Negotiations. At least 45 days prior to commencing
15 Buy-out Negotiations, the landlord shall provide each tenant in that rental unit written disclosure, on a
16 form developed and authorized by the Rent Board, that shall include the following:

17 (1) A statement that the tenant has a right not to enter into a Buy-out Agreement or
18 Buy-out Negotiations;

19 (2) A statement that the tenant may choose to consult with an attorney before entering
20 into a Buy-out Agreement or Buy-out Negotiations;

21 (3) A statement that Buy-out Negotiations may not commence until at least 45 days
22 after the landlord provides the tenant with the disclosure;

23 (4) A statement that the tenant may consult the Rent Board’s website for information
24 about other Buy-out Agreements in the tenant’s neighborhood;

1 (5) A list of tenants' rights organizations and their contact information, based on a list
2 provided by the Rent Board;

3 (6) A statement that information about tenants' rights is available at the Rent Board's
4 office, through its counseling telephone number, and on its website;

5 (7) A space for each tenant to sign, and write the date the landlord provided the tenant
6 with the disclosure; and

7 (8) Any other information required by the Rent Board consistent with the purposes
8 and provisions of this Section 37.9E.

9 The landlord shall retain a copy of each signed disclosure form for five years, along with a
10 record of the date the landlord provided the disclosure to each tenant.

11 (d) Notice and posting of the disclosure. Within seven days of providing the disclosure to a
12 tenant required by subsection (c), the landlord shall provide the following to the Rent Board:

13 (1) The landlord's name, business address, business e-mail address, and business
14 telephone number;

15 (2) The address of the rental unit; and

16 (3) A statement signed by the landlord under penalty of perjury that the landlord
17 provided each tenant of the rental unit with the disclosure, and that the landlord will wait at least 45
18 days between providing the disclosure and commencing Buy-out Negotiations.

19 The Rent Board shall, within seven days of receiving the disclosure, post on its website the
20 address of the rental unit that may become the subject of Buy-out Negotiations. The website shall
21 indicate the date that the landlord provided the tenant with the disclosure and the earliest date when
22 the landlord and tenant may commence Buy-out Negotiations.

23 (e) Filing of Buy-out Agreements. If a landlord enters into a written Buy-out Agreement with a
24 tenant, the landlord shall file a copy of the Buy-out Agreement with the Rent Board within seven days of
25 all parties executing the agreement. If a landlord enters into an oral Buy-out Agreement with a tenant,

1 the landlord shall, within seven days of all parties executing the Buy-out Agreement, file with the Rent
2 Board, on a form developed and authorized by the Rent Board, a list of all Material Terms of the Buy-
3 out Agreement. At the time of the filing required by this subsection (e), the landlord shall swear under
4 penalty of perjury, on a form provided by the Rent Board, that Buy-out Negotiations commenced at
5 least 45 days after the landlord provided the disclosure required by subsection (c).

6 (f) Posting of Buy-out Agreements. The Rent Board shall post on its website all filings received
7 under subsection (e). The Rent Board shall redact all information regarding the identity of the tenants.
8 The Rent Board shall create a searchable online database with information received from filings under
9 subsection (e).

10 (g) Annual report. The Rent Board shall provide an annual report to the Board of Supervisors
11 regarding the implementation of this Section 37.9E. The first report shall be completed by January 31,
12 2016. The report shall include, but not be limited to, a list of all units vacated pursuant to Buy-out
13 Agreements; the total number of disclosures provided by landlords to tenants under subsection (c); the
14 total number of Buy-out Agreements reported under subsection (e); and the total amount of fines owed
15 and paid under subsection (h). The Rent Board shall post each of these annual reports on its website.

16 (h) Enforcement.

