

1 [Administrative Code - Temporarily Displaced Tenant Preference in City Affordable Housing-
2 Compliance with Right to Return for Temporarily Displaced Tenants]

3 **Ordinance amending the Administrative Code to add a preference in City affordable**
4 **housing programs to tenants temporarily evicted from rental units for capital**
5 **improvements or rehabilitation work; requiring landlords who regain possession of**
6 **such rental units to provide evidence of complying with a tenant's right to re-occupy**
7 **such tenant's rental unit; and restricting the issuance of a certificate of final**
8 **completion unless a landlord provides such evidence clarifying that temporary**
9 **evictions for capital improvements are intended to cover work that would make the unit**
10 **hazardous, unhealthy, and/or uninhabitable, and are intended to last for the minimum**
11 **amount of time required to complete the work; and modifying modify the standards**
12 **that the Rent Board must consider when reviewing a request to authorize a temporary**
13 **eviction for capital improvements to last more than three months; establish procedures**
14 **for the landlord to inform the displaced tenant of the tenant's right to reoccupy the unit**
15 **upon completion of the work; and establish that a landlord's failure to timely allow the**
16 **tenant to reoccupy the unit may create a rebuttable presumption that the tenancy has**
17 **been terminated by the landlord rather than by the tenant.**

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

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

25 Section 1. Background and Findings.

1 (a) Administrative Code Section 37.9(a)(11) allows landlords to evict tenants in
2 order to perform capital improvements or rehabilitation work, if the landlord has obtained all
3 the necessary permits on or before the date upon which notice to vacate is given to the tenant
4 and the landlord acts without ulterior reasons and with honest intent. Since January 2017,
5 more than 400 capital improvement evictions have been reported to the Rent Board.

6 (b) Administrative Code Section 37.9(a)(11) further provides that evictions are
7 intended to be temporary and that the tenant is entitled to re-occupy the rental unit when the
8 capital improvements or rehabilitation work are completed. Although this provision ostensibly
9 limits the displacement of tenants to the minimum time necessary and usually less than three
10 months and provides a limited relocation assistance payment, the tenant is not guaranteed a
11 temporary replacement unit during the displacement period, and landlords are allowed to
12 extend such displacement period without a limit.

13 (c) In some cases, the temporary displacement of households, many of them
14 seniors or families with children, often last for a year or more and without any increase in
15 relocation assistance or offer of actual replacement housing, which can lead to these
16 households being permanently displaced from the City. These extended and permanent
17 displacements have caused and continue to cause economic, physical, and emotional
18 hardship on tenants and impact the economic and social well-being of the City's
19 neighborhoods.

20 (d) Given the challenges of finding affordable, temporary housing in the City for
21 even those at the top of the income scale, the Board of Supervisors finds that it is necessary
22 through this ordinance to clarify the requirements and procedures regarding temporary
23 evictions due to capital improvements or rehabilitation work, and in particular to define the
24 factors that bear on whether an extension request is reasonable, so as to ensure that tenants
25 receive the opportunity to return to their units upon completion of the work, and to prevent

1 landlords from constructively evicting and permanently displacing their tenants through
2 evictions that have lasted longer than was reasonably required for the landlord to perform the
3 necessary work ~~provide temporary affordable housing to income-qualified tenants within the~~
4 ~~City's affordable housing.~~

5
6 Section 2. This ordinance initially proposed revising Administrative Code Sections 47.2
7 and 47.3. At its regular meeting on September 30, 2019, the Rules Committee of the Board of
8 Supervisors amended this ordinance to remove Sections 47.2 and 47.3, such that this
9 ordinance no longer includes revisions to those Sections.

10
11 Section 3. Chapter 37 of the Administrative Code is hereby amended by revising
12 Section 37.9(a)(11), to read as follows:

13 **SEC. 37.9. EVICTIONS.**

14 * * * *

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

16 * * * *

17 (11) The landlord seeks in good faith to remove temporarily the unit from
18 housing use in order to be able to carry out capital improvements or rehabilitation work that
19 would make the unit hazardous, unhealthy, and/or uninhabitable while work is in progress.
20 and has obtained all the necessary permits on or before the date upon which notice to vacate
21 is given, and does so without ulterior reasons and with honest intent. Any tenant who vacates
22 the unit under such circumstances shall have the right to reoccupy the unit at the prior rent
23 adjusted in accordance with the provisions of this Chapter 37. ~~The landlord may~~ will only
24 require the tenant to ~~will~~ vacate the unit only for the minimum time required to do the work.

