

1 [Domestic Partner/Spouse/Family Protection Residential Rent Ordinance: Where a
 2 lease/rental agreement limits the number of occupants or limits/prohibits subletting or
 3 assignment in a rent-controlled unit, No rent increase or ordinance prohibits evictions solely
 4 for adding tenant's child, parent, grandchild, grandparent, brother, sister, or spouse/domestic
 5 partner of such relative, or the tenant's spouse/domestic partner, to rent-controlled the unit
 6 according to unit size (e.g., total four-person maximum in two-bedroom unit, or less if so
 7 required by state or other local code maximums), except rent increase may be granted for
 8 increased costs.]

9 **Ordinance amending Administrative Code Chapter 37 "Residential Rent Stabilization**
 10 **and Arbitration Ordinance" by amending Sections 37.3 and 37.9: to prohibit rent**
 11 **increases in existing tenancies solely for the addition of a tenant's child, parent,**
 12 **grandchild, grandparent, brother or sister, or the spouse or domestic partner (as**
 13 **defined in Administrative Code Sections 62.1 through 62.8) of such relatives, or for the**
 14 **addition of the spouse or domestic partner of a tenant, even where a pre-existing rental**
 15 **agreement or lease specifically permits a rent increase for additional occupants, except**
 16 **that the landlord may petition the Rent Board for a rent increase under Section**
 17 **37.8(e)(4) based on the increased cost for such an additional occupant [Section**
 18 **37.3(a)(11)]; and, to prohibit evictions from rent-controlled units based solely on the**
 19 **addition of such occupant(s) an existing tenant's child, parent, grandchild,**
 20 **grandparent, brother or sister, or the spouse or domestic partner (as defined in**
 21 **Administrative Code Sections 62.1 through 62.8) of such relatives, or for the addition of**
 22 **the spouse or domestic partner of a tenant, where a pre-existing rental agreement or**
 23 **lease limits the number of occupants or limits or prohibits subletting or assignment**
 24 **and where the landlord has unreasonably refused the tenant's written request to add**
 25 **such occupant(s), even where a pre-existing rental agreement or lease prohibits**
additional occupants, unless the total number of occupants exceeds two persons per
studio rental unit, three per one-bedroom unit, four per two-bedroom unit, six per three-
bedroom unit or eight per four-bedroom unit, or unless this total would exceed the

1 number of occupants permitted under state law and/or other local codes (e.g.,
2 Planning, Housing, Fire and Building Codes) [Section 37.9(a)(2)]; and expressing the
3 intent of the Board of Supervisors that the Rent Board Rules and Regulations
4 regarding subletting consent procedures be substantially applied to this legislation
5 (but modified to address the family situations that are the subject of this legislation).

6
7 Note: Additions are *single-underline italics Times New Roman font*;
8 deletions are *strikethrough italics Times New Roman font*.
9 Board amendment additions are double underlined Arial font;
10 Board amendment deletions are ~~strikethrough Arial font~~.

11
12 Be it ordained by the People of the City and County of San Francisco:

13 Section 1. The San Francisco Administrative Code is hereby amended by amending
14 Section 37.3, to read as follows:

15 SEC. 37.3. RENT LIMITATIONS.

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

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

23 (2) Banking. A landlord who refrains from imposing an annual rent increase or any
24 portion thereof may accumulate said increase and impose that amount on the tenant's
25 subsequent rent increase anniversary dates. A landlord who, between April 1, 1982, and

1 February 29, 1984, has banked an annual seven percent rent increase (or rent increases) or
2 any portion thereof may impose the accumulated increase on the tenant's subsequent rent
3 increase anniversary dates.

4 (3) Capital Improvements, Rehabilitation, Energy Conservation Improvements, and
5 Renewable Energy Improvements. A landlord may impose rent increases based upon the cost
6 of capital improvements, rehabilitation, energy conservation improvements, or renewable
7 energy improvements, provided that such costs are certified pursuant to Sections 37.7 and
8 37.8B below; provided further that where a landlord has performed seismic strengthening in
9 accordance with Building Code Chapters 16B and 16C, no increase for capital improvements
10 (including but not limited to seismic strengthening) shall exceed, in any 12 month period, 10
11 percent of the tenant's base rent, subject to rules adopted by the Board to prevent landlord
12 hardship and to permit landlords to continue to maintain their buildings in a decent, safe and
13 sanitary condition. A landlord may accumulate any certified increase which exceeds this
14 amount and impose the increase in subsequent years, subject to the 10 percent limitation.
15 Nothing in this subsection shall be construed to supersede any Board rules or regulations with
16 respect to limitations on increases based upon capital improvements whether performed
17 separately or in conjunction with seismic strengthening improvements pursuant to Building
18 Code Chapters 16B and 16C.

19 (4) Utilities. A landlord may impose increases based upon the cost of utilities as
20 provided in Section 37.2(q) above.

