

1 [Conform to Costa-Hawkins Rental Housing Act; Clarify Rent Ord. Fee Provisions]  
2 AMENDING SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 37 "RESIDENTIAL  
3 RENT STABILIZATION AND ARBITRATION ORDINANCE" BY AMENDING §37.2 AND  
4 §37.3 IN ORDER TO IMPLEMENT AND CONFORM TO THE COSTA-HAWKINS RENTAL  
5 HOUSING ACT (CALIFORNIA CIVIL CODE §§1954.50, et seq.), BY REMOVING THE  
6 RENTAL RATES OF MOST SINGLE-FAMILY HOMES AND CONDOMINIUMS FROM  
7 RENT CONTROL AFTER SPECIFIED DATES, AND BY AUTHORIZING RENT  
8 INCREASES IN RENT CONTROLLED UNITS UPON SPECIFIED SUBLETTING OR  
9 ASSIGNMENT. HOWEVER, SPECIFIED UNITS WITH SERIOUS LONG-TERM HEALTH,  
10 SAFETY, FIRE OR BUILDING CODE VIOLATIONS ARE EXCLUDED; UNLESS A  
11 TENANT WHO IS PARTY TO A RENT/LEASE AGREEMENT NOTIFIES THE OWNER IN  
12 WRITING, AN OWNER'S ACCEPTANCE OF RENT DOES NOT WAIVE THE OWNER'S  
13 RIGHT TO ESTABLISH INITIAL RENT OR TO ENFORCE A SUBLEASE/ASSIGNMENT  
14 PROHIBITION; TERMINATION OR NONRENEWAL OF AN OWNER'S CONTRACT OR  
15 RECORDED AGREEMENT WITH A GOVERNMENT AGENCY THAT PROVIDES RENT  
16 LIMITATIONS FOR QUALIFIED TENANT(S) REQUIRES 90 DAYS WRITTEN NOTICE TO  
17 THE TENANT(S), AND THE OWNER MAY NOT SET THE INITIAL RENT FOR THE  
18 AFFECTED UNIT FOR THREE YEARS EXCEPT AS SPECIFIED. ALSO, AMENDING  
19 SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 37A "RESIDENTIAL RENT  
20 STABILIZATION AND ARBITRATION FEE" BY AMENDING §37A.1 TO PROVIDE THAT  
21 THE FEES REMAIN APPLICABLE TO DEFINED UNITS THAT ARE EXEMPT FROM THE  
22 RENT CONTROL PROVISIONS BUT NOT FROM THE OTHER PROVISIONS OF  
23 CHAPTER 37.

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1 Note: Additions are underlined; deletions are in ((double parentheses)).

2  
3 Be it ordained by the People of the City and County of San Francisco:

4  
5 **Section 1.** Chapter 37 of the San Francisco Administrative Code is hereby amended by  
6 amending Section 37.2 to read as follows:

7  
8 **SEC. 37.2. DEFINITIONS.**

9 **(a) Base Rent.**

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

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

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

22 (i) For any tenant receiving tenant-based rental assistance as  
23 of the effective date of this Ordinance (except where the rent payable by the tenant is a fixed  
24 percentage of the tenant's income, such as in the Section 8 certificate program and the rental  
25 subsidy program for the HOPWA program), and continuing to receive tenant-based rental

**RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD**

1 assistance following the effective date of this Ordinance, the base rent for each unit occupied  
2 by such a tenant shall be the rent payable for that unit under the Housing Assistance  
3 Payments contract, as amended, between the San Francisco Housing Authority and the  
4 landlord (the "HAP Contract") with respect to that unit immediately prior to the effective date of  
5 this Ordinance (the "HAP Contract Rent").

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

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

17 (B) For any tenant occupying a unit upon the expiration or termination,  
18 for whatever reason, of a project-based HAP Contract under Section 8 of the United States  
19 Housing Act of 1937 (42 USC §1437f, as amended), the base rent for each such unit following  
20 expiration or termination shall be the "contract rent" in effect for that unit immediately prior to  
21 the expiration or termination of the project-based HAP Contract.

