

[Administrative Code - Amendments to Residential Rent Stabilization and Arbitration Ordinance]

Ordinance amending the Administrative Code to: 1) prohibit, with certain exceptions, rent increases based on the addition of occupants even where a pre-existing rental agreement or lease permits such an increase; 2) prevent evictions based on the addition of occupants if the landlord has unreasonably refused the tenant's written request, including a refusal based on the amount of occupants allowed by the rental agreement or lease; 3) require landlords, after certain vacancies, to set the new base rent as the lawful rent in effect at the time of the vacancy; 4) require that there be a substantial violation of a lawful obligation or covenant of tenancy as a basis for the recovery of possession; 5) require a landlord, prior to seeking recovery of possession, to provide tenants an opportunity to cure the unauthorized addition of the tenant's family members to the tenant's unit; 6) prevent a landlord from seeking recovery of possession solely because the tenant is occupying a unit not authorized for residency; 7) require landlords to state in notices to vacate for certain good cause evictions the lawful rent for the unit at the time the notice is served; 8) require the Rent Board to prepare a form in English, Chinese, Spanish, Vietnamese, Tagalog, and Russian stating that a notice to vacate may lead to a lawsuit to evict and stating that advice regarding notices to vacate is available from the Rent Board; 9) require landlords to attach a copy of the Rent Board form in the primary language of the tenant to each notice to vacate; and 10) require landlords to plead and prove in any action to recover possession that at least one of the grounds of Administrative Code, Section 37.9(a)-(b) stated in the notice to vacate is the dominant motive for recovering possession.

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

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

9 Section 1. Findings

10 The Board of Supervisors hereby finds that:

11 (a) Evictions are increasing across San Francisco. The Rent Board's annual reports on
12 evictions to this Board of Supervisors for 2010 through 2015 show the number of eviction
13 notices issued to rent controlled tenants and reported to the Rent Board has increased each
14 year. Over that five-year reporting period, evictions reported to the Rent Board have
15 increased by 67%.

16 (b) The rise in efforts to evict tenants coincides with a rise in market rents. Market
17 rents have increased at a pace exceeding the ability of most San Franciscans to pay. In its
18 July 2015 Economic Impact Analysis Report, "General Obligation Bond for Affordable
19 Housing," the Controller's Office of Economic Analysis reported that "many tenants face high
20 rent burdens, which have increased rapidly in recent years." The Mayor's 2015 "\$310 Million
21 Affordable Housing General Obligation Bond Report" shows that, as of July 2015 the average
22 market rent for a one-bedroom apartment in San Francisco is reported to be \$3495 per month
23 – approximately 60% of the median gross monthly income of a single person in San
24 Francisco.

25 (c) Rising rates of evictions and rents are forcing thousands of lower and even middle
income households to move out of San Francisco. According to the July 2015 Economic

1 Impact Analysis Report, 12.3% of low income households and 5.9% of moderate and higher
2 income households are now moving out of San Francisco every year. The involuntary
3 displacement of residents adversely impacts San Francisco's collective economic vitality,
4 diversity, and social and cultural well-being. The individual impacts of evictions and
5 displacement from established community relationships and institutions can result in
6 substantial adverse impacts on the health of seniors and vulnerable populations including but
7 not limited to residents with limited English language skills.

8 (d) Rising rents combined with rules restricting the number of occupants in housing
9 also impose a substantial burden on tenants and their right to associate, cohabitate, and live
10 with partners or relatives of their choosing. For example, a landlord imposed rule that limit
11 occupancy to no more than one person per bedroom empowers the landlord to intrude into
12 the privacy of a tenant's bedroom. When such restrictive rules are enforced with the threat of
13 evictions, tenants are forced to choose to live alone or to leave San Francisco in search of an
14 alternative place to live with friends, relatives, or unmarried partners.

15 (e) Therefore, there is a significant public interest in assuring that tenants are not
16 evicted from their rental units without substantial and reasonable cause including the right to
17 live with roommates and or close relations of a tenant's choosing subject to reasonable and
18 articulable standards as established by the landlord.

19 (f) This ordinance will enable tenants to stay in their homes to maintain a committed
20 relationship with another person or personal associations. And by doing so, will relieve the
21 burden on some residents to find affordable rental space in San Francisco. It also permits a
22 landlord to reject a request for a roommate for good reason, and to petition the Rent Board to
23 increase the rent to compensate the landlord for any costs incurred as a result of the
24 additional occupancy.
25

1 For the aforesated reasons, the Board of Supervisors enacts these amendments to
2 Sections 37.3(a)(1)(11) and 37.9(a)(2)(C) of the Administrative Code.