21 (5) Charges Related to Excess Water Use. A landlord may impose increases not to
22 exceed 50 percent of the excess use charges (penalties) levied by the San Francisco Water
23 Department on a building for use of water in excess of Water Department allocations under
24 the following conditions:

25 (A) The landlord provides tenants with written certification that the following have

1 been installed in all units: (1) permanently installed retrofit devices designed to reduce the
2 amount of water used per flush or low-flow toilets (1.6 gallons per flush); (2) low-flow
3 showerheads which allow a flow of no more than 2.5 gallons per minute; and (3) faucet
4 aerators (where installation on current faucets is physically feasible); and

5 (B) The landlord provides the tenants with written certification that no known
6 plumbing leaks currently exist in the building and that any leaks reported by tenants in the
7 future will be promptly repaired; and

8 (C) The landlord provides the tenants with a copy of the water bill for the period in
9 which the penalty was charged. Only penalties billed for a service period which begins after
10 the effective date of the ordinance [April 20, 1991] may be passed through to tenants. Where
11 penalties result from an allocation which does not reflect documented changes in occupancy
12 which occurred after March 1, 1991, a landlord must, if requested in writing by a tenant, make
13 a good-faith effort to appeal the allotment. Increases based upon penalties shall be prorated
14 on a per-room basis provided that the tenancy existed during the time the penalty charges
15 accrued. Such charges shall not become part of a tenant's base rent. Where a penalty in any
16 given billing period reflects a 25 percent or more increase in consumption over the prior billing
17 period, and where that increase does not appear to result from increased occupancy or any
18 other known use, a landlord may not impose any increase based upon such penalty unless
19 inspection by a licensed plumber or Water Department inspector fails to reveal a plumbing or
20 other leak. If the inspection does reveal a leak, no increase based upon penalties may be
21 imposed at any time for the period of the unrepaired leak.

22 (6) Property Tax. A landlord may impose increases based upon a 100%
23 passthrough of the change in the landlord's property tax resulting from the repayment of
24 general obligation bonds of the City and County of San Francisco approved by the voters
25 between November 1, 1996, and November 30, 1998, as provided in Section 37.2(q) above.

1 A landlord may impose increases based upon a 50% passthrough of the change in the
2 landlord's property tax resulting from the repayment of general obligation bonds of the City
3 and County of San Francisco approved by the voters after November 14, 2002, as provided in
4 Section 37.2(q) above, and subject to the following requirement: Any rent increase for bonds
5 approved after the effective date of this initiative ordinance [November 2000 Proposition H,
6 effective December 20, 2000] must be disclosed and approved by the voters.

7 The amount of such increases shall be determined for each tax year as follows:

8 (A) For general obligation bonds approved by the voters between November 1,
9 1996 and November 30, 1998:

10 (i) The Controller and the Board of Supervisors will determine the percentage of
11 the property tax rate, if any, in each tax year attributable to general obligation bonds approved
12 by the voters between November 1, 1996, and November 30, 1998, and repayable within
13 such tax year.

14 (ii) This percentage shall be multiplied by the total amount of the net taxable value
15 for the applicable tax year. The result is the dollar amount of property taxes for that tax year
16 for a particular property attributable to the repayment of general obligation bonds approved by
17 the voters between November 1, 1996, and November 30, 1998.

18 (iii) The dollar amount calculated under Subsection (ii) shall be divided by the total
19 number of all units in each property, including commercial units. That figure shall be divided
20 by 12 months, to determine the monthly per unit costs for that tax year of the repayment of
21 general obligation bonds approved by the voters between November 1, 1996, and November
22 30, 1998.

23 (B) For general obligation bonds approved by the voters after November 14, 2002
24 where any rent increase has been disclosed and approved by the voters:

25 (i) The Controller and the Board of Supervisors will determine the percentage of

1 the property tax rate, if any, in each tax year attributable to general obligation bonds approved
2 by the voters after November 14, 2002, and repayable within such tax year.

3 (ii) This percentage shall be multiplied by the total amount of the net taxable value
4 for the applicable tax year. The result is the dollar amount of property taxes for that tax year
5 for a particular property attributable to the repayment of general obligation bonds approved by
6 the voters after November 14, 2002.

7 (iii) The dollar amount calculated under Subsection (ii) shall be divided by two, and
8 then by the total number of all units in each property, including commercial units. That figure
9 shall be divided by 12 months, to determine the monthly per unit costs for that tax year of the
10 repayment of general obligation bonds approved by the voters after November 14, 2002.

11 (C) Landlords may pass through to each unit in a particular property the dollar
12 amounts calculated under these Subsections 37.3(6)(A) and (B). These passthroughs may
13 be imposed only on the anniversary date of each tenant's occupancy of the property. These
14 passthroughs shall not become a part of a tenant's base rent. The amount of each annual
15 passthrough imposed pursuant to this Subsection (6) may vary from year-to-year, depending
16 on the amount calculated under Subsections (A) and (B). Each annual passthrough shall
17 apply only for the 12 month period after it is imposed. A landlord may impose the
18 passthroughs described in this Subsection (6) for a particular tax year only with respect to
19 those tenants who were residents of a particular property on November 1st of the applicable
20 tax year. A landlord shall not impose a passthrough pursuant to this Subsection (6) if the
21 landlord has filed for or received Board approval for a rent increase under Section 37.8(e)(4)
22 for increased operating and maintenance expenses in which the same increase in property
23 taxes due to the repayment of general obligation bonds was included in the comparison year
24 cost totals.

25 (D) The Board will have available a form which explains how to calculate the

1 passthrough.

2 (E) Landlords must provide to tenants, on or before the date that notice is served on
3 the tenant of a passthrough permitted under this Subsection (6), a copy of the completed form
4 described in Subsection (D). This completed form shall be provided in addition to the Notice of
5 Rent Increase required under Section 37.3(b)(5). A tenant may petition for a hearing under the
6 procedure described in Section 37.8 where the tenant alleges that a landlord has imposed a
7 charge which exceeds the limitations set forth in this Subsection (6). In such a hearing, the
8 burden of proof shall be on the landlord. Tenant petitions regarding this passthrough must be
9 filed within one year of the effective date of the passthrough.

