FILE NO. 020716 ORDINANCE NO. 2-03

[Settlement of lawsuit and, as part of the settlement, amending the Rent Control Ordinance regarding permissible passthrough from landlords to residential tenants of certain bond costs; and regarding passthrough of certain costs for capital improvements, rehabilitation, energy conservation improvements, and renewable energy improvements, and expanding the provisions permitting tenant hardship applications for relief from such passthroughs.]

Ordinance authorizing settlement of the lawsuit filed by residential landlords against the City and County of San Francisco to invalidate Proposition H passed in the November 2000 general election, concerning the pass through of capital improvement costs by landlords to tenants; the lawsuit was filed on November 22, 2000, in San Francisco Superior Court, Case No. 316-928 entitled Quigg v. City and County of San Francisco, et al.; and, as part of the settlement, amending the Residential Rent Stabilization and Arbitration Ordinance (Administrative Code Chapter 37) regarding permissible passthrough of bond costs from landlords to tenants by providing for 50% passthrough of the change in the landlord's property tax resulting from the repayment of general obligation bonds of the City and County of San Francisco approved by the voters in the future; and regarding permissible passthrough from landlords to residential tenants of certain costs for capital improvements, rehabilitation, energy conservation improvements, and renewable energy improvements, by codifying and expanding existing amortization schedules, by establishing specified maximum annual passthroughs at 5% of a tenant's base rent for properties with five or fewer units and at 10% of a tenant's base rent for properties with six or more units, by capping certification for work and improvements on properties with six or more residential units at 50% of landlord costs unless the tenant elects 100% passthrough of costs with a lifetime rent increase cap of 15% of base rent, by lengthening the amortization period from 10 years to 20 years for certain improvements required by law (including certain seismic improvements to unreinforced masonry buildings), by providing tenants and

the Rent Board with pre-application notice of large projects, by providing that each petition totaling more than $25,000 must pay the cost of an estimator hired by the Rent Board unless the applicant provides copies of competitive bids received or copies of time and materials billing, by providing for the Commission on the Environment to conduct hearings and recommend new passthrough provisions encouraging energy conservation improvements and renewable energy improvements, and by expanding the provisions for tenant hardship applications for relief from such passthroughs by providing that a tenant can file such an application at any time instead of only at the time the passthrough is originally approved. This Ordinance amends Sections 37.2, 37.3, and 37.7, and 37.8B, with most provisions operative May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading by the Board of Supervisors, whichever is later.

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

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

Section 1. The City Attorney is hereby authorized to settle with plaintiffs Daniel Quigg, Jon Bumgarner, Kenneth Meislin, Christian Lindgren, 929 Pine Street Associates, Chris J. Dressel, Tim Carrico, Michele Quaranta, Chris Thompson, Coalition for Better Housing, and San Francisco Apartment Association, and intervenors Rebecca Graf, the Housing Rights Committee of San Francisco, Lombard Income Partners, L.P., and Sangiacomo Family Limited Partnership in the action entitled "Quigg v. City and County of San Francisco, San Francisco Superior Court, Court No. 316-928, and California Court of Appeal, First Appellate District, Appeal No. A097389, on the following terms: (1) upon the effective date of this

Ordinance, the City will dismiss Appeal No. A097389; (2) the parties agree that the Judgment in Action No. 316-928 filed October 4, 2001, invalidates and makes unenforceable Proposition H, with the exceptions of S.F. Administrative Code Sections 37.3(a)(6) and 37.3(b)(2) of Proposition H; (3) the parties waive any challenge to this Ordinance; and (4) the parties release one another from liability for claims or damages arising out of Action No. 316-928. The above-named action was filed as follows: Quigg v. City and County of San Francisco, Court No. 316-928 in San Francisco Superior Court on November 22, 2000. The following parties were named in the lawsuit: Daniel Quigg, Jon Bumgarner, Kenneth Meislin, Christian Lindgren, 929 Pine Street Associates, Chris J. Dressel, Tim Carrico, Michele Quaranta, Chris Thompson, Coalition for Better Housing, and San Francisco Apartment Association, Rebecca Graf, the Housing Rights Committee of San Francisco, Lombard Income Partners, L.P., Sangiacomo Family Limited Partnership, and the City and County of San Francisco.

Section 2. The San Francisco Administrative Code is hereby amended by amending Section 37.2, to read as follows:

SEC. 37.2. DEFINITIONS.

(a) Base Rent.

(1) That rent which is charged a tenant upon initial occupancy plus any rent increase allowable and imposed under this Chapter; provided, however, that base rent shall not include increases imposed pursuant to Section 37.7 below or utility passthroughs or general obligation passthroughs pursuant to Section 37.2(q) below. Base rent for tenants of RAP rental units in areas designated on or after July 1, 1977, shall be that rent which was established pursuant to Section 32.73-1 of the San Francisco Administrative Code. Rent increases attributable to the City Administrator's amortization of an RAP loan in an area designated on or after July 1, 1977, shall not be included in the base rent.

(2) From and after the effective date of this ordinance, the base rent for tenants occupying rental units which have received certain tenant-based or project-based rental assistance shall be as follows:

(A) With respect to tenant-based rental assistance:

(i) For any tenant receiving tenant-based assistance as of the effective date of this ordinance (except where the rent payable by the tenant is a fixed percentage of the tenant's income, such as in the Section 8 certificate program and the rental subsidy program for the HOPWA program), and continuing to receive tenant-based rental assistance following the effective date of this ordinance, the base rent for each unit occupied by such tenant shall be the rent payable for that unit under the Housing Assistance Payments contract, as amended, between the San Francisco Housing Authority and the landlord (the "HAP contract") with respect to that unit immediately prior to the effective date of this ordinance (the "HAP" contract rent").