3 Section 2. The Administrative Code is hereby amended by revising Sections 37.3,
4 37.9, and 37.9A, to read as follows:

5
6 **SEC. 37.3. RENT LIMITATIONS.**

7 (a) Rent Increase Limitations for Tenants in Occupancy. Landlords may impose rent
8 increases upon tenants in occupancy only as provided below and as provided by Subsection
9 37.3(d):

10 (1) Annual Rent Increase. On March 1st of each year, the Board shall publish the
11 increase in the CPI for the preceding 12 months, as made available by the U.S. Department of
12 Labor. A landlord may impose annually a rent increase which does not exceed a tenant's
13 base rent by more than 60 percent of said published increase. In no event, however, shall the
14 allowable annual increase be greater than seven percent.

15 * * * *

16 (11) Additional occupants.

17 (A) Except as provided in Section 37.3(a)(11)(B), a landlord may not impose increases
18 solely because a tenant has added an additional occupant to an existing tenancy, including, but not
19 limited to, a newborn child or family member as defined in Section 401 of the Housing Code. The
20 prohibition on increases mandated by this Subsection (A) shall apply notwithstanding a rental
21 agreement or lease that specifically permits a rent increase for additional occupants.

22 (B) A landlord may petition the Board for a rent increase pursuant to Section 37.3(a)(8) for
23 costs associated with the addition of occupants authorized under Section 37.9(a)(2)(C).

1 (C) Rent increases otherwise permitted by the Costa-Hawkins Rental Housing Act,
2 California Civil Code Section 1950 et seq. (as it may be amended from time to time) are not prohibited
3 or limited by this Section 37.3(a)(11).

4 * * * *

5 (f) Costa-Hawkins Vacancy Control. Where a landlord has terminated the previous tenancy
6 as stated in either subsection (1), (2) or (3) below, the initial base rent for the subsequent tenancy shall
7 be a rent not greater than the lawful rent in effect at the time the previous tenancy was terminated, plus
8 any annual rent increases available under this Chapter 37. This Section 37.3(f) is intended to be
9 consistent with California Civil Code Section 1954.53(a)(1)(A)-(B).

10 (1) Where the previous tenancy was terminated by a notice of termination of tenancy
11 issued under California Civil Code Section 1946.1 stating the ground for recovery of possession under
12 Sections 37.9(a)(8), (9), (10), (11), or (14) of this Code. For purposes of the termination of tenancy
13 under Section 37.9(a)(9), the initial rent for the unit may be set by a subsequent bona fide purchaser for
14 value of the condominium.

15 (2) Where the previous tenancy was terminated upon a change in terms of tenancy noticed
16 under California Civil Code Section 827, except a change in rent permitted by law. Within 10 days
17 after serving the notice of termination based upon a change in terms of tenancy under Civil Code
18 Section 827, the landlord shall notify the Board in writing of the monthly rent the tenant was paying
19 when the landlord gave the notice to the tenant, and provide a copy of the notice to the Board to the
20 tenant.

21 (3) Where the landlord terminated or did not renew a contract or recorded agreement
22 with a governmental agency that provided for a rent limitation to a qualified tenant. When a landlord
23 terminates a tenant-based rental assistance program, the landlord shall, within 10 days after giving the
24 notice of termination of the program to the tenant, notify the Board in writing of the monthly rent the
25

1 tenant was paying and the monthly rent paid by the program to the landlord on behalf of the tenant
2 when the landlord gave notice to the tenant, and provide a copy of the notice to the Board to the tenant.

3 * * * *

5 **SEC. 37.9. EVICTIONS.**

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

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

10 (1) The tenant:

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

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

15 (ii) Except that, commencing August 10, 2001, to and including February 10,
16 2003, a landlord shall not endeavor to recover or recover possession of a rental unit for failure
17 of a tenant to pay that portion of rent attributable to a capital improvement passthrough
18 certified pursuant to a decision issued after April 10, 2000, where the capital improvement
19 passthrough petition was filed prior to August 10, 2001, and a landlord shall not impose any
20 late fee(s) upon the tenant for such non-payment of capital improvements costs; or

21 (B) Habitually pays the rent late; or

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

24 (2) The tenant has violated a lawful obligation or covenant of tenancy other than the
25 obligation to surrender possession upon proper notice or other than an obligation to pay a

1 charge prohibited by Police Code Section 919.1, the violation was substantial, and the tenant
2 fails~~failure~~ to cure such violation after having received written notice thereof from the landlord.

3 (A) Provided that notwithstanding any lease provision to the contrary, a landlord
4 shall not endeavor to recover possession of a rental unit as a result of subletting of the rental
5 unit by the tenant if the landlord has unreasonably withheld the right to sublet following a
6 written request by the tenant, so long as the tenant continues to reside in the rental unit and
7 the sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails
8 to respond to the tenant in writing with a description of the reasons for the denial of the request
9 within ~~fourteen~~(14) days of receipt of the tenant's written request, the tenant's request shall be
10 deemed approved by the landlord.