17 (1) Any organization with tax exempt status under 26 United States Code Section
18 501(c)(3) or 501(c)(4) and with a primary mission of protecting the rights of tenants in San Francisco
19 may initiate an administrative enforcement proceeding against any landlord who the organization has
20 reason to believe has violated subsection (c). Administrative enforcement proceedings brought under
21 this subsection (h)(1) shall be adjudicated before the Rent Board. In such a proceeding, a landlord
22 who has violated subsection (c) shall receive a be fine of up to 25% of the amount paid to the tenant
23 under the Buy-out Agreement, or, if the landlord and tenant did not enter into a Buy-out Agreement, the
24 landlord shall receive a fine of up to \$5,000.

1 (2) Before commencing an administrative enforcement proceeding under subsection
2 (h)(1), the organization shall notify the tenant of its intention to bring such a proceeding and of the
3 tenant's right to bring a civil action under subsection (h)(3). If the tenant brings such an action before
4 the organization commences an administrative enforcement proceeding, the organization shall not
5 commence an administrative enforcement proceeding under subsection (h)(1). The organization shall
6 wait at least 60 days between providing the notice required by this subsection (h)(2) to the tenant and
7 commencing the administrative enforcement proceeding under subsection (h)(1). If the tenant brings
8 such an action after the organization commences an administrative enforcement proceeding, the Rent
9 Board may stay the proceeding pending the outcome of the litigation.

10 (3) A tenant may bring a civil action against the landlord in San Francisco Superior
11 Court for failure to provide the disclosure required by subsection (c). The landlord shall be liable for
12 the tenant's actual damages as well as statutory damages of up to \$25,000. The court shall award
13 reasonable attorney's fees to any tenant who is the prevailing party in a civil action brought under this
14 subsection (h)(3).

15 (4) Any organization with tax exempt status under 26 United States Code Section
16 501(c)(3) or 501(c)(4) and with a primary mission of protecting the rights of tenants in San Francisco
17 may initiate administrative enforcement proceedings against any landlord who fails to comply with the
18 filing requirements in subsection (d) or (e). Proceedings brought under this subsection (h)(4) shall be
19 adjudicated before the Rent Board. A landlord who has violated subsection (d) or (e) shall be fined by
20 the Rent Board an amount up to \$100 per day per document that the landlord has failed to file.

21 (5) A nonprofit organization may not bring an administrative enforcement proceeding
22 under subsections (h)(1) and (h)(4), and a tenant may not bring a civil action under subsection (h)(3),
23 against any landlord more than four years after the date of the alleged violation.

24 (6) The Rent Board shall deposit any funds collected under this Section in the General
25 Fund of the City and County of San Francisco.

1 Section 2. The Subdivision Code is hereby amended by revising Section 1396, to read
2 as follows:

3 **SEC. 1396. ANNUAL CONVERSION LIMITATION.**

4 (a) This Section governing annual limitation shall apply only to ~~conversion~~ conversion
5 of residential units. This Section also is subject to the limitations established by Section
6 1396.5's suspension of the lottery.

7 (b) Applications for conversion of residential units, whether vacant or occupied, shall
8 not be accepted by the Department of Public Works, except that a maximum of 200 units as
9 selected yearly by lottery by the Department of Public Works from all eligible applicants, may
10 be approved for conversion per year for the following categories of buildings:

11 (1) Buildings consisting of four units in which at least three of the units have
12 been occupied continuously by the applicant owners of record as their ~~principle~~ principal place
13 of residence for three years prior to the date of registration for the lottery as selected by the
14 Director;

15 (2) Buildings consisting of three units in which at least two of the units have
16 been occupied continuously by the applicant owners of record as their ~~principle~~ principal place
17 of residence for three years prior to the date of registration for the lottery as selected by the
18 Director;

19 (3) Buildings consisting of two units in which at least one unit has been
20 occupied continuously by the applicant owner of record as his or her ~~principle~~ principal place
21 of residence for three years prior to the date of registration for the lottery as selected by the
22 Director;