(ii) For any tenant receiving tenant-based rental assistance (except where the rent payable by the tenant is a fixed percentage of the tenant's income, such as in the Section 8 certificate program and the rental subsidy program for the HOPWA program), and commencing occupancy of a rental unit following the effective date of this ordinance, the base rent for each unit occupied by such a tenant shall be the HAP contract rent in effect as of the date the tenant commences occupancy of such unit.

(iii) For any tenant whose tenant-based rental assistance terminates or expires, for whatever reason, following the effective date of this ordinance, the base rent for each such unit following expiration or termination shall be the HAP contract rent in effect for that unit immediately prior to the expiration or termination of the tenant-based rental assistance.

(B) For any tenant occupying a unit upon the expiration or termination, for whatever reason, of a project-based HAP contract under Section 8 of the United States Housing Act of

1937 (42 USC Section 1437f, as amended), the base rent for each such unit following expiration or termination shall be the "contract rent" in effect for that unit immediately prior to the expiration or termination of the project-based HAP contract.

(C) For any tenant occupying a unit upon the prepayment or expiration of any mortgage insured by the United States Department of Housing and Urban Development ("HUD"), including but not limited to mortgages provided under Sections 221(d)(3), 221(d)(4) and 236 of the National Housing Act (12 USC Section 1715z-1), the base rent for each such unit shall be the "basic rental charge" (described in 12 USC 1715z-1(f), or successor legislation) in effect for that unit immediately prior to the prepayment of the mortgage, which charge excludes the "interest reduction payment" attributable to that unit prior to the mortgage prepayment or expiration.

(b) Board. The Residential Rent Stabilization and Arbitration Board.

(c) Capital Improvements. Those improvements which materially add to the value of the property, appreciably prolong its useful life, or adapt it to new uses, and which may be amortized over the useful life of the improvement of the building.

(d) CPI. Consumer Price Index for all Urban Consumers for the San Francisco-Oakland Metropolitan Area, U.S. Department of Labor.

(e) Energy Conservation ~~*Measures*~~ *Improvements*. Work performed pursuant to the requirements of ~~*Article*~~ *Chapter* 12 of the San Francisco Housing Code.

(f) Administrative Law Judge. A person, designated by the Board, who arbitrates and mediates rental increase disputes, and performs other duties as required pursuant to this Chapter 37.

(g) Housing Services. Services provided by the landlord connected with the use or occupancy of a rental unit including, but not limited to: repairs; replacement; maintenance; painting; light; heat; water; elevator service; laundry facilities and privileges; janitor service;

refuse removal; furnishings; telephone; parking; rights permitted the tenant by agreement, including the right to have a specific number of occupants, whether express or implied, and whether or not the agreement prohibits subletting and/or assignment; and any other benefits, privileges or facilities.

(h) Landlord. An owner, lessor, sublessor, who receives or is entitled to receive rent for the use and occupancy of any residential rental unit or portion thereof in the City and County of San Francisco, and the agent, representative or successor of any of the foregoing.

(i) Member. A member of the Residential Rent Stabilization and Arbitration Board.

(j) Over FMR Tenancy Program. A regular certificate tenancy program whereby the base rent, together with a utility allowance in an amount determined by HUD, exceeds the fair market rent limitation for a particular unit size as determined by HUD.

(k) Payment Standard. An amount determined by the San Francisco Housing Authority that is used to determine the amount of assistance paid by the San Francisco Housing Authority on behalf of a tenant under the Section 8 Voucher Program (24 CFR Part 887).

(l) RAP. Residential Rehabilitation Loan Program (Chapter 32, San Francisco Administrative Code).

(m) RAP Rental Units. Residential dwelling units subject to RAP loans pursuant to Chapter 32, San Francisco Administrative Code.

(n) Real Estate Department. A city department in the City and County of San Francisco.

(o) Rehabilitation Work. Any rehabilitation or repair work done by the landlord with regard to a rental unit, or to the common areas of the structure containing the rental unit, which work was done in order to be in compliance with State or local law, or was done to repair damage resulting from fire, earthquake or other casualty or natural disaster.

(p) Rent. The consideration, including any bonus, benefits or gratuity, demanded or received by a landlord for or in connection with the use or occupancy of a rental unit, or the assignment of a lease for such a unit, including but not limited to monies demanded or paid for parking, furnishing, food service, housing services of any kind, or subletting.

(q) Rent Increases. Any additional monies demanded or paid for rent as defined in item (p) above, or any reduction in housing services without a corresponding reduction in the monies demanded or paid for rent; provided, however, that (1) where the landlord has been paying the tenant's utilities and cost of those utilities increase, the landlord's passing through to the tenant of such increased costs does not constitute a rent increase; and (2) where there has been a change in the landlord's property tax attributable to a ballot measure approved by the voters between November 1, 1996, and November 30, 1998, *or after [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later],* the landlord's passing through of such increased costs in accordance with this Chapter does not constitute a rent increase.

(r) Rental Units. All residential dwelling units in the City and County of San Francisco together with the land and appurtenant buildings thereto, and all housing services, privileges, furnishings and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities. The term shall not include:

(1) Housing accommodations in hotels, motels, inns, tourist houses, rooming and boarding houses, provided that at such time as an accommodation has been occupied by a tenant for 32 continuous days or more, such accommodation shall become a rental unit subject to the provisions of this Chapter; provided further, no landlord shall bring an action to recover possession of such unit in order to avoid having the unit come within the provisions of this Chapter. An eviction for a purpose not permitted under Section 37.9(a) shall be deemed

to be an action to recover possession in order to avoid having a unit come within the provisions of this Chapter;

(2) Dwelling units in nonprofit cooperatives owned, occupied and controlled by a majority of the residents or dwelling units solely owned by a nonprofit public benefit corporation governed by a board of directors the majority of which are residents of the dwelling units and where it is required in the corporate by-laws that rent increases be approved by a majority of the residents;