11 (B) Provided further that where a rental agreement or lease provision limits the
12 number of occupants or limits or prohibits subletting or assignment, a landlord shall not
13 endeavor to recover possession of a rental unit as a result of the addition to the unit of a
14 tenant's child, parent, grandchild, grandparent, brother or sister, or the spouse or domestic
15 partner (as defined in Administrative Code Sections 62.1 through 62.8) of such relatives, or as
16 a result of the addition of the spouse or domestic partner of a tenant, so long as the maximum
17 number of occupants stated in Section 37.9(a)(2)(B)(i) and (ii) is not exceeded, if the landlord
18 has unreasonably refused a written request by the tenant to add such occupant(s) to the unit.
19 If the landlord fails to respond to the tenant in writing with a description of the reasons for the
20 denial of the request within ~~fourteen~~(14) days of receipt of the tenant's written request, the
21 tenant's request shall be deemed approved by the landlord. A landlord's reasonable refusal of
22 the tenant's written request may not be based on the proposed additional occupant's lack of
23 creditworthiness, if that person will not be legally obligated to pay some or all of the rent to the
24 landlord. A landlord's reasonable refusal of the tenant's written request may be based on, but
25

1 is not limited to, the ground that the total number of occupants in a unit exceeds (or with the
2 proposed additional occupant(s) would exceed) the lesser of (i) or (ii):

3 (i) Two persons in a studio unit, three persons in a one-bedroom unit, four
4 persons in a two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four-
5 bedroom unit; or

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

8 (C) Provided further that where a rental agreement or lease provision limits the
9 number of occupants or limits or prohibits subletting or assignment, a landlord shall not endeavor to
10 recover possession of a rental unit as a result of the addition by the tenant of additional occupants to
11 the rental unit, so long as the maximum number of occupants does not exceed the lesser of the amounts
12 allowed by Subsection (i) or Subsection (ii) of this Section 37.9(a)(2)(C), if the landlord has
13 unreasonably refused a written request by the tenant to add such occupant(s) to the unit. If the landlord
14 fails to respond to the tenant in writing with a description of the reasons for the denial of the request
15 within 14 days of receipt of the tenant's written request, the tenant's request shall be deemed approved
16 by the landlord. A landlord's reasonable refusal of the tenant's written request may not be based on
17 either of the following: (1) the proposed additional occupant's lack of creditworthiness, if that person
18 will not be legally obligated to pay some or all of the rent to the landlord, or (2) the number of
19 occupants allowed by the rental agreement or lease. With the exception of the restrictions stated in the
20 preceding sentence, a landlord's reasonable refusal of the tenant's written request may be based on, but
21 is not limited to, the ground that the landlord resides in the same unit as the tenant or the ground that
22 the total number of occupants in a unit exceeds (or with the proposed additional occupant(s) would
23 exceed) the lesser of (i) or (ii):

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

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

3 (iii) This Subsection 37.9(a)(2)(C) is not intended by itself to establish a direct
4 landlord-tenant relationship between the additional occupant and the landlord or to limit a landlord's
5 rights under the Costa-Hawkins Rental Housing Act, California Civil Code Section 1954.50 et seq. (as
6 it may be amended from time to time).

7 (iv) For the purposes of this Subsection 37.9(a)(2)(C), the term "additional
8 occupant" shall not include persons who occupy the unit as a Tourist or Transient Use, as
9 defined in Administrative Code Section 41A.5.

10 (D) Before endeavoring to recover possession based on the violation of a lawful
11 obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the
12 rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant
13 with an opportunity to cure the violation in 10 or more days. The tenant may cure the violation by
14 making a written request to add occupants referenced in Subsection (A), (B), or (C) of Section
15 37.9(a)(2) or by using other reasonable means to cure the violation, including, without limitation, the
16 removal of any additional or unapproved occupant. Nothing in this Section 37.9(a)(2)(D) is intended
17 to limit any other rights or remedies that the law otherwise provides to landlords; or

18 (3) When the landlord commences the endeavor to recover possession, ~~T~~the tenant is
19 committing or permitting to exist a nuisance in, or is causing substantial damage to, the rental
20 unit, or is creating a substantial interference with the comfort, safety or enjoyment of the
21 landlord or tenants in the building, and the nature of such nuisance, damage or interference is
22 specifically stated by the landlord in writing as required by Section 37.9(c); or

23 (4) The tenant is using or permitting a rental unit to be used for any illegal
24 purpose, provided however that a landlord shall not endeavor to recover possession of a
25 rental unit solely (a) as a result of a first violation of Chapter 41A that has been cured within 30

1 days written notice to the tenant; or, (b) because the illegal use is the residential occupancy of a unit
2 not authorized for residential occupancy by the City.