10 (F) The Board may amend its rules and regulations as necessary to implement this
11 Subsection (6).

12 (7) RAP Loans. A landlord may impose rent increases attributable to the City
13 Administrator's amortization of the RAP loan in an area designated on or after July 1, 1977,
14 pursuant to Chapter 32 of the San Francisco Administrative Code.

15 (8) Additional Increases. A landlord who seeks to impose any rent increase which
16 exceeds those permitted above shall petition for a rental arbitration hearing pursuant to
17 Section 37.8 of this Chapter.

18 (9) A landlord may impose a rent increase to recover costs incurred for the
19 remediation of lead hazards, as defined in San Francisco Health Code Article 26. Such
20 increases may be based on changes in operating and maintenance expenses or for capital
21 improvement expenditures as long as the costs which are the basis of the rent increase are a
22 substantial portion of the work which abates or remediates a lead hazard, as defined in San
23 Francisco Health Code Article 26, and provided further that such costs are approved for
24 operating and maintenance expense increases pursuant to Section 37.8(e)(4)(A) and certified
25 as capital improvements pursuant to Section 37.7 below.

1 When rent increases are authorized by this Subsection 37.3(a)(9), the total rent
2 increase for both operating and maintenance expenses and capital improvements shall not
3 exceed 10 percent in any 12 month period. If allowable rent increases due to the costs of lead
4 remediation and abatement work exceed 10 percent in any 12 month period, an
5 Administrative Law Judge shall apply a portion of such excess to approved operating and
6 maintenance expenses for lead remediation work, and the balance, if any, to certified capital
7 improvements, provided, however, that such increase shall not exceed 10 percent. A landlord
8 may accumulate any approved or certified increase which exceeds this amount, subject to the
9 10 percent limit.

10 (10) With respect to units occupied by recipients of tenant-based rental assistance:

11 (A) If the tenant's share of the base rent is not calculated as a fixed percentage of
12 the tenant's income, such as in the Section 8 voucher program and the Over-FMR Tenancy
13 Program, then:

14 (i) If the base rent is equal to or greater than the payment standard, the rent
15 increase limitations in Sections 37.3(a)(1) and (2) shall apply to the entire base rent, and the
16 arbitration procedures for those increases set forth in Section 37.8 and 37.8A shall apply.

17 (ii) If the base rent is less than the payment standard, the rent increase limitations
18 of this Chapter shall not apply; provided, however, that any rent increase which would result in
19 the base rent being equal to or greater than the payment standard shall not result in a new
20 base rent that exceeds the payment standard plus the increase allowable under Section
21 37.3(a)(1).

22 (B) If the tenant's share of the base rent is calculated as a fixed percentage of the
23 tenant's income, such as in the Section 8 certificate program and the rental subsidy program
24 for the HOPWA program, the rent increase limitations in Section 37.3(a)(1) and (2) shall not
25 apply. In such circumstances, adjustments in rent shall be made solely according to the

1 requirements of the tenant-based rental assistance program.

2 (11) ~~No extra rent may be charged solely for the addition to an existing tenancy of a~~
3 ~~tenant's child, parent, grandchild, grandparent, brother or sister, or the spouse or domestic~~
4 ~~partner (as defined in Administrative Code Sections 62.1 through 62.8) of such relatives, or for~~
5 ~~the addition of the spouse or domestic partner of a tenant, notwithstanding a rental agreement~~
6 ~~or lease provision that permits a rent increase for an additional occupant, so long as one or~~
7 ~~more of the occupants of the unit pursuant to the existing tenancy agreement with the owner~~
8 ~~remains an occupant in lawful possession of the unit, or so long as a lawful sublessee or~~
9 ~~assignee who resided in the unit prior to January 1, 1996 remains in possession of the unit.~~
10 ~~Such "extra rent" provisions in written or oral rental agreements or leases are deemed to be~~
11 ~~contrary to public policy. Except that, a landlord may petition the Rent Board for a rent~~
12 ~~increase pursuant to Section 37.8(e)(4) based on increased costs, and the petition may be~~
13 ~~granted, where such an additional occupant causes an increase in costs. Rent increases~~
14 ~~otherwise permitted by California Civil Code Section 1954.53(d)(1) (as it may be amended~~
15 ~~from time to time) or any successor section are not prohibited or limited by this Administrative~~
16 ~~Code Section 37.3(a)(11).~~

17 (b) Notice of Rent Increase for Tenants in Occupancy. On or before the date upon
18 which a landlord gives a tenant legal notice of a rent increase, the landlord shall inform the
19 tenant, in writing, of the following:

20 (1) Which portion of the rent increase reflects the annual increase, and/or a banked
21 amount, if any;

22 (2) Which portion of the rent increase reflects costs for increased operating and
23 maintenance expenses, rents for comparable units, and/or capital improvements,
24 rehabilitation, energy conservation improvements, or renewable energy improvements
25 certified pursuant to Section 37.7. Any rent increase certified due to increases in operating

1 and maintenance costs shall not exceed seven percent;

2 (3) Which portion of the rent increase reflects the passthrough of charges for gas
3 and electricity, or bond measure costs described in Section 37.3(a)(6) above, which charges
4 shall be explained in writing on a form provided by the Board as described in Section
5 37.3(a)(6)(E);

6 (4) Which portion of the rent increase reflects the amortization of the RAP loan, as
7 described in Section 37.3(a)(7) above.