22 (C) For any tenant occupying a unit upon the prepayment or expiration  
23 of any mortgage insured by the United States Department of Housing and Urban  
24 Development ("HUD"), including but not limited to mortgages provided under Sections  
25 221(d)(3), 221(d)(4) and 236 of the National Housing Act (12 USC §1715z-1), the base rent

1 for each such unit shall be the "basic rental charge" (described in 12 USC 1715z-1(f), or  
2 successor legislation) in effect for that unit immediately prior to the prepayment of the  
3 mortgage, which charge excludes the "interest reduction payment" attributable to that unit  
4 prior to the mortgage prepayment or expiration.

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

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

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

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

13 (f) **Hearing Officer.** A person, designated by the Board, who arbitrates rental  
14 increase disputes.

15 (g) **Housing Services.** Housing Services. Services provided by the landlord  
16 connected with the use or occupancy of a rental unit including, but not limited to: repairs;  
17 replacement; maintenance; painting; light; heat; water; elevator service; laundry facilities and  
18 privileges; janitor service; refuse removal; furnishings; telephone; parking; rights permitted the  
19 tenant by agreement, including the right to have a specific number of occupants, whether  
20 express or implied, and whether or not the agreement prohibits subletting and/or assignment;  
21 and any other benefits, privileges or facilities.

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

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

#### RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD

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

4           **(k) Payment Standard.** An amount determined by the San Francisco Housing  
5 Authority that is used to determine the amount of assistance paid by the San Francisco  
6 Housing Authority on behalf of a tenant under the Section 8 Voucher Program (24 CFR Part  
7 887).

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

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

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

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

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

22           **(q) Rent Increases.** Any additional monies demanded or paid for rent as defined in  
23 item (p) above, or any reduction in housing services without a corresponding reduction in the  
24 monies demanded or paid for rent; provided, however, that (1) where the landlord has been  
25 paying the tenant's utilities and cost of those utilities increase, the landlord's passing through

**RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD**

1 to the tenant of such increased costs does not constitute a rent increase; and (2) where there  
2 has been a change in the landlord's property tax attributable to a ballot measure approved by  
3 the voters between November 1, 1996, and November 30, 1998, the landlord's passing  
4 through of such increased costs in accordance with this Chapter does not constitute a rent  
5 increase.

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

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

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

23 (3) Housing accommodation in any hospital, convent, monastery, extended  
24 care facility, asylum, residential care or adult day health care facility for the elderly which must  
25 be operated pursuant to a license issued by the California Department of Social Services, as

1 required by California Health and Safety Chapters 3.2 and 3.3; or in dormitories owned and  
2 operated by an institution of higher education, a high school, or an elementary school;

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

11 (A) For purposes of Sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6,  
12 37.9, 37.9A, 37.10A, 37.11A and 37.13, and the arbitration provisions of Sections 37.8 and  
13 37.8A applicable *only* to the provisions of Section 37.3(a)(10)(A), the term "rental units" *shall*  
14 include units occupied by recipients of tenant-based rental assistance where the tenant-based  
15 rental assistance program does not establish the tenant's share of base rent as a fixed  
16 percentage of a tenant's income, such as in the Section 8 voucher program and the "Over-  
17 FMR Tenancy" program defined in 24 CFR §982.4;

18 (B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9,  
19 37.9A, 37.10A, 37.11A and 37.13, the term "rental units" *shall* include units occupied by  
20 recipients of tenant-based rental assistance where the rent payable by the tenant under the  
21 tenant-based rental assistance program is a fixed percentage of the tenant's income; such as  
22 in the Section 8 certificate program and the rental subsidy program for the Housing  
23 Opportunities for Persons with Aids ("HOPWA") program (42 U.S.C. §12901 et seq., as  
24 amended).