(3) Housing accommodation in any hospital, convent, monastery, extended care facility, asylum, residential care or adult day health care facility for the elderly which must be operated pursuant to a license issued by the California Department of Social Services, as required by California Health and Safety Chapters 3.2 and 3.3; or in dormitories owned and operated by an institution of higher education, a high school, or an elementary school;

(4) Except as provided in Subsections (A) and (B), dwelling units whose rents are controlled or regulated by any government unit, agency or authority, excepting those unsubsidized and/or unassisted units which are insured by the United States Department of Housing and Urban Development; provided, however, that units in unreinforced masonry buildings which have undergone seismic strengthening in accordance with Building Code Chapters ~~*14*~~ *16B* and ~~*15*~~ *16C* shall remain subject to the Rent Ordinances to the extent that the ordinance is not in conflict with the seismic strengthening bond program or with the program's loan agreements or with any regulations promulgated thereunder;

(A) For purposes of Sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6, 37.9, 37.9A, 37.10A, 37.11A and 37.13, and the arbitration provisions of Sections 37.8 and 37.8A applicable only to the provisions of Sections 37.3(a)(10)(A), the term "rental units" shall include units occupied by recipients of tenant-based rental assistance where the tenant-based rental assistance program does not establish the tenant's share of base rent as a fixed

percentage of a tenant's income, such as in the Section 8 voucher program and the "Over-FMR Tenancy" program defined in 24 CFR Section 982.4;

(B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9, 37.9A, 37.10A, 37.11A and 37.13, the term "rental units" shall include units occupied by recipients of tenant-based rental assistance where the rent payable by the tenant under the tenant-based rental assistance program is a fixed percentage of the tenant's income; such as in the Section 8 certificate program and the rental subsidy program for the Housing Opportunities for Persons with Aids ("HOPWA") program (42 U.S.C. Section 12901 et seq., as amended).

(5) Rental units located in a structure for which a certificate of occupancy was first issued after the effective date of this ordinance, except as provided for certain categories of units and dwellings by Section 37.3(d) and Section 37.9A(b) of this Chapter;

(6) Dwelling units in a building which has undergone substantial rehabilitation after the effective date of this ordinance; provided, however, that RAP rental units are not subject to this exemption.

(7) Dwellings or units otherwise subject to this Chapter 37, to the extent such dwellings or units are partially or wholly exempted from rent increase limitations by the Costa-Hawkins Rental Housing Act (California Civil Code Sections 1954.50. et seq.) and/or San Francisco Administrative Code Section 37.3(d).

(s) Substantial Rehabilitation. The renovation, alteration or remodeling of residential units of 50 or more years of age which have been condemned or which do not qualify for certificates of occupancy or which require substantial renovation in order to conform the building to contemporary standards for decent, safe and sanitary housing. Substantial rehabilitation may vary in degree from gutting and extensive reconstruction to extensive improvements that cure substantial deferred maintenance. Cosmetic improvements alone

such as painting, decorating and minor repairs, or other work which can be performed safely without having the unit vacated do not qualify as substantial rehabilitation.

(t) Tenant. A person entitled by written or oral agreement, sub-tenancy approved by the landlord, or by sufferance, to occupy a residential dwelling unit to the exclusion of others.

(u) Tenant-Based Rental Assistance. Rental assistance provided directly to a tenant or directly to a landlord on behalf of a particular tenant, which includes but shall not be limited to certificates and vouchers issued pursuant to Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Section 1437f) and the HOPWA program.

(v) Utilities. The term "utilities" shall refer to gas and electricity exclusively.

Section 2. The San Francisco Administrative Code is hereby amended by amending Section 37.3, to read as follows:

SEC. 37.3. RENT LIMITATIONS.

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

(1) Annual Rent Increase. On March 1st of each year, the Board shall publish the increase in the CPI for the preceding 12 months, as made available by the U.S. Department of Labor. A landlord may impose annually a rent increase which does not exceed a tenant's 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.

(2) Banking. A landlord who refrains from imposing an annual rent increase or any portion thereof may accumulate said increase and impose that amount on the tenant's

subsequent rent increase anniversary dates. A landlord who, between April 1, 1982, and February 29, 1984, has banked an annual seven percent rent increase (or rent increases) or any portion thereof may impose the accumulated increase on the tenant's subsequent rent increase anniversary dates.

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

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

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

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

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

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

(6) Property Tax. A landlord may impose increases based upon a *100% passthrough of the* change in the landlord's property tax resulting from the repayment of general obligation

bonds of the City and County of San Francisco approved by the voters between November 1, 1996, and November 30, 1998, as provided in Section 37.2(q) above.

A landlord may impose increases based upon a 50% passthrough of the change in the landlord's property tax resulting from the repayment of general obligation bonds of the City and County of San Francisco approved by the voters after [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later], as provided in Section 37.2(q) above, and subject to the following requirement: Any rent increase for bonds approved after the effective date of this initiative ordinance *[November 2000 Proposition H, effective December 20, 2000]* must be disclosed and approved by the voters.

The amount of such increase*s* shall be determined for each tax year as follows:

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

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

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

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

(B) For general obligation bonds approved by the voters after [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later] where any rent increase has been disclosed and approved by the voters:

(i) The Controller and the Board of Supervisors will determine the percentage of the property tax rate, if any, in each tax year attributable to general obligation bonds approved by the voters after [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later], and repayable within such tax year.

(ii) This percentage shall be multiplied by the total amount of the net taxable value for the applicable tax year. The result is the dollar amount of property taxes for that tax year for a particular property attributable to the repayment of general obligation bonds approved by the voters after [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later].

(iii) The dollar amount calculated under Subsection (ii) shall be divided by two, and then by the total number of all units in each property, including commercial units. That figure shall be divided by 12 months, to determine the monthly per unit costs for that tax year of the repayment of general obligation bonds approved by the voters after [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later].