8 (5) Nonconforming Rent Increases. Any rent increase which does not conform with
9 the provisions of this Section shall be null and void.

10 (6) With respect to rental units occupied by recipients of tenant-based rental
11 assistance, the notice requirements of this Subsection (b) shall be required in addition to any
12 notice required as part of the tenant-based rental assistance program.

13 (c) Initial Rent Limitation for Subtenants. A tenant who subleases his or her rental
14 unit may charge no more rent upon initial occupancy of the subtenant or subtenants than that
15 rent which the tenant is currently paying to the landlord.

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

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

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

1 where the preceding tenancy has been terminated by the owner by notice pursuant to
2 California Civil Code Section 1946 or has been terminated upon a change in the terms of the
3 tenancy noticed pursuant to California Civil Code Section 827; in such instances, the rent
4 increase limitation provisions of Chapter 37 shall continue to apply for the duration of the new
5 tenancy in that dwelling or unit.

6 (B) Where the initial or subsequent rental rates of a Subsection 37.3(d)(1)(A)
7 dwelling or unit were controlled by the provisions of Chapter 37 on January 1, 1995, the
8 following shall apply:

9 (i) A tenancy that was in effect on December 31, 1995, remains subject to the rent
10 control provisions of this Chapter 37, and the owner may not otherwise establish the
11 subsequent rental rates for that tenancy.

12 (ii) On or after January 1, 1999, an owner may establish the initial and all
13 subsequent rental rates for any tenancy created on or after January 1, 1996.

14 (C) An owner's right to establish subsequent rental rates under Subsection
15 37.3(d)(1) shall not apply to a dwelling or unit which contains serious health, safety, fire or
16 building code violations, excluding those caused by disasters, for which a citation has been
17 issued by the appropriate governmental agency and which has remained unabated for six
18 months or longer preceding the vacancy.

19 (2) Conditions for Establishing the Initial Rental Rate Upon Sublet or Assignment.
20 Except as identified in this Subsection 37.3(d)(2), nothing in this Subsection or any other
21 provision of law of the City and County of San Francisco shall be construed to preclude
22 express establishment in a lease or rental agreement of the rental rates to be applicable in the
23 event the rental unit subject thereto is sublet, and nothing in this Subsection shall be
24 construed to impair the obligations of contracts entered into prior to January 1, 1996, subject
25 to the following:

1 (A) Where the original occupant or occupants who took possession of the dwelling
2 or unit pursuant to the rental agreement with the owner no longer permanently reside there,
3 an owner may increase the rent by any amount allowed by this Subsection to a lawful
4 sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996.
5 However, such a rent increase shall not be permitted while:

6 (i) The dwelling or unit has been cited in an inspection report by the appropriate
7 governmental agency as containing serious health, safety, fire, or building code violations, as
8 defined by Section 17920.3 of the California Health and Safety Code, excluding any violation
9 caused by a disaster; and,

10 (ii) The citation was issued at least 60 days prior to the date of the vacancy; and,

11 (iii) The cited violation had not been abated when the prior tenant vacated and had
12 remained unabated for 60 days or for a longer period of time. However, the 60-day time
13 period may be extended by the appropriate governmental agency that issued the citation.

14 (B) This Subsection 37.3(d)(2) shall not apply to partial changes in occupancy of a
15 dwelling or unit where one or more of the occupants of the premises, pursuant to the
16 agreement with the owner provided for above (37.3(d)(2)), remains an occupant in lawful
17 possession of the dwellings or unit, or where a lawful sublessee or assignee who resided at
18 the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit.
19 Nothing contained in this Subsection 37.3(d)(2) shall be construed to enlarge or diminish an
20 owner's right to withhold consent to a sublease or assignment.

21 (C) Acceptance of rent by the owner shall not operate as a waiver or otherwise
22 prevent enforcement of a covenant prohibiting sublease or assignment or as a waiver of an
23 owner's rights to establish the initial rental rate unless the owner has received written notice
24 from the tenant that is party to the agreement and thereafter accepted rent.

25 (3) Termination or Nonrenewal of a Contract or Recorded Agreement with a

1 Government Agency Limiting Rent. An owner who terminates or fails to renew a contract or
2 recorded agreement with a governmental agency that provides for a rent limitation to a
3 qualified tenant, shall be subject to the following:

4 (A) The tenant(s) who were beneficiaries of the contract or recorded agreement
5 shall be given at least 90 days' written notice of the effective date of the termination and shall
6 not be obligated to pay more than the tenant's portion of the rent, as calculated under that
7 contract or recorded agreement, for 90 days following receipt of the notice of termination or
8 nonrenewal.

9 (B) The owner shall not be eligible to set an initial rent for three years following the
10 date of the termination or nonrenewal of the contract or agreement.

11 (C) The rental rate for any new tenancy established during the three-year period in
12 that vacated dwelling or unit shall be at the same rate as the rent under the terminated or
13 nonrenewed contract or recorded agreement, plus any increases authorized under this
14 Chapter 37 after the date of termination/non renewal.

15 (D) The provisions of Subsections 37.3(d)(3)(B) and (C) shall not apply to any new
16 tenancy of 12 months or more duration established after January 1, 2000, pursuant to the
17 owner's contract or recorded agreement with a governmental agency that provides for a rent
18 limitation to a qualified tenant unless the prior vacancy in that dwelling or unit was pursuant to
19 a nonrenewed or canceled contract or recorded agreement with a governmental agency that
20 provides for a rent limitation to a qualified tenant.