23 (4) Buildings consisting of five or six units that were subject to the requirements
24 of Section 1396.2(f) on or before April 15, 2013 where (A) no further evictions as set forth in
25 Section 1396.2 have occurred in the building after April 15, 2013, (B) the building and all

1 applicants first satisfied all the requirements for conversion under Section 1396.2(f) after
2 January 24, 2020 and before resumption of the lottery under ~~in accordance with the terms of~~
3 Section 1396.5; and (C) 50 percent or more of the units have been occupied continuously by
4 owners of record as their ~~principle~~ principal place of residence for ten years prior to the date of
5 registration for the lottery as selected by the Director. Applicants for such buildings must apply
6 for the lottery within five years of the resumption of the lottery under Section 1396.5(c) and
7 remain eligible until selected;

8 (5) If the Expedited Conversion program under Section 1396.4 has been
9 suspended until 2024 as a result of a successful lawsuit against the City and County of San
10 Francisco challenging Section 1396.4(g) or 1396.5: (A) buildings consisting of five or six units
11 that participated in but were not selected for the 2012 or 2013 condominium conversion lottery
12 in which 50 percent or more of the units have been occupied continuously by the applicant
13 owners of record for no less than six years prior to the date of registration for the lottery as
14 selected by the Director or (B) buildings consisting of five or six units in which: (i) 50 percent
15 or more of the units have been occupied continuously by the applicant owners of record for no
16 less than six years prior to the date of registration for the lottery as selected by the Director
17 and (ii) the eligible applicant owners of record have a fully executed written agreement as of
18 April 15, 2013 in which the owners each have an exclusive right of occupancy to individual
19 units in the building to the exclusion of the owners of the other units. Applicants for buildings
20 identified in this Subsection must first apply for the lottery within five years of the resumption
21 of the lottery under Section 1396.5(c) and remain eligible until selected; or

22 (6) Community apartments as defined in Section 1308 of this Code, which, on
23 or before December 31, 1982, met the criteria for community apartments in Section 1308 of
24 this Code and which were approved as a subdivision by the Department of Public Works on or
25 before December 31, 1982, and where 75 percent of the units have been occupied

1 continuously by the applicant owners of record for three years prior to the date of registration
2 for the lottery as selected by the Director.

3 (c) The conversion of a stock cooperative as defined in Section 1308 of this Code to
4 condominiums shall be exempt from the annual limitation imposed on the number of
5 conversions in this Section and from the requirement to be selected by lottery where 75
6 percent of the units have been occupied for the lottery as selected by the Director.

7 (d) No application for conversion of a residential building submitted by a registrant
8 shall be approved by the Department of Public Works to fill the unused portion of the 200-unit
9 annual limitation for the previous year.

10 (e) (1) Any application for a condominium conversion submitted after being
11 selected in the lottery must meet the following requirements applicable to Subdivision Code
12 Article 9, Conversions: Sections 1381, 1382, 1383, 1386, 1387, 1388, 1389, 1390, 1391(a)
13 and (b), 1392, 1393, 1394, and 1395.

14 (2) Any building subject to Section 1396.2 shall have all applicant(s) satisfy all
15 the requirements for conversion under Section 1396.2(f) in order be eligible to convert
16 pursuant to this Section 1396; provided, however, that any building subject to the prohibition
17 on conversion under Section 1396.2, in particular a property with the eviction(s) set forth in
18 Section 1396.2(b), is ineligible for conversion.

19 (3) (A) In addition, the applicant(s) shall certify that to the extent any tenant
20 vacated his or her unit within the seven years prior to the date of registration for the lottery as
21 selected by the Director and before recordation of the final parcel or subdivision map, such
22 tenant did so voluntarily or if an eviction or eviction notice occurred it was not pursuant to
23 Administrative Code Sections 37.9(a)(8)-(14) unless such eviction or eviction notice complied
24 with the requirements of Subsections (B)-(D) below.

