

File No. 200518

Committee Item No. 8

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Government Audit and Oversight

Date: Sept. 17, 2020

Board of Supervisors Meeting:

Date: _____

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- Referral FYI – July 1, 2020
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Prepared by: John Carroll

Date: Sept. 11, 2020

Prepared by: John Carroll

Date: _____

1 [Administrative Code - Rent Control at Midtown Park Apartments]

2

3 **Ordinance amending the Administrative Code to subject dwelling units at Midtown Park**
4 **Apartments, a residential development owned by the City and County of San Francisco,**
5 **to the Residential Rent Stabilization and Arbitration Ordinance; and making findings**
6 **pursuant to as required by the California Tenant Protection Act of 2019.**

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

11

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

13

14 Section 1. The Administrative Code is hereby amended by revising Sections 37.2 and
15 37.3, to read as follows:

16 **SEC. 37.2. DEFINITIONS.**

17 * * * *

18 (r) **Rental Units.** All residential dwelling units in the City and County of San
19 Francisco together with the land and appurtenant buildings thereto, and all housing services,
20 privileges, furnishings, and facilities supplied in connection with the use or occupancy thereof,
21 including garage and parking facilities.

22 * * * *

23 The term "rental units" shall not include:

24 * * * *

25

1 (4) Except as provided in subsections (A)-(E), ~~(B) and (C)~~, dwelling units whose
2 rents are controlled or regulated by any government unit, agency, or authority, excepting
3 those unsubsidized and/or unassisted units which are insured by the United States
4 Department of Housing and Urban Development; provided, however, that units in unreinforced
5 masonry buildings which have undergone seismic strengthening in accordance with Building
6 Code Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that
7 the ordinance is not in conflict with the seismic strengthening bond program or with the
8 program's loan agreements or with any regulations promulgated thereunder;

9 * * * *

10 (E) The term "rental units" shall include dwelling units at Midtown Park
11 Apartments, as set forth in Section 37.12A.

12 * * * *

13
14 **SEC. 37.3. RENT LIMITATIONS.**

15 (a) **Rent Increase Limitations for Tenants in Occupancy.** Landlords may impose
16 rent increases upon tenants in occupancy only as provided below and as provided by
17 subsections 37.3(d), ~~and~~ 37.3(g), and 37.12A(c):

18 * * * *

19
20 Section 2. The Administrative Code is hereby amended by adding Section 37.12A, to
21 read as follows:

22 **SEC. 37.12A. MIDTOWN PARK APARTMENTS**

23 (a) Midtown Park Apartments ("Midtown"), which is located at 1415 Scott Street, San
24 Francisco (Lot 31, Assessor's Block 1099), is a City-owned apartment complex in the Western Addition
25 neighborhood that opened in 1968 to provide housing to families displaced by urban renewal policies.

1 From 1968-2014, a tenant board was empowered to make decisions regarding Midtown's management
2 and development, and Midtown tenants generally received rent increases commensurate with the city's
3 rent control laws. On or about January 31, 2014, the City began to operate Midtown under a program
4 that set rents based on household gross income, which caused some tenants to experience significant
5 rent increases. The Board of Supervisors finds it is appropriate and in the public interest to extend rent
6 control protections to tenants at Midtown, and enacts this Section 37.12A in order to assure a smooth
7 transition to coverage under this Chapter 37.

8 (b) The City shall not endeavor to recover possession of a residential dwelling unit located
9 at Midtown Park Apartments (each, a "Midtown Unit") except as authorized by Section 37.9, as it may
10 be amended from time to time; and provided, further, that Section 37.9(a)(8) and Section 37.9(a)(13)
11 shall not apply to Midtown Units.

12 (c) For Midtown Units where one or more of the tenants has been occupying the unit since
13 January 1, 2014 (each, a "Legacy Tenant"), the initial base rent shall be the rent that was in effect for
14 the unit on May 1, 2014, plus any allowable increases under Section 37.3. For Midtown Units without
15 a Legacy Tenant, the initial base rent shall be the rent in effect at the time the tenancy commenced, plus
16 any allowable increases under Section 37.3. All subsequent rent increases shall be subject to the rent
17 increase limitations of Section 37.3 as it may be amended from time to time.