21 (4) Subsection 37.3(d) does not affect the authority of the City and County of San
22 Francisco to regulate or monitor the basis or grounds for eviction.

23 (5) This Subsection 37.3(d) is intended to be and shall be construed to be
24 consistent with the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.)

25 (e) Effect of Deferred Maintenance on Passthroughs for Lead Remediation

1 Techniques.

2 (1) When lead hazards, which have been remediated or abated pursuant to San
3 Francisco Health Code Article 26, are also violations of State or local housing health and
4 safety laws, the costs of such work shall not be passed through to tenants as either a capital
5 improvement or an operating and maintenance expense if the Administrative Law Judge finds
6 that the deferred maintenance, as defined herein, of the current or previous landlord caused
7 or contributed to the existence of the violation of law.

8 (2) In any unit occupied by a lead-poisoned child and in which there exists a lead
9 hazard, as defined in San Francisco Health Code Article 26, there shall be a rebuttable
10 presumption that violations of State or local housing health and safety laws caused or created
11 by deferred maintenance, caused or contributed to the presence of the lead hazards. If the
12 landlord fails to rebut the presumption, that portion of the petition seeking a rent increase for
13 the costs of lead hazard remediation or abatement shall be denied. If the presumption is
14 rebutted, the landlord shall be entitled to a rent increase if otherwise justified by the standards
15 set forth in this Chapter.

16 (3) For purposes of the evaluation of petitions for rent increases for lead
17 remediation work, maintenance is deferred if a reasonable landlord under the circumstances
18 would have performed, on a regular basis, the maintenance work required to keep the
19 premises from being in violation of housing safety and habitability standards set forth in
20 California Civil Code Section 1941 and the San Francisco Municipal Code. In order to prevail
21 on a deferred maintenance defense, a tenant must show that the level of repair or remediation
22 currently required would have been lessened had maintenance been performed in a more
23 timely manner.

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25 //

1 Section 2. The San Francisco Administrative Code is hereby amended by amending
2 Section 37.9, to read as follows:

3 SEC. 37.9. EVICTIONS. Notwithstanding Section 37.3, this Section shall apply as of
4 August 24, 1980, to all landlords and tenants of rental units as defined in Section 37.2(r).

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

6 (1) The tenant:

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

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

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

17 (B) Habitually pays the rent late; or

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

20 (2) The tenant has violated a lawful obligation or covenant of tenancy other than the
21 obligation to surrender possession upon proper notice or other than an obligation to pay a
22 charge prohibited by Police Code Section 919.1, and failure to cure such violation after having
23 received written notice thereof from the landlord, — .

24 (A) ~~p~~ Provided *further* that notwithstanding any lease provision to the contrary, a
25 landlord shall not endeavor to recover possession of a rental unit as a result of subletting of

1 the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet
2 following a written request by the tenant, so long as the tenant continues to reside in the rental
3 unit and the sublet constitutes a one-for-one replacement of the departing tenant(s). If the
4 landlord fails to respond to the tenant in writing within fourteen (14) days of receipt of the
5 tenant's written request, the tenant's request shall be deemed approved by the landlord.

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

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

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

25 (3) The tenant is committing or permitting to exist a nuisance in, or is causing

1 substantial damage to, the rental unit, or is creating a substantial interference with the
2 comfort, safety or enjoyment of the landlord or tenants in the building, and the nature of such
3 nuisance, damage or interference is specifically stated by the landlord in writing as required
4 by Section 37.9(c); or

5 (4) The tenant is using or permitting a rental unit to be used for any illegal purpose;
6 or

7 (5) The tenant, who had an oral or written agreement with the landlord which has
8 terminated, has refused after written request or demand by the landlord to execute a written
9 extension or renewal thereof for a further term of like duration and under such terms which are
10 materially the same as in the previous agreement; provided, that such terms do not conflict
11 with any of the provisions of this Chapter; or

12 (6) The tenant has, after written notice to cease, refused the landlord access to the
13 rental unit as required by State or local law; or

14 (7) The tenant holding at the end of the term of the oral or written agreement is a
15 subtenant not approved by the landlord; or

16 (8) The landlord seeks to recover possession in good faith, without ulterior reasons
17 and with honest intent:

18 (i) For the landlord's use or occupancy as his or her principal residence for a period
19 of at least 36 continuous months;

20 (ii) For the use or occupancy of the landlord's grandparents, grandchildren, parents,
21 children, brother or sister, or the landlord's spouse, or the spouses of such relations, as their
22 principal place of residency for a period of at least 36 months, in the same building in which
23 the landlord resides as his or her principal place of residency, or in a building in which the
24 landlord is simultaneously seeking possession of a rental unit under Section 37.9(a)(8)(i). For
25 purposes of this Section 37.9(a)(8)(ii), the term spouse shall include domestic partners as

1 defined in San Francisco Administrative Code Sections 62.1 through 62.8.

2 (iii) For purposes of this Section 37.9(a)(8) only, as to landlords who become
3 owners of record of the rental unit on or before February 21, 1991, the term "landlord" shall be
4 defined as an owner of record of at least 10 percent interest in the property or, for Section
5 37.9(a)(8)(i) only, two individuals registered as domestic partners as defined in San Francisco
6 Administrative Code Sections 62.1 through 62.8 whose combined ownership of record is at
7 least 10 percent. For purposes of this Section 37.9(a)(8) only, as to landlords who become
8 owners of record of the rental unit after February 21, 1991, the term "landlord" shall be defined
9 as an owner of record of at least 25 percent interest in the property or, for Section 37.9(a)(8)(i)
10 only, two individuals registered as domestic partners as defined in San Francisco
11 Administrative Code Sections 62.1 through 62.8 whose combined ownership of record is at
12 least 25 percent.