(~~D~~ C) Landlords may pass through to each unit in a particular property the dollar amount*s* calculated under ~~*this*~~ *these* Subsection*s 37.3*(6)*(A) and (B)*. ~~*This*~~ *These* passthrough*s* may be imposed only on the anniversary date of each tenant's occupancy of the property. ~~*This*~~ *These* passthrough*s* shall not become a part of a tenant's base rent. The amount of each annual passthrough imposed pursuant to this Subsection (6) may vary from year-to-year, depending on the amount calculated under Subsections (*A*) ~~*through*~~ and (~~C~~ *B*). Each annual passthrough shall apply only for the 12 month period after it is imposed. A landlord may impose the passthrough*s* described in this Subsection (6) for a particular tax year only with respect to those tenants who were residents of a particular property on November 1st of the

applicable tax year. A landlord shall not impose a passthrough pursuant to this Subsection (6) if the landlord has filed for or received Board approval for a rent increase under Section 37.8(e)(4) for increased operating and maintenance expenses in which the same increase in property taxes due to the repayment of general obligation bonds was included in the comparison year cost totals.

(~~E~~ D) The Board will have available a form which explains how to calculate the passthrough.

(~~F~~ E) Landlords must provide to tenants, ~~*at least 30 days prior to the imposition of the*~~ *on or before the date that notice is served on the tenant of a* passthrough permitted under this Subsection (6), a copy of the completed form described in Subsection (~~E~~ D). This completed form shall be provided in addition to the Notice of Rent Increase required under Section 37.3(b)(5). A tenant~~s~~ may petition for a hearing under the procedure described in Section 37.8 where the tenant alleges that a landlord has imposed a charge which exceeds the limitations set forth in this Subsection (6). In such a hearing, the burden of proof shall be on the landlord. Tenant petitions regarding this passthrough must be filed within one year of the effective date of the passthrough.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Which portion of the rent increase reflects costs for increased operating and maintenance expenses, rents for comparable units, and/or capital improvements, rehabilitation, ~~*or*~~ energy conservation ~~*measures*~~ *improvements, or renewable energy improvements* certified pursuant to Section 37.7. Any rent increase certified due to increases in operating and maintenance costs shall not exceed seven percent;

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

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

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

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

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

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

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

(A) An owner or residential real property may establish the initial and all subsequent rental rates for a dwelling or a unit which is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b), (d), or (f) of Section 11004.5 of the California Business and Professions Code. The owner's right to establish subsequent rental rates under this paragraph shall not apply to a dwelling or unit where the preceding tenancy has been terminated by the owner by notice pursuant to California Civil Code Section 1946 or has been terminated upon a change in the terms of the tenancy noticed pursuant to California Civil Code Section 827; in such instances, the rent increase limitation provisions of Chapter 37 shall continue to apply for the duration of the new tenancy in that dwelling or unit.

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

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

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

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

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

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

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

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

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

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

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

(3) Termination or Nonrenewal of a Contract or Recorded Agreement with a Government Agency Limiting Rent. An owner who terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant, shall be subject to the following:

(A) The tenant(s) who were beneficiaries of the contract or recorded agreement shall be given at least 90 days' written notice of the effective date of the termination and shall

not be obligated to pay more than the tenant's portion of the rent, as calculated under that contract or recorded agreement, for 90 days following receipt of the notice of termination or nonrenewal.

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

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

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

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

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

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

(1) When lead hazards, which have been remediated or abated pursuant to San Francisco Health Code Article 26, are also violations of State or local housing health and safety laws, the costs of such work shall not be passed through to tenants as either a capital improvement or an operating and maintenance expense if the Administrative Law Judge finds

that the deferred maintenance, as defined herein, of the current or previous landlord caused or contributed to the existence of the violation of law.

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

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

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Section 3. The San Francisco Administrative Code is hereby amended by amending Section 37.7, to read as follows:

SEC. 37.7. CERTIFICATION OF RENT~~AL~~ INCREASES FOR CAPITAL IMPROVEMENTS, REHABILITATION WORK, ~~AND~~ ENERGY CONSERVATION ~~MEASURES~~ *IMPROVEMENTS, AND RENEWABLE ENERGY IMPROVEMENTS*.

(a) Authority. In accordance with such guidelines as the Board shall establish, the Board and designated Administrative Law Judges shall have the authority to conduct hearings in order to certify rental increases to the extent necessary to amortize the cost of capital improvements, rehabilitations, ~~and~~ energy conservation ~~measures~~ *improvements, and renewable energy improvements*. Costs determined to be attributable to such work *and improvements* shall be amortized over a period which is fair and reasonable for the type and the extent of the work *and improvements,* and which will provide an incentive to landlords to maintain, improve and renovate their properties while at the same time protecting tenants from excessive rent increases. Costs attributable to routine repair and maintenance shall not be certified.

(b) Requirements for Certification. The Board and designated Administrative Law Judges may only certify the costs of capital improvements, rehabilitation, ~~and~~ energy conservation ~~measures~~ *improvements, and renewable energy improvements,* where the following criteria are met:

(1) The landlord completed capital improvements or rehabilitation on or after April 15, 1979, or the landlord completed installation of energy conservation measures on or after July 24, 1982, and has filed a proof of compliance with the Bureau of Building Inspection in accordance with the requirements of Section 1207(d) of the Housing Code;

(2) The landlord has not yet increased the rent or rents to reflect the cost of said work;

(3) The landlord has not been compensated for the work by insurance proceeds;

(4) The building is not subject to a RAP loan in a RAP area designated prior to July 1, 1977;

(5) The landlord files the certification petition no later than five years after the work has been completed.~~–~~ ;

(6) The cost is not for work required to correct a code violation for which a notice of violation has been issued and remained unabated for 90 days unless the landlord made timely good faith efforts within that 90-day period to commence and complete the work but was not successful in doing so because of the nature of the work or circumstances beyond the control of the landlord. The landlord's failure to abate within the original 90-day period raises a rebuttable presumption that the landlord did not exercise timely good faith efforts.

