

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

2 Ordinance amending the Administrative Code to: 1) prohibit, with certain exceptions,  
3 rent increases based on the addition of occupants even where a pre-existing rental  
4 agreement or lease permits such an increase; 2) prevent evictions based on the  
5 addition of occupants if the landlord has unreasonably refused the tenant's written  
6 request, including a refusal based on the amount of occupants allowed by the rental  
7 agreement or lease; 3) require landlords, after certain vacancies, to set the new base  
8 rent, for the next five years, as the lawful rent in effect at the time of the vacancy; 4)  
9 require that there be a substantial violation of a lawful obligation or covenant of  
10 tenancy as a basis for the recovery of possession; 5) require a landlord, prior to  
11 seeking recovery of possession, to provide tenants an opportunity to cure the  
12 unauthorized addition of the tenant's family members to the tenant's unit; 6) require  
13 that if a landlord seeks to recover possession based on a nuisance, substantial  
14 damage, or substantial interference with comfort, safety or enjoyment, the nuisance,  
15 substantial damage, or substantial interference be severe, continuing or recurring in  
16 nature; 7) prevent a landlord from seeking recovery of possession solely because the  
17 tenant is occupying a unit not authorized for residency; ~~7~~8) require landlords to state in  
18 notices to vacate for certain good cause evictions the lawful rent for the unit at the time  
19 the notice is served; ~~8~~9) require the Rent Board to prepare a form in English, Chinese,  
20 Spanish, Vietnamese, Tagalog, and Russian stating that a notice to vacate may lead to  
21 a lawsuit to evict and stating that advice regarding notices to vacate is available from  
22 the Rent Board; ~~9~~10) require landlords to attach a copy of the Rent Board form in the  
23 primary language of the tenant to each notice to vacate; and ~~10~~11) require landlords to  
24 plead and prove in any action to recover possession that at least one of the grounds of  
25

1 **Administrative Code, Section 37.9(a)-(b) stated in the notice to vacate is the dominant**  
2 **motive for recovering possession.**

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

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

12 Section 1. Findings

13 The Board of Supervisors hereby finds that:

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

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

1 – approximately 60% of the median gross monthly income of a single person in San  
2 Francisco.

3 (c) Rising rates of evictions and rents are forcing thousands of lower and even middle  
4 income households to move out of San Francisco. According to the July 2015 Economic  
5 Impact Analysis Report, 12.3% of low income households and 5.9% of moderate and higher  
6 income households are now moving out of San Francisco every year. The involuntary  
7 displacement of residents adversely impacts San Francisco’s collective economic vitality,  
8 diversity, and social and cultural well-being. The individual impacts of evictions and  
9 displacement from established community relationships and institutions can result in  
10 substantial adverse impacts on the health of seniors and vulnerable populations including but  
11 not limited to residents with limited English language skills.

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

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

23 (f) This ordinance will enable tenants to stay in their homes to maintain a committed  
24 relationship with another person or personal associations. And by doing so, will relieve the  
25 burden on some residents to find affordable rental space in San Francisco. It also permits a

1 landlord to reject a request for a roommate for good reason, and to petition the Rent Board to  
2 increase the rent to compensate the landlord for any costs incurred as a result of the  
3 additional occupancy.

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

6 Section 2. The Administrative Code is hereby amended by revising Sections 37.3,  
7 37.9, and 37.9A, to read as follows:

8  
9 **SEC. 37.3. RENT LIMITATIONS.**

10 (a) Rent Increase Limitations for Tenants in Occupancy. Landlords may impose rent  
11 increases upon tenants in occupancy only as provided below and as provided by Subsection  
12 37.3(d):

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

18 \* \* \* \*

19 (11) Additional occupants.

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

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

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

6 \* \* \* \*

7           (f) Costa-Hawkins Vacancy Control. Where a landlord has terminated the previous tenancy  
8 as stated in either subsection (1), (2) or (3) below, for the next five years from the termination, the  
9 initial base rent for the subsequent tenancy shall be a rent not greater than the lawful rent in effect at  
10 the time the previous tenancy was terminated, plus any annual rent increases available under this  
11 Chapter 37. This Section 37.3(f) is intended to be consistent with California Civil Code Section  
12 1954.53(a)(1)(A)-(B).