13 (iv) A landlord may not recover possession under this Section 37.9(a)(8) if a
14 comparable unit owned by the landlord is already vacant and is available, or if such a unit
15 becomes vacant and available before the recovery of possession of the unit. If a comparable
16 unit does become vacant and available before the recovery of possession, the landlord shall
17 rescind the notice to vacate and dismiss any action filed to recover possession of the
18 premises. Provided further, if a noncomparable unit becomes available before the recovery of
19 possession, the landlord shall offer that unit to the tenant at a rent based on the rent that the
20 tenant is paying, with upward or downward adjustments allowed based upon the condition,
21 size, and other amenities of the replacement unit. Disputes concerning the initial rent for the
22 replacement unit shall be determined by the Rent Board. It shall be evidence of a lack of
23 good faith if a landlord times the service of the notice, or the filing of an action to recover
24 possession, so as to avoid moving into a comparable unit, or to avoid offering a tenant a
25 replacement unit.

1 (v) It shall be rebuttably presumed that the landlord has not acted in good faith if the
2 landlord or relative for whom the tenant was evicted does not move into the rental unit within
3 three months and occupy said unit as that person's principal residence for a minimum of 36
4 continuous months.

5 (vi) Once a landlord has successfully recovered possession of a rental unit pursuant
6 to Section 37.9(a)(8)(i), then no other current or future landlords may recover possession of
7 any other rental unit in the building under Section 37.9(a)(8)(i). It is the intention of this
8 Section that only one specific unit per building may be used for such occupancy under Section
9 37.9(a)(8)(i) and that once a unit is used for such occupancy, all future occupancies under
10 Section 37.9(a)(8)(i) must be of that same unit, provided that a landlord may file a petition with
11 the Rent Board, or at the landlord's option, commence eviction proceedings, claiming that
12 disability or other similar hardship prevents him or her from occupying a unit which was
13 previously occupied by the landlord.

14 (vii) If any provision or clause of this amendment to Section 37.9(a)(8) or the
15 application thereof to any person or circumstance is held to be unconstitutional or to be
16 otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other
17 chapter provisions, and clauses of this Chapter are held to be severable; or

18 (9) The landlord seeks to recover possession in good faith in order to sell the unit in
19 accordance with a condominium conversion approved under the San Francisco subdivision
20 ordinance and does so without ulterior reasons and with honest intent; or

21 (10) The landlord seeks to recover possession in good faith in order to demolish or to
22 otherwise permanently remove the rental unit from housing use and has obtained all the
23 necessary permits on or before the date upon which notice to vacate is given, and does so
24 without ulterior reasons and with honest intent; provided that a landlord who seeks to
25 demolish an unreinforced masonry building pursuant to Building Code Chapters ~~14~~ 16B and ~~15~~

1 16C must provide the tenant with the relocation assistance specified in Section 37.9A below
2 prior to the tenant's vacating the premises; or

3 (11) The landlord seeks in good faith to remove temporarily the unit from housing use
4 in order to be able to carry out capital improvements or rehabilitation work and has obtained
5 all the necessary permits on or before the date upon which notice to vacate is given, and does
6 so without ulterior reasons and with honest intent. Any tenant who vacates the unit under
7 such circumstances shall have the right to reoccupy the unit at the prior rent adjusted in
8 accordance with the provisions of this Chapter. The tenant will vacate the unit only for the
9 minimum time required to do the work. On or before the date upon which notice to vacate is
10 given, the landlord shall advise the tenant in writing that the rehabilitation or capital
11 improvement plans are on file with the Central Permit Bureau of the Department of Building
12 Inspection and that arrangements for reviewing such plans can be made with the Central
13 Permit Bureau. In addition to the above, no landlord shall endeavor to recover possession of
14 any unit subject to a RAP loan as set forth in Section 37.2(m) of this Chapter except as
15 provided in Section 32.69 of the San Francisco Administrative Code. The tenant shall not be
16 required to vacate pursuant to this Section 37.9(a)(11), for a period in excess of three months;
17 provided, however, that such time period may be extended by the Board or its Administrative
18 Law Judges upon application by the landlord. The Board shall adopt rules and regulations to
19 implement the application procedure. Any landlord who seeks to recover possession under
20 this Section 37.9(a)(11) shall pay the tenant actual costs up to \$1,000 for moving and
21 relocation expenses not less than 10 days prior to recovery of possession; or

22 (12) The landlord seeks to recover possession in good faith in order to carry out
23 substantial rehabilitation, as defined in Section 37.2(s), and has obtained all the necessary
24 permits on or before the date upon which notice to vacate is given, and does so without
25 ulterior reasons and with honest intent. Notwithstanding the above, no landlord shall

1 endeavor to recover possession of any unit subject to a RAP loan as set forth in Section
2 37.2(m) of this Chapter except as provided in Section 32.69 of the San Francisco
3 Administrative Code; or

4 (13) The landlord wishes to withdraw from rent or lease all rental units within any
5 detached physical structure and, in addition, in the case of any detached physical structure
6 containing three or fewer rental units, any other rental units on the same lot, and complies in
7 full with Section 37.9A with respect to each such unit; provided, however, that a unit classified
8 as a residential unit under Chapter 41 of this Code which is vacated under this Section
9 37.9(a)(13) may not be put to any use other than that of a residential hotel unit without
10 compliance with the provisions of Section 41.9 of this Code; or

11 (14) The landlord seeks in good faith to temporarily recover possession of the unit for
12 less than 30 days solely for the purpose of effecting lead remediation or abatement work, as
13 required by San Francisco Health Code Article 26. The relocation rights and remedies,
14 established by San Francisco Administrative Code Chapter 72, including but not limited to, the
15 payment of financial relocation assistance, shall apply to evictions under this Section
16 37.9(a)(14).