18 (d) The City shall discharge its duties as Landlord through the Mayor's Office of Housing
19 and Community Development ("MOHCD"). MOHCD may adopt rules and regulations consistent with
20 this Chapter 37 to manage the property, and shall develop procedures to verify Legacy Tenant status
21 and to set the rent consistent with subdivision (c). If a tenant has paid rent after May 1, 2014 in excess
22 of the rent allowed under subdivision (c), MOHCD shall credit the excess payment against the tenant's
23 future rent payments as soon as practicable after the effective date of this Section 37.12A. Nothing in
24 this Section 37.12A shall affect or impair the ability of either MOHCD or a person residing in a
25 Midtown Unit to file a petition to the Rent Board as set forth in this Chapter 37.

LEGISLATIVE DIGEST

[Administrative Code - Rent Control at Midtown Park Apartments]

Ordinance amending the Administrative Code to subject dwelling units at Midtown Park Apartments, a residential development owned by the City and County of San Francisco, to the Residential Rent Stabilization and Arbitration Ordinance; and making findings pursuant to as required by the California Tenant Protection Act of 2019.

Existing Law

Midtown Park Apartments is a residential building owned by the City. Rental units at Midtown are not subject to the City's Rent Ordinance. Instead, rents at Midtown are set by the Mayor's Office of Housing and Community Development ("MOHCD"), based on a percentage of each tenant's household income.

Amendments to Current Law

The legislation would bring units at Midtown Park Apartments under the Rent Ordinance. The Rent Ordinance limits rent increases and regulates when a tenant may be evicted, generally without regard to a tenant's household income. The legislation also states that the City may not perform owner move-in or Ellis Act evictions at Midtown.

Background Information

Midtown Park Apartments is located at 1415 Scott Street, San Francisco (Lot 31, Assessor's Block 1099).

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CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292
FAX (415) 252-0461

September 11, 2020

TO: Government Audit and Oversight Committee
FROM: Budget and Legislative Analyst 
SUBJECT: September 17, 2020 Government Audit and Oversight Committee Meeting

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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance amends the Administrative Code to make Midtown Park Apartments, a housing development owned by the City, subject to the Residential Rent Stabilization and Arbitration Ordinance.

Key Points

- In 2014, the Mayor’s Office of Housing and Community Development (MOHCD) entered into a lease with Mercy Midtown Inc. (“Mercy”) to manage Midtown Park Apartments, and established the Rental Modification Program, setting rent rates for existing tenants, generally equal to 30 percent of household income. 88 tenants had existing rents less than 30 percent of household income and therefore had rent increases phased in over five years, with the median increase equal to 75 percent; and 28 tenants had existing rents greater than 30 percent of household income and therefore had rent decreases, with the median decrease equal to 30 percent. Because Midtown Park Apartments is a City-owned property, the apartments are not subject to the City’s Rent Stabilization and Arbitration Ordinance.
- According to the proposed ordinance: (a) tenants occupying their units in the Midtown Park Apartments since May 2014, would have rent set at 2014 rates, plus allowable annual percentage increases; (b) tenants who paid rent since May 2014, exceeding the allowable amount, would receive rent credits against future rents; and (c) tenants who began occupying their units after May 2014 would have base rent established as the rent to be paid at the time of their occupancy, increasing annually by the amount allowed under the City’s Residential Rent Stabilization and Arbitration Ordinance.

Fiscal Impact

- According to the Midtown Park Apartments audited financial statements, the City’s subsidy to the Midtown Park Apartments in CY 2018 was \$850,000 and in CY 2019 was \$425,973. According to the rent roll data for Midtown Park Apartments, provided by MOHCD, the MOHCD subsidy would need to increase to approximately \$975,290 per year, an increase of approximately \$550,000 compared to the CY 2019 subsidy, to offset the decrease in rents under the proposed ordinance.

Policy Consideration

- Seventeen vacant units at Midtown Park Apartments will be made available to tenants temporarily relocated from other affordable housing projects that are undergoing rehabilitation. Also, eleven tenants who had rent increases in 2015 now owe back rent exceeding \$20,000 per tenant.

Recommendations

- Request clarification from MOHCD and Rent Board on how the proposed ordinance would impact (1) tenants temporarily relocated from housing projects undergoing rehabilitation to Midtown Parks Apartments; and (2) would apply to back rent owed by 11 tenants.
- Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance.