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

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

24           (3) Where the landlord terminated or did not renew a contract or recorded agreement  
25 with a governmental agency that provided for a rent limitation to a qualified tenant. When a landlord

1 terminates a tenant-based rental assistance program, the landlord shall, within 10 days after giving the  
2 notice of termination of the program to the tenant, notify the Board in writing of the monthly rent the  
3 tenant was paying and the monthly rent paid by the program to the landlord on behalf of the tenant  
4 when the landlord gave notice to the tenant, and provide a copy of the notice to the Board to the tenant.

5 \* \* \* \*

6  
7 **SEC. 37.9. EVICTIONS.**

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

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

11  
12 (1) The tenant:

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

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

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

23 (B) Habitually pays the rent late; or

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

1 (2) The tenant has violated a lawful obligation or covenant of tenancy other than the  
2 obligation to surrender possession upon proper notice or other than an obligation to pay a  
3 charge prohibited by Police Code Section 919.1, the violation was substantial, and the tenant  
4 fails~~failure~~ to cure such violation after having received written notice thereof from the landlord.

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

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

1 landlord. A landlord's reasonable refusal of the tenant's written request may be based on, but  
2 is not limited to, the ground that the total number of occupants in a unit exceeds (or with the  
3 proposed additional occupant(s) would exceed) the lesser of (i) or (ii):

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

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

9 (C) Provided further that where a rental agreement or lease provision limits the  
10 number of occupants or limits or prohibits subletting or assignment, a landlord shall not endeavor to  
11 recover possession of a rental unit as a result of the addition by the tenant of additional occupants to  
12 the rental unit, so long as the maximum number of occupants does not exceed the lesser of the amounts  
13 allowed by Subsection (i) or Subsection (ii) of this Section 37.9(a)(2)(C), if the landlord has  
14 unreasonably refused a written request by the tenant to add such occupant(s) to the unit. If the landlord  
15 fails to respond to the tenant in writing with a description of the reasons for the denial of the request  
16 within 14 days of receipt of the tenant's written request, the tenant's request shall be deemed approved  
17 by the landlord. A landlord's reasonable refusal of the tenant's written request may not be based on  
18 either of the following: (1) the proposed additional occupant's lack of creditworthiness, if that person  
19 will not be legally obligated to pay some or all of the rent to the landlord, or (2) the number of  
20 occupants allowed by the rental agreement or lease. With the exception of the restrictions stated in the  
21 preceding sentence, a landlord's reasonable refusal of the tenant's written request may be based on, but  
22 is not limited to, the ground that the landlord resides in the same unit as the tenant or the ground that  
23 the total number of occupants in a unit exceeds (or with the proposed additional occupant(s) would  
24 exceed) the lesser of (i) or (ii):  
25



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

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

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

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

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

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

1 (4) The tenant is using or permitting a rental unit to be used for any illegal  
2 purpose, provided however that a landlord shall not endeavor to recover possession of a  
3 rental unit solely;

4 (aA) as a result of a first violation of Chapter 41A that has been cured within 30  
5 days written notice to the tenant; or,

6 (bB) because the illegal use is the residential occupancy of a unit not authorized for  
7 residential occupancy by the City. Nothing in this Section 37.9(a)(4)(B) prohibits a landlord from  
8 endeavoring to recover possession of the unit under Section 37.9(a)(8) or (10) of this Chapter.