17 (b) A landlord who resides in the same rental unit with his or her tenant may evict
18 said tenant without just cause as required under Section 37.9(a) above.

19 (c) A landlord shall not endeavor to recover possession of a rental unit unless at
20 least one of the grounds enumerated in Section 37.9(a) or (b) above is the landlord's
21 dominant motive for recovering possession and unless the landlord informs the tenant in
22 writing on or before the date upon which notice to vacate is given of the grounds under which
23 possession is sought and that advice regarding the notice to vacate is available from the
24 Residential Rent Stabilization and Arbitration Board, before endeavoring to recover
25 possession. A copy of all notices to vacate except three-day notices to vacate or pay rent and

1 a copy of any additional written documents informing the tenant of the grounds under which
2 possession is sought shall be filed with the Board within 10 days following service of the
3 notice to vacate. The District Attorney shall determine whether the units set forth on the list
4 compiled in accordance with Section 37.6(k) are still being occupied by the tenant who
5 succeeded the tenant upon whom the notice was served. In cases where the District Attorney
6 determines that Section 37.9(a)(8) has been violated, the District Attorney shall take whatever
7 action he deems appropriate under this Chapter or under State law.

8 (d) No landlord may cause a tenant to quit involuntarily or threaten to bring any
9 action to recover possession, or decrease any services, or increase the rent, or take any other
10 action where the landlord's dominant motive is retaliation for the tenant's exercise of any
11 rights under the law. Such retaliation shall be a defense to any action to recover possession.
12 In an action to recover possession of a rental unit, proof of the exercise by the tenant of rights
13 under the law within six months prior to the alleged act of retaliation shall create a rebuttable
14 presumption that the landlord's act was retaliatory.

15 (e) It shall be unlawful for a landlord or any other person who wilfully assists the
16 landlord to endeavor to recover possession or to evict a tenant except as provided in Section
17 37.9(a) and (b). Any person endeavoring to recover possession of a rental unit from a tenant
18 or evicting a tenant in a manner not provided for in Section 37.9(a) or (b) without having a
19 substantial basis in fact for the eviction as provided for in Section 37.9(a) shall be guilty of a
20 misdemeanor and shall be subject, upon conviction, to the fines and penalties set forth in
21 Section 37.10A. Any waiver by a tenant of rights under this Chapter except as provided in
22 Section 37.10A(g), shall be void as contrary to public policy.

23 (f) Whenever a landlord wrongfully endeavors to recover possession or recovers
24 possession of a rental unit in violation of Sections 37.9 and/or 37.10 as enacted herein, the
25 tenant or Board may institute a civil proceeding for injunctive relief, money damages of not

1 less than three times actual damages, (including damages for mental or emotional distress),
2 and whatever other relief the court deems appropriate. In the case of an award of damages
3 for mental or emotional distress, said award shall only be trebled if the trier of fact finds that
4 the landlord acted in knowing violation of or in reckless disregard of Section 37.9 or 37.10A
5 herein. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant
6 to order of the court. The remedy available under this Section 37.9(f) shall be in addition to
7 any other existing remedies which may be available to the tenant or the Board.

8 (g) The provisions of this Section 37.9 shall apply to any rental unit as defined in
9 Sections 37.2(r)(4)(A) and 37.2(r)(4)(B), including where a notice to vacate/quit any such
10 rental unit has been served as of the effective date of this Ordinance No. 250-98 but where
11 any such rental unit has not yet been vacated or an unlawful detainer judgment has not been
12 issued as of the effective date of this Ordinance No. 250-98.

13 (h) With respect to rental units occupied by recipients of tenant-based rental
14 assistance, the notice requirements of this Section 37.9 shall be required in addition to any
15 notice required as part of the tenant-based rental assistance program, including but not limited
16 to the notice required under 24 CFR Section 982.310(e)(2)(ii).

17 (i) The following additional provisions shall apply to a landlord who seeks to
18 recover a rental unit by utilizing the grounds enumerated in Section 37.9(a)(8):

19 (1) A landlord may not recover possession of a unit from a tenant under Section
20 37.9(a)(8) if the landlord has or receives notice, any time before recovery of possession, that
21 any tenant in the rental unit:

22 (A) Is 60 years of age or older and has been residing in the unit for 10 years or
23 more; or

24 (B) Is disabled within the meaning of Section 37.9(i)(1)(B)(i) and has been residing
25 in the unit for 10 years or more, or is catastrophically ill within the meaning of Section

1 37.9(i)(1)(B)(ii) and has been residing in the unit for five years or more:

2 (i) A "disabled" tenant is defined for purposes of this Section 37.9(i)(1)(B) as a
3 person who is disabled or blind within the meaning of the federal Supplemental Security
4 Income/California State Supplemental Program (SSI/SSP), and who is determined by
5 SSI/SSP to qualify for that program or who satisfies such requirements through any other
6 method of determination as approved by the Rent Board;

7 (ii) A "catastrophically ill" tenant is defined for purposes of this Section 37.9(i)(1)(B)
8 as a person who is disabled as defined by Section 37.9(i)(1)(B)(i), and who is suffering from a
9 life threatening illness as certified by his or her primary care physician.