(c) Amortization and Cost Allocation. The Board shall establish amortization periods and cost allocation formulas, *in accordance with this Section 37.7*. Costs shall be allocated to each unit according to the benefit of the work *and improvements* attributable to such unit.

(1) Applications Filed Before [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later]. The following provisions shall apply to all applications filed before [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later].

(A) Amortization Periods. Costs shall be amortized on a straight-line basis over a seven or ten-year period, depending upon which category described below most closely relates to the type of work or improvement and its estimated useful life.

(i) Schedule I - Seven-Year Amortization. The following shall be amortized over a seven-year period: Appliances, such as new stoves, disposals, washers, dryers and dishwashers; fixtures, such as garage door openers, locks, light fixtures, water heaters and blankets, shower heads, time clocks and hot water pumps; and other improvements, such as carpeting, linoleum, and exterior and interior painting of common areas. If the appliance is a replacement for which the tenant has

already had the benefit, the cost will not be amortized as a capital improvement, but will be considered part of operating and maintenance expenses. Appliances may be amortized as capital improvements when: (1) part of a remodeled kitchen; (2) based upon an agreement between the tenant and landlord; and/or (3) it is a new service or appliance the tenant did not previously have.

(ii) Schedule II - Ten-Year Amortization. The following shall be amortized over a ten-year period: New foundation, new floor structure, new ceiling or walls - new sheetrock, new plumbing (new fixtures, or piping,) weather stripping, ceiling insulation, seals and caulking, new furnaces and heaters, refrigerators, new electrical wiring, new stairs, new roof structure, new roof cover, new window, fire escapes, central smoke detection system, new wood or tile floor cover, new sprinkler system, boiler replacement, air conditioning-central system, exterior siding or stucco, elevator rebuild, elevator cables, additions such as patios or decks, central security system, new doors, new mail boxes, new kitchen or bathroom cabinets, and sinks.

(B) Allowable Increase. One hundred percent (100%) of the certified costs of capital improvements, rehabilitation, and energy conservation improvements may be passed through to the tenants who benefit from such work and improvements. However no increase under this Subsection 37.7(c)(1) shall exceed, in a twelve-month period, ten percent (10%) of the tenant's base rent at the time the petition was filed or $30.00, whichever is greater. A landlord may accumulate any certified increase which exceeds this amount and impose the increase in subsequent years, subject to this 10% or $30.00 limitation.

(2) Applications Filed On or After [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later], For Qualified Energy Conservation Improvements and Renewable Energy Improvements. For Applications filed on or after [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later], the following provisions shall apply to certification of costs for qualified energy conservation improvements and renewable energy improvements.

(A) Amortization Periods. Costs shall be amortized on a straight-line basis over the period of time provided in 37.7(c)(2)(B)(i), or as determined pursuant to the procedure provided in 37.7(c)(2)(B)(ii).

(B) For purposes of this Subsection 37.7(c)(2), qualified energy conservation improvements and renewable energy improvements are:

(i) 100% of new EPA Energy-Star-compliant refrigerators where the refrigerator replaced is more than five years old and where the unit has separate metering, which costs shall be amortized on straight-line basis over a ten-year period; and,

(ii) Other improvements as may be approved by the Board of Supervisors upon recommendation of the Rent Board, following hearings and recommendations by the Commission on the Environment in an Energy Conservation Improvements and Renewable Energy Improvements List (List), as follows:

(I) The Commission on the Environment shall hold hearings to develop a list of recommended energy conservation improvements and renewable energy improvements that demonstrably benefit tenants in units that have separate electrical and/or natural gas metering. Such recommendations shall include consideration of cost effectiveness for tenants, appropriate amortization schedules, and permissible passthrough amounts that will encourage landlords to make such improvements.

(II) The Commission shall also consider whether the certification for each such improvement should include the entire improvement, or only that portion of the improvement cost directly attributable to energy conservation or renewable energy.

(III) The List shall take into consideration the variety and conditions of housing in the City.

(IV) The Commission on the Environment shall adopt the List at a public meeting, and shall transmit the List to the Rent Board no later than [six months after the effective date of this Ordinance].

(V) The Commission on the Environment shall periodically review and amend the List as warranted by changes in technology or conditions in the electricity and natural gas markets. Any amended List shall be transmitted forthwith to the Rent Board.

(VI) The Rent Board shall consider any such List received from the Commission on the Environment, and recommend appropriate Subsection 37.7(c)(2) amendments to the Board of Supervisors.

(3) Applications Filed On or After [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later], For Seismic Work and Improvements Required by Law, and for Work and Improvements Required by Laws Enacted After [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later].

For applications filed on or after [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later]:

(A) This Subsection 37.7(c)(3) shall apply to certification of costs for seismic work and improvements required by law.

(B) This Subsection 37.7(c)(3) shall apply to certification of costs for capital improvement, rehabilitation, energy conservation, and renewable energy work and improvements required by federal, state, or local laws enacted on or after [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later]:

(C) Amortization Periods. Costs shall be amortized on a straight-line basis over a twenty-year period.

(D) Allowable Increase. One hundred percent (100%) of the certified costs of capital improvement, rehabilitation, energy conservation, and renewable energy work and improvements required by law may be passed through to the tenants who benefit from such work and improvements. Any rent increases under this Section 37.7(c)(3) shall not exceed, in a twelve-month period, a total of ten percent (10%) of the tenant's base rent at the time the petition was filed or $30.00, whichever is

greater. A landlord may accumulate any certified increase which exceeds this amount and impose the increase in subsequent years, subject to this 10% or $30.00 limitation.