25 (5) Rental units located in a structure for which a certificate of occupancy

1 was first issued after the effective date of this ordinance, except as provided ((in)) for certain  
2 categories of units and dwellings by Section 37.3(d) and Section 37.9A(b) of this Chapter;

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

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

10 (s) **Substantial Rehabilitation.** The renovation, alteration or remodeling of  
11 residential units of 50 or more years of age which have been condemned or which do not  
12 qualify for certificates of occupancy or which require substantial renovation in order to conform  
13 the building to contemporary standards for decent, safe and sanitary housing. Substantial  
14 rehabilitation may vary in degree from gutting and extensive reconstruction to extensive  
15 improvements that cure substantial deferred maintenance. Cosmetic improvements alone  
16 such as painting, decorating and minor repairs, or other work which can be performed safely  
17 without having the unit vacated do not qualify as substantial rehabilitation.

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

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

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

## RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD



1 **Section 2.** Chapter 37 of the San Francisco Administrative Code (Residential Rent  
2 Stabilization and Arbitration Ordinance) is hereby amended by amending Section 37.3 to read  
3 as follows:  
4

5 **SEC. 37.3. RENT LIMITATIONS.**

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

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

14 **(2) Banking.** A landlord who refrains from imposing an annual rent increase  
15 or any portion thereof may accumulate said increase and impose that amount on the tenant's  
16 subsequent rent increase anniversary dates. A landlord who, between April 1, 1982, and  
17 February 29, 1984, has banked an annual seven percent rent increase (or rent increases) or  
18 any portion thereof may impose the accumulated increase on the tenant's subsequent rent  
19 increase anniversary dates.

20 **(3) Capital Improvements, Rehabilitation, and Energy Conservation**  
21 **Measures.** A landlord may impose rent increases based upon the cost of capital  
22 improvements, rehabilitation or energy conservation measures provided that such costs are  
23 certified pursuant to Sections 37.7 and 37.8B below; provided further that where a landlord  
24 has performed seismic strengthening in accordance with Building Code Chapters 14 and 15,  
25 no increase for capital improvements (including but not limited to seismic strengthening) shall

1 exceed, in any 12-month period, 10 percent of the tenant's base rent, subject to rules adopted  
2 by the Board to prevent landlord hardship and to permit landlords to continue to maintain their  
3 buildings in a decent, safe and sanitary condition. A landlord may accumulate any certified  
4 increase which exceeds this amount and impose the increase in subsequent years, subject to  
5 the 10 percent limitation. Nothing in this subsection shall be construed to supersede any  
6 Board rules or regulations with respect to limitations on increases based upon capital  
7 improvements whether performed separately or in conjunction with seismic strengthening  
8 improvements pursuant to Building Code Chapters 14 and 15.

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

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

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

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

23                   (C) The landlord provides the tenants with a copy of the water bill for  
24 the period in which the penalty was charged. Only penalties billed for a service period which  
25 begins after the effective date of the ordinance [April 20, 1991] may be passed through to

1 tenants. Where penalties result from an allocation which does not reflect documented  
2 changes in occupancy which occurred after March 1, 1991, a landlord must, if requested in  
3 writing by a tenant, make a good-faith effort to appeal the allotment. Increases based upon  
4 penalties shall be prorated on a per-room basis provided that the tenancy existed during the  
5 time the penalty charges accrued. Such charges shall not become part of a tenant's base  
6 rent. Where a penalty in any given billing period reflects a 25 percent or more increase in  
7 consumption over the prior billing period, and where that increase does not appear to result  
8 from increased occupancy or any other known use, a landlord may not impose any increase  
9 based upon such penalty unless inspection by a licensed plumber or Water Department  
10 inspector fails to reveal a plumbing or other leak. If the inspection does reveal a leak, no  
11 increase based upon penalties may be imposed at any time for the period of the unrepaired  
12 leak.

13           **(6) Property Tax.** A landlord may impose increases based upon a change in  
14 the landlord's property tax resulting from the repayment of general obligation bonds of the City  
15 and County of San Francisco approved by the voters between November 1, 1996, and  
16 November 30, 1998 as provided in Section 37.2(q) above. The amount of such increase shall  
17 be determined for each tax year as follows:

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

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

**RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD**

1 (C) The dollar amount calculated under Subsection (B) shall be  
2 divided by the total number of all units in each property, including commercial units. That  
3 figure shall be divided by twelve months, to determine the monthly per unit costs for that tax  
4 year of the repayment of general obligation bonds approved by the voters between November  
5 1, 1996, and November 30, 1998.