9 \* \* \* \*

10 (c) A landlord shall not endeavor to recover possession of a rental unit unless at  
11 least one of the grounds enumerated in Section 37.9(a) or (b) above is (1) the landlord's  
12 dominant motive for recovering possession and (2) unless the landlord informs the tenant in  
13 writing on or before the date upon which notice to vacate is given of the grounds under which  
14 possession is sought, and for notices to vacate under Sections 37.9(a)(8), (9), (10), (11), and (14),  
15 state in the notice to vacate the lawful rent for the unit at the time the notice is issued and that advice  
16 regarding the notice to vacate is available from the Residential Rent Stabilization and Arbitration  
17 Board, before endeavoring to recover possession. The Board shall prepare a written form that  
18 states that a tenant's failure to timely act in response to a notice to vacate may result in a lawsuit by the  
19 landlord to evict the tenant and advice regarding the notice to vacate is available from the Board. The  
20 Board shall prepare the form in English, Chinese, Spanish, Vietnamese, Tagalog, and Russian and  
21 make the form available to the public on its website and in its office. A landlord shall attach a copy of  
22 the form that is in the primary language of the tenant to a notice to vacate before serving the notice,  
23 except that if the tenant's primary language is not English, Chinese, Spanish, Vietnamese, Tagalog or  
24 Russian, the landlord shall attach a copy of the form that is in English to the notice. A copy of all  
25 notices to vacate except three-day notices to vacate or pay rent and a copy of any additional

1 written documents informing the tenant of the grounds under which possession is sought shall  
2 be filed with the Board within 10 days following service of the notice to vacate. The District  
3 Attorney shall determine whether the units set forth on the list compiled in accordance with  
4 Section 37.6(k) are still being occupied by the tenant who succeeded the tenant upon whom  
5 the notice was served. In cases where the District Attorney determines that Section 37.9(a)(8)  
6 has been violated, the District Attorney shall take whatever action he deems appropriate  
7 under this Chapter or under State law. In any action to recover possession of the rental unit under  
8 Section 37.9, the landlord must plead and prove that at least one of the grounds enumerated in Section  
9 37.9(a) or (b) and also stated in the notice to vacate is the dominant motive for recovering possession.  
10 Tenants may rebut the allegation that any of the grounds stated in the notice to vacate is the dominant  
11 motive.

12 \* \* \* \*

13  
14 **SEC. 37.9A. TENANT RIGHTS IN CERTAIN DISPLACEMENTS UNDER SECTION**  
15 **37.9(a)(13).**

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

18 \* \* \* \*

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

20 (1) Any owner who intends to withdraw from rent or lease any rental unit shall  
21 notify the Rent Board in writing of said intention. Said notice shall contain statements, under  
22 penalty of perjury, providing information on the number of residential units, the address or  
23 location of those units, the name or names of the tenants or lessees of the units, and the rent  
24 applicable to each residential rental unit. Said notice shall be signed by all owners of record of  
25 the property under penalty of perjury and shall include a certification that actions have been

1 initiated as required by law to terminate existing tenancies through service of a notice of  
2 termination of tenancy. The notice must be served by certified mail or any other manner  
3 authorized by law prior to delivery to the Rent Board of the notice of intent to withdraw the  
4 rental units. Information respecting the name or names of the tenants, the rent applicable to  
5 any unit, or the total number of units, is confidential and shall be treated as confidential  
6 information by the City for purposes of the Information Practices Act of 1977, as contained in  
7 Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil  
8 Code. The City shall, to the extent required by the preceding sentence, be considered an  
9 "agency," as defined by Subdivision (b) of Section 1798.3 of the Civil Code.

10 \* \* \* \*

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

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

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

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

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

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

23 \* \* \* \*

24 Section 2. Severability. If any section, subsection, sentence, clause, phrase, or word  
25 of this Ordinance, or any application thereof to any person or circumstance, is held to be

1 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision  
2 shall not affect the validity of the remaining portions or applications of the Ordinance. The  
3 Board of Supervisors hereby declares that it would have passed this Ordinance and each and  
4 every section, subsection, sentence, clause, phrase, and word not declared invalid or  
5 unconstitutional without regard to whether any other portion of this Ordinance would be  
6 subsequently declared invalid or unconstitutional.

7 Section 3. Effective Date. This ordinance shall become effective 30 days after  
8 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
9 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
10 of Supervisors overrides the Mayor's veto of the ordinance.