(4) Applications Filed On or After [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later], for Other Work and Improvements On Properties With Five Residential Units or Less. For applications filed on or after [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later], the following provisions shall apply to certification of all work and improvements for properties containing five residential units or less, with the exception of work and improvements costs certified for passthrough under Subsections 37.7(c)(2) or (3):

(A) Amortization Periods. Costs shall be amortized on a straight-line basis over a ten, fifteen or twenty-year period, depending upon which category described below most closely relates to the type of work or improvement and its estimated useful life.

(i) Schedule I - Ten-Year Amortization. The following shall be amortized over a ten-year period: New roof structure, new roof cover, electrical heaters, central security system, telephone entry systems, new wood frame windows, new mailboxes, weather-stripping, ceiling insulation, seals and caulking, central smoke detection system, new doors and skylights; appliances, such as new stoves, disposals, refrigerators, washers, dryers and dishwashers; fixtures, such as garage door openers, locks, light fixtures, water heaters and blankets, shower heads, time clocks and hot water pumps; and other improvements, such as carpeting, linoleum, and exterior and interior painting of common areas. If the appliance is a replacement for which the tenant has already had the benefit, the cost will not be amortized as a capital improvement but will be considered part of operating and maintenance expenses. Appliances may be amortized as capital improvements when: (1) part of a remodeled kitchen; (2) based upon an agreement between the tenant and landlord; and/or (3) it is a new service or appliance the tenant did not previously have.

(ii) Schedule II - Fifteen-Year Amortization. The following shall be amortized over a fifteen-year period: New floor structure, new ceiling or walls – new sheetrock, wood decks, new stairs, new furnaces and gas heaters, new thermal pane windows, new wood or tile floor cover, new sprinkler systems, air conditioning-central system, exterior siding or stucco, elevator rebuild, elevator cables, new kitchen or bathroom cabinets, and sinks.

(iii) Schedule III - Twenty-Year Amortization. The following shall be amortized over a twenty-year period: New foundation, new plumbing (new fixtures or piping), boiler replacement, new electrical wiring, fire escapes, concrete patios, iron gates, sidewalk replacement and chimneys.

(B) Allowable Increase. One hundred percent (100%) of the certified costs of capital improvement, rehabilitation, and energy conservation work and improvements may be passed through to the tenants who benefit from such work and improvements. However, no increase under this Subsection 37.7(c)(4) shall exceed, in a twelve-month period, five percent (5%) of the tenant's base rent at the time the petition was filed or $30.00, whichever is greater. A landlord may accumulate any certified increase which exceeds this amount and impose the increase in subsequent years subject to this 5% or $30.00 limitation.

(5) For Applications Filed On or After [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later], for Other Work and Improvements for Properties with Six or more Residential Units. For applications filed on or after [May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading, whichever is later], the following provisions shall apply to certification of all work and improvements for properties containing six residential units or more, with the exception of work and improvements certified under Subsections 37.7(c)(2) or (3):

(A) Amortization Periods. Costs shall be amortized on a straight-line basis over a seven or ten-year period, depending upon which category described below most closely relates to the type of work or improvement and its estimated useful life.

(i) Schedule I - Seven-Year Amortization. The following shall be amortized over a seven-year period: Appliances, such as new stoves, disposals, washers, dryers and dishwashers; fixtures, such as garage door openers, locks, light fixtures, water heaters and blankets, shower heads, time clocks and hot water pumps; and other improvements, such as carpeting, linoleum, and exterior and interior painting of common areas. If the appliance is a replacement for which the tenant has already had the benefit, the cost will not be amortized as a capital improvement, but will be considered part of operating and maintenance expenses. Appliances may be amortized as capital improvements when: (1) part of a remodeled kitchen; (2) based upon an agreement between the tenant and landlord; and/or (3) it is a new service or appliance the tenant did not previously have.

(ii) Schedule II - Ten-Year Amortization. The following shall be amortized over a ten year period: New foundation, new floor structure, new ceiling or walls - new sheetrock, new plumbing (new fixtures, or piping) weather stripping, ceiling insulation, seals and caulking, new furnaces and heaters, refrigerators, new electrical wiring, new stairs, new roof structure, new roof cover, new window, fire escapes, central smoke detection system, new wood or tile floor cover, new sprinkler system, boiler replacement, air conditioning-central system, exterior siding or stucco, elevator rebuild, elevator cables, additions such as patios or decks, central security system, new doors, new mail boxes, new kitchen or bathroom cabinets, sinks, telephone entry system, skylights, iron gates, sidewalk replacement and chimneys.

(B) Allowable Increase.

(i) Only fifty percent (50%) of the costs certified under this Subsection 37.7(c)(5) may be passed through to the tenants who benefit from such work and improvements. However, no increase under this Subsection 37.7(c)(5) shall exceed, in a twelve-month period, ten percent (10%) of the tenant's base rent at the time the petition was filed or $30.00, whichever is greater. A landlord may accumulate any certified increase which exceeds this amount and impose the increase in subsequent years, subject to this 10% or $30.00 limitation.

(ii) In the alternative, a tenant may elect to have one hundred percent (100%) of the costs certified under this Subsection 37.7(c)(5) passed through to the tenant. In that event no increase under this Subsection shall exceed, in a twelve-month period, five percent (5%) of the tenant's base rent at the time the application was filed, and over the life of the tenancy the total increase shall never exceed fifteen percent (15%) of the tenant's base rent at the time the application was filed. A tenant must elect this alternative by filing such an election with the Board on a form prescribed by the Board. An election may be filed at any time after the application is filed but no later than fifteen (15) calendar days after the Administrative Law Judge's decision on the application is mailed to the tenant. In a unit with multiple tenants, the election form must be signed by a majority (more than 50%) in order for the election to be accepted. If a timely election is made after a decision has been issued, an addendum to the decision will be issued reflecting the tenant's election.

(6) Development of On-Line Programs. The Board, in conjunction with the Department of Telecommunications and Information Services, shall design and implement on-line programs by September 1, 2003 to allow landlords and tenants to perform calculations concerning allowable increases for capital improvement, rehabilitation, energy conservation, and renewable energy work, and to compare average costs for work certified in prior decisions.