1 (B) If the evicting owner(s) recovered possession of the unit under
2 Administrative Code Sections 37.9(a)(11) or 37.9(a)(14), then the applicant(s) shall certify that
3 the original tenant reoccupied or was given an opportunity to reoccupy the unit after the
4 temporary eviction.

5 (C) If the evicting owner(s) recovered possession of the unit under
6 Administrative Code Section 37.9(a)(10), then the applicant(s) shall certify that the
7 Department of Building Inspection required the unit be demolished or permanently removed
8 from housing use pursuant to a Notice of Violation or Emergency Order or similar notice,
9 order, or act; all the necessary permits for demolition or removal were obtained; that the
10 evicting owner(s) complied in full with Administrative Code Section 37.9(a)(10) and (c); and
11 that an additional unit or replacement unit was not constructed in the building after the
12 demolition or removal of the unit previously occupied by the evicted tenant.

13 (D) If the evicting owner(s) recovered possession of a unit under
14 Administrative Code Section 37.9(a)(8), then the applicants shall certify that: (i) only one unit
15 in the building was the subject of such eviction during the seven year period, (ii) any surviving
16 owner or relative named as the intended resident of the unit in the Section 37.9(a)(8) eviction
17 notice also is presently an owner applying for the conversion of the same unit, and (iii) the
18 subject applicant owner has occupied the unit continuously as his or her ~~principle~~ principal
19 residence for three years prior to the date of registration for the lottery as selected by the
20 Director.

21 (4) Notwithstanding any provisions in this Code to the contrary, the Department of
22 Public Works shall not sell residential condominium conversion lottery tickets to, shall not accept a
23 residential condominium conversion subdivision application from, and shall deny a tentative or final
24 subdivision or parcel map for residential condominium conversion submitted by the owner(s) of a
25 building if, on or after October 31, 2014, (A) a senior, disabled, or catastrophically ill tenant in the

1 building entered into a Buy-out Agreement, as defined in Administrative Code Section 37.9E, for any
2 unit in the building, or (B) two or more tenants entered into Buy-out Agreements during the period
3 beginning ten years prior to the date of the application and ending on the date of the final or parcel
4 map approval. This Subsection (e)(4) shall apply without regard to whether the current owner(s) was a
5 party to the Buy-out Agreement, provided that the Buy-out Agreement was reported to the Rent Board
6 as provided in Administrative Code Section 37.9E prior to the current owner(s) purchasing the
7 building. For purposes of this Subsection, a “senior” shall be a person who is 60 years or older and
8 has been residing in the unit for ten years or more at the time of Buy-out Agreement; a “disabled”
9 tenant shall be a person who is disabled within the meaning of Title 42 United States Code Section
10 12102 and has been residing in the unit for ten years or more at the time of Buy-out Agreement; and a
11 “catastrophically ill” tenant shall be a person who is disabled within the meaning of Title 42 United
12 States Code Section 12102 and who is suffering from a life threatening illness as certified by his or her
13 primary care physician and has been residing in the unit for five years or more at the time of Buy-out
14 Agreement.

15 (f) The Department shall review all available records, including eviction notices and
16 records maintained by the Rent Board for compliance with Subsection (e). If the Department
17 finds that a violation of Subsection (e) occurred prior to recordation of the final map or final
18 parcel map, the Department shall disapprove the application or subject map. If the
19 Department finds that a violation of Subsection (e) occurred after recordation of the final map
20 or parcel map, the Department shall take such actions as are available and within its authority
21 to address the violation.

22

23 Section 3. Effective and Operative Dates.

24 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
25 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not

1 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
2 Mayor’s veto of the ordinance.

3 (b) This ordinance shall become operative 90 days after enactment.
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5 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
6 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
7 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
8 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
9 additions, and Board amendment deletions in accordance with the “Note” that appears under
10 the official title of the ordinance.
11

12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By: _____
15 Joshua S. White
16 Deputy City Attorney

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