BACKGROUND

Midtown Park Apartments are a City-owned housing project located at 1415 Scott Street in the Western Addition. The project opened in 1968 to provide housing to households displaced by urban development. The project consists of 139 housing units, which are a mix of three-, two-, and one-bedroom units. Fifty-three percent of the households are single person households, and the remaining households range from two to five persons. Sixty-five percent of the households are headed by an individual who is 60 years or older. Average household income is \$47,711, equal to 45 percent of the Area Median Income.

Income Restrictions

While the City subsidizes the operations of the Midtown Park Apartments, the project does not have deed or other restrictions mandating affordability. The original funding to develop the Midtown Park Apartments came from Department of Housing and Urban Development (HUD) loans, but affordability restrictions set by these loans are no longer in effect.

Property Management Lease

In 2014, the Mayor's Office of Housing and Community Development (MOHCD) entered into a lease and management agreement ("lease") with Mercy Midtown Inc. ("Mercy"), a nonprofit organization, to manage Midtown Park Apartments, including maintaining the property and improvements. The lease was month-to-month and therefore not subject to Board of Supervisors approval.¹

Under the terms of the lease, Mercy collected tenant rents, which were a source of income to be used in accordance with the annual budget approved by MOHCD. MOHCD is required to cover operating deficits, which is any revenue shortfall that is insufficient to pay for operations and maintenance of the property. The lease provided for Mercy to certify the income of all existing tenants and enter into rental agreements with the tenants. Mercy was then responsible to enforce the terms of the rental agreements.

At the beginning of the lease in 2014, Mercy was to maintain the existing rents for tenants, pending implementation of a Rental Credit Program by MOHCD. The second amendment to the lease, executed in March 2015, changed the name of the Rental Credit Program to the "Rent Modification Program". The second amendment provided for Mercy to enter into rental agreements with existing tenants by June 2015; rents were to remain unchanged from the 2014

¹ Administrative Code Section 23.31 states that leases of City-owned property that are year-to-year or less, including month-to-month leases, for which the fair market rent is \$15,000 or less per month, can be approved by the Director of Real Estate. Rent paid by Mercy to the City was \$1.00 per month.

rents until implementation of the Rent Modification Program, which required annual certification of tenant income. The Rent Modification Program contained the following provisions:

- Rents to be set at 30 percent of tenant’s income or market rate, whichever was less;
- Rent increases would be phased in over time for tenants paying less than 30 percent of their income;
- Rents would be reduced for tenants paying more than 30 percent of their income;
- Rents would be unchanged for tenants currently paying rent equal to 30 percent of their income.

The Rent Modification Program specified that no tenant would be evicted if their income was considered too high or too low.

Deferred Maintenance and Improvements

Between 2014 and 2019, Mercy completed repairs to the Midtown Apartments. The third amendment to the lease with Mercy provided for an allocation of Community Development and Block Grant (CDBG) funds of \$5 million to Mercy for emergency mold remediation of the property. In 2017, the fourth amendment increased CDBG funds to \$8.7 million for health and safety improvements to the property. The fifth amendment increased this funding to approximately \$9.5 million. According to Ms. Cindy Heavens, MOHCD Senior Project Manager, when the \$5 million repair began, there were 126 occupied units of the total 139 units. All of the occupied units were inspected, and based on the inspections repairs were completed on 123 units. All repairs with the CDBG funds were completed in 2019.

According to Ms. Heavens, the Midtown Park Apartments require additional repairs that need to be completed within the next 18 months, including repairs to the roofs, HVAC (heating, ventilation, air conditioning) system, fire safety, and other improvements and repairs. The estimated cost of the repairs needed to be completed in the next 18 months is approximately \$2 million.

Assignment of Lease

In January 2020, Mercy assigned the lease to Midtown Park Apartments – Kalco, LLC (“Kalco”), a limited liability company. Under the assignment agreement, MOHCD agreed to continue providing adequate funds to manage and operate the Midtown Park Apartments project to offset revenue shortfalls.