25 (A) On or before the date upon which notice to vacate is given, the

1 landlord shall: ~~(A) (i)~~ advise the tenant in writing that the rehabilitation or capital improvement
2 plans are on file with the Central Permit Bureau of the Department of Building Inspection and
3 that arrangements for reviewing such plans can be made with the Central Permit Bureau, and
4 ~~(B) (ii) provide the tenant a disclosure form prepared by the Board that advises the tenant of the~~
5 ~~tenant's right to return and opportunity to obtain temporary rental housing through the Mayor's~~
6 ~~Office of Housing and Community Development; and (iii) provide the tenant a form prepared~~
7 ~~by the Rent Board that the tenant can use to keep the Rent Board apprised of any future~~
8 ~~change in address.~~

9 _____ (B) ~~In addition to the above, n~~ No landlord shall endeavor to recover
10 possession of any unit subject to a RAP loan as set forth in Section 37.2(m) of this Chapter
11 except as provided in Section 32.69 of the *San Francisco* Administrative Code.

12 _____ (C) The tenant shall not be required to vacate pursuant to this Section
13 37.9(a)(11), for a period in excess of three months; provided, however, that such time period
14 may be extended by the Board ~~or (including its Administrative Law Judges)~~ upon application
15 by the landlord.

16 _____ (i) In reviewing an application for an extension of time, the
17 Board or its Administrative Law Judge shall first determine whether the landlord has
18 demonstrated that all of the work is reasonable and necessary to meet state or local
19 requirements concerning the safety or habitability of the building or the unit, rather than
20 elective in nature. If so, the Board shall only consider whether the landlord has delayed in
21 seeking the extension; and the reasonableness of the landlord's time estimate. ;

22 _____ (ii) Alternatively, if the Board determines that whether the
23 landlord has demonstrated that not all of the work is reasonable and necessary to meet state
24 or local requirements concerning the safety or habitability of the building or the unit, the Board
25 shall consider the degree to which the work is versus purely elective in nature; whether any

1 tenants have objected that the cost of securing alternative housing during the time extension
2 would cause them a financial hardship, and/or that they are 60 years of age or older or
3 disabled; and any other extraordinary circumstances. The Board shall also consider whether
4 the landlord has offered reasonable mitigation, other than the relocation expenses required by
5 Section 37.9C, to address the hardship imposed upon the tenant, such as temporary
6 occupancy of another vacant unit should one be available.

7 (iii) The Board may grant or deny an application for an
8 extension of time or may approve a shorter period of time, based upon the consideration of
9 the facts of the case. The Board shall adopt rules and regulations to implement the
10 application procedure. If the landlord does not timely allow the tenant to reoccupy the unit,
11 and upon completion of the work the subsequent occupant is someone other than the original
12 tenant, there shall be a rebuttable presumption that the original tenant did not reoccupy the
13 unit due to the delay and therefore, for purposes of restricting the rent as set forth in Section
14 37.3(f)(1), that the original tenancy was terminated by the landlord.

15 (D) Any landlord who seeks to recover possession under this Section
16 37.9(a)(11) shall pay relocation expenses as provided in Section 37.9C.

17 (E) Immediately upon completion of the capital improvements or
18 rehabilitation work, the landlord shall advise the tenant, in writing, and allow the tenant to reoccupy
19 the tenant's unit. The tenant shall have 30 days from receipt of the landlord's offer of reoccupany to
20 notify the landlord of acceptance or rejection of the offer, and if accepted, the tenant shall reoccupy the
21 unit within 45 days of receipt of the landlord's offer. The landlord shall file a copy of the offer with the
22 Rent Board within 15 days of the offer. The Board shall make all reasonable efforts to send a
23 notice to the unit within one year of the date of filing, to inform the occupant that the rent may
24 be subject to the rent restrictions set forth in Section 37.3(f)(1). No certificate of final
25 completion for the capital improvement or rehabilitation work under this Section 37.9(a)(11)

1 shall be approved by the Department of Building Inspection unless and until the Board verifies
2 to the Department of Building Inspection that the landlord has provided the tenant an offer to
3 re-occupy the unit under this Section 37.9(a)(11); or

4 * * * *

5
6 Section 4. Effective Date. This ordinance shall become effective 30 days after
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
8 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
9 of Supervisors overrides the Mayor's veto of the ordinance.

10
11 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
12 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
13 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
14 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
15 additions, and Board amendment deletions in accordance with the "Note" that appears under
16 the official title of the ordinance.

17
18 Section 6. Applicability. The amendments to Administrative Code Section 37.9(a)(11)
19 (exclusive of Subsections 37.9(a)(11)(A)-(E)), which deal with (1) the requirement that the unit
20 must be hazardous, unhealthy, and/or uninhabitable while work is in progress, and (2) the
21 landlord's duty to limit the duration of the eviction to the minimum time required to do the
22 work, are intended to clarify existing law and shall therefore apply to all rental units, including
23 those where a notice to vacate or quit has been served as of the legislation's effective date,
24 but where the rental unit has not yet been vacated or an unlawful detainer has not yet been
25 issued.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Section 7. 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:
DENNIS J. HERRERA, City Attorney

By: _____
MANU PRADHAN
Deputy City Attorney
n:\legana\as2019\2000028\01395725.docx