3 * * * *

4 (c) A landlord shall not endeavor to recover possession of a rental unit unless at
5 least one of the grounds enumerated in Section 37.9(a) or (b) above is (1) the landlord's
6 dominant motive for recovering possession and (2) unless the landlord informs the tenant in
7 writing on or before the date upon which notice to vacate is given of the grounds under which
8 possession is sought, and for notices to vacate under Sections 37.9(a)(8), (9), (10), (11), and (14),
9 state in the notice to vacate the lawful rent for the unit at the time the notice is issued ~~and that advice~~
10 ~~regarding the notice to vacate is available from the Residential Rent Stabilization and Arbitration~~
11 ~~Board,~~ before endeavoring to recover possession. The Board shall prepare a written form that
12 states that a tenant's failure to timely act in response to a notice to vacate may result in a lawsuit by the
13 landlord to evict the tenant and advice regarding the notice to vacate is available from the Board. The
14 Board shall prepare the form in English, Chinese, Spanish, Vietnamese, Tagalog, and Russian and
15 make the form available to the public on its website and in its office. A landlord shall attach a copy of
16 the form that is in the primary language of the tenant to a notice to vacate before serving the notice,
17 except that if the tenant's primary language is not English, Chinese, Spanish, Vietnamese, Tagalog or
18 Russian, the landlord shall attach a copy of the form that is in English to the notice. A copy of all
19 notices to vacate except three-day notices to vacate or pay rent and a copy of any additional
20 written documents informing the tenant of the grounds under which possession is sought shall
21 be filed with the Board within 10 days following service of the notice to vacate. The District
22 Attorney shall determine whether the units set forth on the list compiled in accordance with
23 Section 37.6(k) are still being occupied by the tenant who succeeded the tenant upon whom
24 the notice was served. In cases where the District Attorney determines that Section 37.9(a)(8)
25 has been violated, the District Attorney shall take whatever action he deems appropriate

1 under this Chapter or under State law. In any action to recover possession of the rental unit under
2 Section 37.9, the landlord must plead and prove that at least one of the grounds enumerated in Section
3 37.9(a) or (b) and also stated in the notice to vacate is the dominant motive for recovering possession.
4 Tenants may rebut the allegation that any of the grounds stated in the notice to vacate is the dominant
5 motive.

6 * * * *

7
8 **SEC. 37.9A. TENANT RIGHTS IN CERTAIN DISPLACEMENTS UNDER SECTION**
9 **37.9(a)(13).**

10 This Section 37.9A applies to certain tenant displacements under Section 37.9(a)(13), as
11 specified.

12 * * * *

13 (f) Notice to Rent Board; Recordation of Notice; Effective Date of Withdrawal.

14 (1) Any owner who intends to withdraw from rent or lease any rental unit shall
15 notify the Rent Board in writing of said intention. Said notice shall contain statements, under
16 penalty of perjury, providing information on the number of residential units, the address or
17 location of those units, the name or names of the tenants or lessees of the units, and the rent
18 applicable to each residential rental unit. Said notice shall be signed by all owners of record of
19 the property under penalty of perjury and shall include a certification that actions have been
20 initiated as required by law to terminate existing tenancies through service of a notice of
21 termination of tenancy. The notice must be served by certified mail or any other manner
22 authorized by law prior to delivery to the Rent Board of the notice of intent to withdraw the
23 rental units. Information respecting the name or names of the tenants, the rent applicable to
24 any unit, or the total number of units, is confidential and shall be treated as confidential
25 information by the City for purposes of the Information Practices Act of 1977, as contained in

Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code. The City shall, to the extent required by the preceding sentence, be considered an "agency," as defined by Subdivision (b) of Section 1798.3 of the Civil Code.

* * * *

(5) Within 15 days of delivery of a Subsection (f)(1) notice of intent to the Rent Board, the owner shall provide notice to any tenant or lessee to be displaced of the following:

(A) That the Rent Board has been notified pursuant to Subsection (f)(1);

(B) That the notice to the Rent Board specified the name and the amount of rent paid by the tenant or lessee as an occupant of the rental unit;

(C) The amount of rent the owner specified in the notice to the Rent Board;

(D) The tenant's or lessee's rights to reoccupancy under Section 37.9A(c) if the rental unit is again offered for rent or lease by a current or future owner and to relocation assistance under ~~Subsections 37.9A(c) and (e)~~; and

(E) The rights of qualified elderly or disabled tenants as described under Subsection (f)(4), to extend their tenancy to one year after the date of delivery to the Rent Board of the Subsection (f)(1) notice of intent to withdraw.

* * * *

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.

////

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

7
8
9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: _____
13 Robert A. Bryan
14 Deputy City Attorney

15 n:\legana\as2015\1500782\01035636.docx
16
17
18
19
20
21
22
23
24
25