11 Section 4. 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  
19

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

22 By: \_\_\_\_\_  
23 Robert A. Bryan  
24 Deputy City Attorney

25 n:\leganalas2015\1500782\01046761.docx

**AMENDED LEGISLATIVE DIGEST**  
*(9/14/2015 - Amended in Committee)*

[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, for the next five years, 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) require that if a landlord seeks to recover possession based on a nuisance, substantial damage, or substantial interference with comfort, safety or enjoyment, the nuisance, substantial damage, or substantial interference be severe, continuing or recurring in nature; 7) prevent a landlord from seeking recovery of possession solely because the tenant is occupying a unit not authorized for residency; 8) 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; 9) 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; 10) require landlords to attach a copy of the Rent Board form in the primary language of the tenant to each notice to vacate; and 11) 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.**

Existing Law

The City's Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative Code, the "Rent Ordinance") applies to most rental housing built before June 1979. In general, the Rent Ordinance limits annual rent increases, and requires specified good cause for evictions. The Rent Ordinance established the Residential Rent Stabilization and Arbitration Board (the "Rent Board") to safeguard tenants from excessive rent increases and assure landlords fair and adequate rents. Section 37.9 of the Rent Ordinance lists the good cause grounds for eviction and Section 37.3 of the Rent Ordinance states the conditions for which a landlord may seek a rent increase and the process for obtaining the increase.

Section 37.9(a) and (b) lists approximately 15 good cause grounds for evicting tenants. Section 37.9(a)(2) allows a landlord to recover possession if the tenant has violated a lawful obligation or covenant of tenancy and failed to cure the violation after receiving a notice to cure from the landlord. However, Section 37.9(a)(2) essentially prohibits evictions based on increased occupancy (with a limited exception) where the additional occupants consists of certain family members of the tenant. Eviction is prohibited even where a rental agreement or lease otherwise limits the number of occupants, or limits or prohibits subletting. A tenant's written request to the landlord to add occupant(s) is deemed approved if the landlord fails to respond in writing within 14 days. The landlord may not refuse an additional occupant based on that person's creditworthiness if that person would not be legally obligated to pay any rent to the landlord. But the landlord may refuse the additional occupant(s) if the total number of occupants in the unit would exceed the lesser of: (1) two persons in a studio unit, three persons in a one-bedroom unit, four persons in a two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four bedroom-unit, or (2) the maximum number of persons allowed in a unit under state or local law.

Additional good cause grounds include Section 37.9(a)(3) and 37.9(a)(4). Section 37.9(a)(3) allows a landlord to recover possession when the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the rental unit, or is creating a substantial interference with the comfort, safety or enjoyment of the landlord or other tenant, and the landlord so informs the tenant in writing on or before serving a notice to vacate. Section 37.9(a)(4) allows a landlord to recover possession if the tenant is using the premises for illegal purposes, but the landlord may not recover possession solely because the tenant has committed the tenant's first violation of Chapter 41A (Residential Unit Conversion and Demolition) if that violation has been cured within 30 days written notice to the tenant.

Section 37.9(c) requires that a landlord not seek to recover possession of a rental unit unless one of the basis for recovery provided in Sections 37.9(a) or (b) is the landlord's dominant motive for recovering possession.

#### Amendments to Current Law

The proposed ordinance would amend Section 37.3(a)(11) to prohibit rent increases based solely on the addition of an occupant to an existing tenancy. Such rent increases would be prohibited even where a pre-existing rental agreement or lease permits a rent increase. However, a landlord would be able to petition the Rent Board for a rent increase based on increased costs associated with the addition of occupants. Furthermore, the proposed legislation would not limit rent increases permitted by the state Costa-Hawkins Rental Housing Act (California Civil Code §§1954.50 *et seq.*).

The proposed ordinance amends Section 37.9(a)(2) to prohibit evictions based on additional occupants with tenancies greater than 29 days. A tenant who wishes to add an occupant would first have to make a written request to the landlord. The landlord could not refuse the request on the basis that the rental agreement or lease limits the number of occupants or prohibits subletting, or that the proposed occupant is not creditworthy, if that person would not be legally obligated to pay any rent to the landlord. The landlord could not unreasonably refuse the tenant's request. A reasonable basis for refusing the request includes, but is not limited to, the total number of occupants in the unit exceeding the lesser of: (1) two persons in a studio unit, three persons in a one-bedroom unit, four persons in a two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four bedroom-unit, or (2) the maximum number of persons allowed in the unit under state or local law. If the landlord does not respond to the tenant's request in 14 days, the request would be deemed approved.