(d) Estimator. The Board or its Executive Director may hire an estimator where an expert appraisal is required.

(e) Filing Fee. The Board shall establish a filing fee based upon the cost of the capital improvement, rehabilitation, ~~or~~ energy conservation ~~measures~~ *improvement, or renewable energy improvement* being reviewed. Such fees will pay for the costs of an estimator. These fees shall be deposited in the Residential Rent Stabilization and Arbitration Fund pursuant to Section 10.117-88 of this Code.

(f) Application Procedures.

(1) Pre-Application Notice for Large Projects for Parcels or Buildings Containing Six or More Residential Units. If at any time prior to filing an application the landlord determines that the total cost of a project for a parcel or a building containing six or more residential units is reasonably expected to exceed $25,000 multiplied by the number of units on the parcel or in the building, the landlord shall immediately inform each tenant and the Rent Board in writing of the anticipated costs of the work. The landlord's notice must occur within 30 days after such determination by the landlord.

(~~1~~ 2) Filing. Landlords who seek to pass through the costs of capital improvements, rehabilitation, ~~or~~ energy conservation ~~measures~~ *improvements, or renewable energy improvements,* must file an application on a form prescribed by the Board. The application shall be accompanied by such supporting material as the Board shall prescribe. All applications must be submitted with the filing fee established by the Board.

For each petition totaling more than $25,000, in addition to the supporting material prescribed by the Board for all petitions, the applicant must either:

(A) Provide copies of competitive bids received for work and materials; or,

(B) Provide copies of time and materials billing for work performed by all contractors and subcontractors; or

(C) The applicant must pay the cost of an estimator hired by the Board.

(~~2~~ 3) Filing Date. Applications must be filed prior to the mailing or delivery of legal notice of a rent increase to the tenants of units for which the landlord seeks certification and in no event more than five years after the work has been completed.

(~~3~~ 4) Effect of Filing Application. Upon the filing of the application, the requested increase will be inoperative until such time as the Administrative Law Judge makes findings of fact at the conclusion of the certification hearing.

(~~4~~ 5) Notice to Parties. The Board shall calendar the application for hearing before a designated Administrative Law Judge and shall give written notice of the date to the parties at least 10 days prior to the hearing.

(g) Certification Hearings.

(1) Time of Hearing. The hearing shall be held within 45 days of the filing of the application.

(2) Consolidation. To the greatest extent possible, certification hearings with respect to a given building shall be consolidated. Where a landlord and/or tenant has filed a petition for hearing based upon the grounds and under the procedure set forth in Section 37.8, the Board may, in its discretion, consolidate certification hearings with hearings on Section 37.8 petitions.

(3) Conduct of Hearing. The hearing shall be conducted by an Administrative Law Judge designated by the Board. Both parties may offer such documents, testimony, written declarations or other evidence as may be pertinent to the proceedings. Burden of proof is on the landlord. A record of the proceedings must be maintained for purposes of appeal.

(4) Determination of the Administrative Law Judge. In accordance with the Board's amortization schedules and cost allocation formulas, the Administrative Law Judge shall make findings as to whether or not the proposed rent increases are justified based upon the following considerations:

(A) The application and its supporting documentation.

(B) Evidence presented at the hearing establishing both the extent and the cost of the work performed.

(C) Estimator's report, where such report has been prepared.

(D) Any other such relevant factors as the Board shall specify in rules and regulations.

(5) Findings of Fact. The Administrative Law Judge shall make written findings of fact, copies of which shall be mailed within 30 days of the hearing.

(6) Payment or Refund of Rents to Implement Certification Decision. If the Administrative Law Judge finds that all or any portion of the heretofore inoperative rent increase is justified, the tenant shall be ordered to pay the landlord that amount. If the tenant has paid an amount to the landlord which the Administrative Law Judge finds unjustified, the Administrative Law Judge shall order the landlord to reimburse the tenant said amount.

(7) Finality of Administrative Law Judge's Decision. The decision of the Administrative Law Judge shall be final unless the Board vacates his or her decision on appeal.

(8) Appeals. Either party may file an appeal of the Administrative Law Judge's decision with the Board. Such appeals are governed by Section 37.8(f) below.

(h) Hardship Applications.

(1) A tenant may file a hardship application at any time on grounds of financial hardship with respect to any rent increase based on certified costs of capital improvements, rehabilitation work, energy conservation improvements, or renewable energy improvements. Payment of such rent increase(s) set forth in the hardship application shall be stayed for a period of 60 days from the date of filing, and the stay shall be extended if the Board accepts the application for hearing.

(2) Hardship applications shall be available in multiple languages.

(3) Multilingual notice of hardship application procedures shall be mailed with each Administrative Law Judge or Board decision.

(4) Within six months after [the effective date of this ordinance] the Rent Board shall implement a process for direct outreach to landlords and tenants whose primary language is not English, regarding availability and use of the hardship application procedure. Within three months of

implementation the Board shall provide a report to the Board of Supervisors regarding this outreach program, describing the implementation process and any known results.

Section 4. The San Francisco Administrative Code is hereby amended by amending Section 37.8B, to read as follows:

SEC. 37.8B. EXPEDITED HEARING AND APPEAL PROCEDURES FOR CAPITAL IMPROVEMENTS RESULTING FROM SEISMIC WORK ON UNREINFORCED MASONRY BUILDINGS PURSUANT TO BUILDING CODE CHAPTERS ~~14~~ *16B* AND ~~15~~ *16C* WHERE LANDLORDS PERFORMED THE WORK WITH A UMB BOND LOAN.

This section contains the exclusive procedures for all hearings concerning certification of the above-described capital improvements. Landlords who perform such work without a UMB bond loan are subject to the capital improvement certification procedures set forth in Section 37.7 above.