DETAILS OF PROPOSED LEGISLATION

File 20-0518 is an ordinance amending the Administrative Code to subject dwelling units at Midtown Park Apartments, a residential development owned by the City and County of San Francisco, to the Residential Rent Stabilization and Arbitration Ordinance; and making findings pursuant to as required by the California Tenant Protection Act of 2019. According to the proposed ordinance:

- Tenants occupying their units in the Midtown Park Apartments since May 2014, would have rent set at 2014 rates, plus allowable annual percentage increases under the City's Residential Rent Stabilization and Arbitration Ordinance;
- Tenants who paid rent since May 2014, exceeding the allowable amount, would receive rent credits against future rents;
- Tenants who began occupying their units after May 2014 would have base rent established as the rent to be paid at the time of their occupancy, increasing annually by the amount allowed under the City's Residential Rent Stabilization and Arbitration Ordinance.

Vacant Units

Twenty-two of the 139 housing units at Midtown Park Apartments are vacant. According to MOHCD staff, 17 of the 22 vacant units will be made available under a master lease to tenants temporarily relocated from other affordable housing projects that are undergoing rehabilitation. The Board of Supervisors should request clarification from MOHCD and the Rent Board on how these future tenants will be impacted under the proposed ordinance.

FISCAL IMPACT

Estimated Impact on Rents²

When the Rent Modification Program at Midtown Parks Apartments was implemented in June 2015, which increased rents to 30 percent of household income:

- 88 tenants had existing rents less than 30 percent of household income and therefore had rent increases phased in over five years, with the median increase equal to 75 percent; and
- 28 tenants had existing rents greater than 30 percent of household income and therefore had rent decreases, with the median decrease equal to 30 percent.

Under the proposed ordinance, which would set rents for existing tenants at the lower of (a) 30 percent of household income, or (b) 2014 rents, plus allowable increases under the City's Rent Stabilization and Arbitration Ordinance:

- 47 tenants would have no change in their existing rent, of whom 35 tenants are currently paying rent equal to 30 percent of their household income which is less than rent set by the City's Rent Stabilization and Arbitration Ordinance; and
- 70 tenants would have a rent decrease to bring their rent into conformance with the City's Rent Stabilization and Arbitration Ordinance.

Estimated City Subsidy to Midtown Parks Apartments

Under the lease agreement between the City and Kalco, the City agreed to provide adequate funds to manage and operate the Midtown Park Apartments project, as noted above. According to the Midtown Park Apartments audited financial statements, the City's subsidy to the Midtown

² Rent information based on rent roll data provided by MOHCD for Midtown Park Apartments.

Park Apartments in CY 2018 was \$850,000 and in CY 2019 was \$425,973. According to the rent roll data for Midtown Park Apartments, provided by MOHCD, the MOHCD subsidy would need to increase to approximately \$975,290 per year, an increase of approximately \$550,000 compared to the CY 2019 subsidy, to offset the decrease in rents under the proposed ordinance.

POLICY CONSIDERATION

As noted above, the Board of Supervisors should request clarification from MOHCD and the Rent Board on how tenants temporarily relocated from housing projects undergoing rehabilitation to Midtown Parks Apartments would be impacted by the proposed ordinance.

Also, according to the rent roll data provided by MOHCD, eleven tenants who had rent increases in 2015 now owe back rent exceeding \$20,000. The Board of Supervisors should request clarification from MOHCD and the Rent Board on how the proposed ordinance would apply to back rent owed by the 11 tenants.

RECOMMENDATIONS

- Request clarification from MOHCD and the Rent Board on how the proposed ordinance would impact (1) tenants temporarily relocated from housing projects undergoing rehabilitation to Midtown Parks Apartments; and (2) would apply to back rent owed by 11 tenants.
- Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

BOARD of SUPERVISORS



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

MEMORANDUM

TO: Robert Collins, Executive Director, Residential Rent Stabilization and Arbitration Board
Eric D. Shaw, Director, Mayor's Office of Housing and Community Development

FROM: John Carroll, Assistant Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: July 1, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, transferred from the Land Use and Transportation Committee, introduced by Supervisor Preston on May 19, 2019:

File No. 200518

Ordinance amending the Administrative Code to subject dwelling units at Midtown Park Apartments, a residential development owned by the City and County of San Francisco, to the Residential Rent Stabilization and Arbitration Ordinance; and making findings pursuant to as required by the California Tenant Protection Act of 2019.

If you have any 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.

c: Eugene Flannery, Mayor's Office of Housing and Community Development
Amy Chan, Mayor's Office of Housing and Community Development
Office of Chair Mar,
Office of Supervisor Preston

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

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

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

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

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only