The proposed ordinance amends Section 37.3 to include the Costa-Hawkins Vacancy Control of the California Civil Code Section 1954.53(a)(1) by adding subsection (f) to Section 37.3 to require that, for the next five years from the termination of a tenancy, the initial base rent for a subsequent tenancy be no greater than the lawful rent in effect at the time the preceding tenancy ended, if any of the following is true: (1) the preceding tenancy was terminated by a notice of termination issued under California Civil Code Section 1946.1 (for a tenancy for an unspecified term) stating the grounds for recovery of possession under Sections 37.9(a)(8),(9), (10), (11), or (14); (2) the preceding tenancy was terminated by a change in terms of the tenancy noticed under California Civil Code Section 827 (for a tenancy with a term that is month to month or shorter); or (3) where the landlord terminated or did not renew a contract or recorded agreement with a governmental agency that provided for a rent limitation to a qualified tenant. Within 10 days of serving a notice of termination based on a change in terms of tenancy under Section 827 of the California Civil Code or based on the termination of a tenant-based assistance program, the landlord must notify the Rent Board in writing of the monthly rent the tenant was paying before the termination, and provide a copy of the notice to the tenant.

The proposed ordinance amends Section 37.9(a)(2) to require that the tenant's violation of a lawful obligation or covenant of tenancy be a substantial violation for the landlord to seek recovery of possession. Furthermore, the amendment requires that before seeking recovery of possession based on a violation of a covenant regarding subletting or the number of occupants in the rental unit, that the landlord serve the tenant a written notice of the violation that gives the tenant an opportunity to cure in not less than 10 days. The tenant may cure the violation by submitting the written request for additional occupants allowed under Section 37.9(a)(2)(A),(B) or (C) or using any other reasonable means to cure.

The proposed ordinance amends Section 37.9(a)(3) by requiring that the violation that is the basis for seeking recovery of possession from the tenant (causing a nuisance, causing substantial damage to the premises, etc.) be severe, continuing or recurring in nature.



The proposed ordinance amends Section 37.9(a)(4) to prevent a landlord from seeking to recover possession of a unit solely because the illegal use of the unit is the occupancy of a unit that is not authorized for residential occupancy by the City. However, this amendment does not prevent a landlord from seeking recovery of possession under Section 37.9(a)(8) or (10) of the Rent Ordinance.

The proposed ordinance amends Section 37.9(c) to require that a landlord plead and prove in any action to recover possession, that at least one of the grounds that is both enumerated in Section 37.9(a)-(b) and stated in the notice to vacate is the dominant motive for seeking recovery of possession. A tenant may rebut the landlord's allegation that any of the grounds stated is the dominant motive.

The proposed ordinance also amends Section 37.9(c) to require the Rent Board to prepare a form in English, Chinese, Spanish, Vietnamese, and Russian that states that a tenant's failure to promptly respond to a notice to vacate could lead to a lawsuit for the tenant's eviction, and that the tenant may receive advise on the notice from the Rent Board. Landlords are required to attached a copy of the form in the tenant's primary language to a notice to vacate, and to attach a form that is in English if the tenant's primary language is not English, Chinese, Spanish, Vietnamese, or Russian.

#### Background Information

This legislative digest reflects the following amendments adopted by the Land Use Committee on September 14, 2015: (1) limit the effective period of the Costa Hawkins Vacancy Control requirements added to the Rent Ordinance to five years from the termination of a tenancy; (2) require that a tenant's actions causing a nuisance, substantial damage, or substantial interference with the comfort, safety, or enjoyment of the landlord or tenants, that is the basis for seeking recovery of possession, be severe, continuing or recurring in nature; and (3) clarify that the prohibition against seeking recovery solely because a residential occupancy is not authorized does not prevent a landlord from seeking to recover possession under Section 37.9(a)(8) or (10).

n:\leganas2015\1500782\01035643.docx