(a) Requirements for Certification. The landlord must have completed the capital improvements in compliance with the requirements of Building Code Chapters ~~14~~ *16B* and ~~15~~ *16C*. The certification requirements of Section 37.7(b)(2) and (b)(3) are also applicable.

(b) Amortization and Cost Allocation; Interest. Costs shall be equally allocated to each unit and amortized over a ~~10~~ *20*-year period or the life of any loan acquired for the capital improvements, whichever is longer. Interest shall be limited to the actual interest rate charged on the loan and in no event shall exceed 10 percent per year.

(c) Eligible Items; Costs. Only those items required in order to comply with Building Code Chapters ~~14~~ *16B* and ~~15~~ *16C* may be certified. The allowable cost of such items may not exceed the costs set forth in the Mayor's Office of Economic Planning and Development's

publication of estimated cost ranges for bolts plus retrofitting by building prototype and/or categories of eligible construction activities.

(d) Hearing Procedures. The application procedures of Section 37.7(f) apply to petitions for these expedited capital improvement hearings; provided, however, that the landlord shall pay no filing fee since the Board will not hire an estimator. The hearings shall be conducted according to the following conducted according to the following procedures:

(1) Time of Hearing; Consolidation; Conduct of Hearing. The hearing must be held within 21 days of the filing of the application. The consolidation and hearing conduct procedures of Section 37.7(g)(2) and (g)(3) apply.

(2) Determination of Administrative Law Judge. In accordance with the requirements of this section, the Administrative Law Judge shall make findings as to whether or not the proposed rent increases are justified based upon the following considerations:

(A) The application and its supporting documentation;

(B) Evidence presented at the hearing establishing both the extent and the cost of the work performed; and

(C) The Mayor's Office of Planning and Economic Development's bolts plus cost range publication; and

(D) Tenant objections that the work has not been completed; and

(E) Any other such relevant factors as the Board shall specify in rules and regulations.

(3) Findings of Fact; Effect of Decision. The Administrative Law Judge shall make written findings of fact, copies of which shall be mailed within 21 days of the hearing. The decision of the Administrative Law Judge is final unless the Board vacates it on appeal.

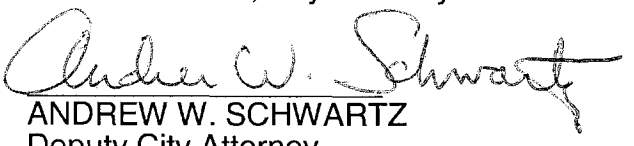
(e) Appeals. Either party may appeal the Administrative Law Judge's decisions in accordance with the requirements of Section 37.8(f)(1), (f)(2) and (f)(3). The Board shall

decide whether or not to accept an appeal within 21 days.

(1) Time of Appeal Hearing; Notice to Parties; Record; Conduct of Hearing. The appeal procedures of Section 37.8(f)(5), (f)(6), (f)(7), (f)(8) and (f)(9) apply; provided, however, that the Board's decision shall be rendered within 20 days of the hearing.

(2) Rent Increases. A landlord may not impose any rent increase approved by the Board on appeal without at least 60 days' notice to the tenants.

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

By: 
ANDREW W. SCHWARTZ
Deputy City Attorney

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City and County of San Francisco

Tails

Ordinance

File Number: 020716 **Date Passed:**

Ordinance authorizing settlement of the lawsuit filed by residential landlords against the City and County of San Francisco to invalidate Proposition H passed in the November 2000 general election, concerning the pass through of capital improvement costs by landlords to tenants; the lawsuit was filed on November 22, 2000, in San Francisco Superior Court, Case No. 316-928 entitled Quigg v. City and County of San Francisco, et al.; and, as part of the settlement, amending the Residential Rent Stabilization and Arbitration Ordinance (Administrative Code Chapter 37) regarding permissible passthrough of bond costs from landlords to tenants by providing for 50% passthrough of the change in the landlord's property tax resulting from the repayment of general obligation bonds of the City and County of San Francisco approved by the voters in the future; and regarding permissible passthrough from landlords to residential tenants of certain costs for capital improvements, rehabilitation, energy conservation improvements, and renewable energy improvements, by codifying and expanding existing amortization schedules, by establishing specified maximum annual passthroughs at 5% of a tenant's base rent for properties with five or fewer units and at 10% of a tenant's base rent for properties with six or more units, by capping certification for work and improvements on properties with six or more residential units at 50% of landlord costs unless the tenant elects 100% passthrough of costs with a lifetime rent increase cap of 15% of base rent, by lengthening the amortization period from 10 years to 20 years for certain improvements required by law (including certain seismic improvements to unreinforced masonry buildings), by providing tenants and the Rent Board with pre-application notice of large projects, by providing that each petition totaling more than $25,000 must pay the cost of an estimator hired by the Rent Board unless the applicant provides copies of competitive bids received or copies of time and materials billing, by providing for the Commission on the Environment to conduct hearings and recommend new passthrough provisions encouraging energy conservation improvements and renewable energy improvements, and by expanding the provisions for tenant hardship applications for relief from such passthroughs by providing that a tenant can file such an application at any time instead of only at the time the passthrough is originally approved. This Ordinance amends Sections 37.2, 37.3, and 37.7, and 37.8B, with most provisions operative May 1, 2002 or 60 days prior to passage of this Ordinance on Second Reading by the Board of Supervisors, whichever is later.

December 16, 2002 Board of Supervisors — PASSED ON FIRST READING

Ayes: 9 - Ammiano, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom, Peskin, Sandoval
Noes: 1 - Dufty
Absent: 1 - Daly

January 13, 2003 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom, Peskin, Ammiano, Sandoval

File No. 020716

I hereby certify that the foregoing Ordinance was FINALLY PASSED on January 13, 2003 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

JAN 2 1 2003

Date Approved

Mayor Willie L. Brown Jr.