10 (2) The foregoing provisions of Sections 37.9(i)(1)(A) and (B) shall not apply where
11 there is only one rental unit owned by the landlord in the building, or where each of the rental
12 units owned by the landlord in the same building where the landlord resides (except the unit
13 actually occupied by the landlord) is occupied by a tenant otherwise protected from eviction by
14 Sections 37.9(i)(1)(A) or (B) and where the landlord's qualified relative who will move into the
15 unit pursuant to Section 37.9(a)(8) is 60 years of age or older.

16 (3) The provisions established by this Section 37.9(i) include, but are not limited to,
17 any rental unit where a notice to vacate/quit has been served as of the date this amendment
18 takes effect but where the rental unit has not yet been vacated or an unlawful detainer
19 judgment has not been issued.

20 (4) Within 30 days of personal service by the landlord of a written request, or, at the
21 landlord's option, a notice of termination of tenancy under Section 37.9(a)(8), the tenant must
22 submit a statement, with supporting evidence, to the landlord if the tenant claims to be a
23 member of one of the classes protected by Section 37.9(i). The written request or notice shall
24 contain a warning that a tenant's failure to submit a statement within the 30 day period shall
25 be deemed an admission that the tenant is not protected by Section 37.9(i). The landlord

1 shall file a copy of the request or notice with the Rent Board within 10 days of service on the
2 tenant. A tenant's failure to submit a statement within the 30 day period shall be deemed an
3 admission that the tenant is not protected by Section 37.9(i). A landlord may challenge a
4 tenant's claim of protected status either by requesting a hearing with the Rent Board or, at the
5 landlord's option, through commencement of eviction proceedings, including service of a
6 notice of termination of tenancy. In the Rent Board hearing or the eviction action, the tenant
7 shall have the burden of proof to show protected status. No civil or criminal liability under
8 Section 37.9(e) or (f) shall be imposed upon a landlord for either requesting or challenging a
9 tenant's claim of protected status.

10 (5) This Section 37.9(i) is severable from all other sections and shall be of no force
11 or effect if any temporary moratorium on owner/relative evictions adopted by the Board of
12 Supervisors after June 1, 1998 and before October 31, 1998 has been invalidated by the
13 courts in a final decision.

14
15 Section 3. It is the intent of the Board of Supervisors that the provisions (as modified from
16 time to time) of Residential Rent Stabilization and Arbitration Board Rules and Regulations Section
17 6.15A and 6.15B regarding consent procedures in subletting also substantially apply to this legislation,
18 modified to accommodate the family situations addressed herein, and that the Rent Board amend
19 its Rules and Regulations as necessary to so provide.

20
21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By:


24 MARIE CORLETT BLITS
25 Deputy City Attorney

SUPERVISORS GONZALEZ, DALY, PESKIN, AMMIANO
BOARD OF SUPERVISORS



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 030667

Date Passed:

Ordinance amending Administrative Code Chapter 37 "Residential Rent Stabilization and Arbitration Ordinance" by amending Section 37.9 to prohibit evictions from rent-controlled units based solely on the addition of an existing tenant's child, parent, grandchild, grandparent, brother or sister, or the spouse or domestic partner (as defined in Administrative Code Sections 62.1 through 62.8) of such relatives, or for the addition of the spouse or domestic partner of a tenant, where a pre-existing rental agreement or lease limits the number of occupants or limits or prohibits subletting or assignment and where the landlord has unreasonably refused the tenant's written request to add such occupant(s), unless the total number of occupants exceeds two persons per studio rental unit, three per one-bedroom unit, four per two-bedroom unit, six per three-bedroom unit or eight per four-bedroom unit, or unless this total would exceed the number of occupants permitted under state law and/or other local codes (e.g., Planning, Housing, Fire and Building Codes) [Section 37.9(a)(2)]; and expressing the intent of the Board of Supervisors that the Rent Board Rules and Regulations regarding subletting consent procedures be substantially applied to this legislation (but modified to address the family situations that are the subject of this legislation).

September 23, 2003 Board of Supervisors — SUBSTITUTED

November 16, 2004 Board of Supervisors — PASSED ON FIRST READING


Ayes: 7 - Ammiano, Daly, Dufty, Gonzalez, Maxwell, Peskin, Sandoval
Noes: 2 - Alioto-Pier, Elsbernd
Excused: 2 - Ma, McGoldrick

November 23, 2004 Board of Supervisors — FINALLY PASSED

Ayes: 8 - Ammiano, Daly, Dufty, Gonzalez, Maxwell, McGoldrick, Peskin, Sandoval
Noes: 3 - Alioto-Pier, Elsbernd, Ma

File No. 030667

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on November 23, 2004 by the Board of Supervisors of the City and County of San Francisco.



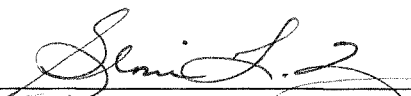
Gloria L. Young
Clerk of the Board

Date Approved

Mayor Gavin Newsom

December 1, 2004

I hereby certify that the foregoing ordinance, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter.



Clerk of the Board