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

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

21 (F) Landlords must provide to tenants, at least thirty (30) days prior to  
22 the imposition of the passthrough permitted under this Subsection (6), a copy of the  
23 completed form described in Subsection (E). This completed form shall be provided in  
24 addition to the Notice of Rent Increase required under Section 37.3(b)(5). A tenant may  
25 petition for a hearing under the procedure described in Section 37.8 where the tenant alleges

1 that a landlord has imposed a charge which exceeds the limitations set forth in this  
2 Subsection (6). In such a hearing, the burden of proof shall be on the landlord. Tenant  
3 petitions regarding this passthrough must be filed within one year of the effective date of the  
4 passthrough.

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

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

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

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

21 When rent increases are authorized by this Subsection 37.3(a)(9), the total rent  
22 increase for both operating and maintenance expenses and capital improvements shall not  
23 exceed 10 percent in any 12-month period. If allowable rent increases due to the costs of lead  
24 remediation and abatement work exceed 10 percent in any 12-month period, a hearing officer  
25 shall apply a portion of such excess to approved operating and maintenance expenses for

1 lead remediation work, and the balance, if any, to certified capital improvements, provided,  
2 however, that such increase shall not exceed 10 percent. A landlord may accumulate any  
3 approved or certified increase which exceeds this amount, subject to the 10 percent limit.

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

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

9 (i) If the base rent is equal to or greater than the Payment  
10 Standard, the rent increase limitations in Sections 37.3(a)(1) and (2) shall apply to the entire  
11 base rent, and the arbitration procedures for those increases set forth in Section 37.8 and  
12 37.8A shall apply.

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

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

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

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

3 (2) Which portion of the rent increase reflects costs for increased operating  
4 and maintenance expenses, rents for comparable units, and/or capital improvements,  
5 rehabilitation, or energy conservation measures certified pursuant to Section 37.7;

6 (3) Which portion of the rent increase reflects the passthrough of charges for  
7 gas and electricity, or bond measure costs described in Section 37.3(a)(6) above, which  
8 charges shall be explained in writing on a form provided by the Board as described in Section  
9 37.3(a)(6)(E);

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

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

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

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

20 (d) **Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50, et seq.)**  
21 Consistent with the Costa-Hawkins Rental Housing Act (California Civil Code Sections  
22 1954.50, et seq.) and regardless of whether otherwise provided under Chapter 37:

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

25 (A) An owner of residential real property may establish the initial and

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

10 (B) Where the initial or subsequent rental rates of a Subsection  
11 37.3(d)(1)(A) dwelling or unit were controlled by the provisions of Chapter 37 on January 1,  
12 1995, the following shall apply:

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

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

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

23 **(2) Conditions for Establishing the Initial Rental Rate Upon Sublet or**  
24 **Assignment.** Except as identified in this Subsection 37.3(d)(2), nothing in this  
25 Subsection or any other provision of law of the City and County of San Francisco shall be



1 construed to preclude express establishment in a lease or rental agreement of the rental rates  
2 to be applicable in the event the rental unit subject thereto is sublet, and nothing in this  
3 Subsection shall be construed to impair the obligations of contracts entered into prior to  
4 January 1, 1996, subject to the following:

5 (A) Where the original occupant or occupants who took possession of  
6 the dwelling or unit pursuant to the rental agreement with the owner no longer permanently  
7 reside there, an owner may increase the rent by any amount allowed by this Subsection to a  
8 lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1,  
9 1996. However, such a rent increase shall not be permitted while:

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

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

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

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

1 owner's right to withhold consent to a sublease or assignment.

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

6 **(3) Termination or nonrenewal of a contract or recorded agreement with**  
7 **a government agency limiting rent.** An owner who terminates or fails to renew a contract  
8 or recorded agreement with a governmental agency that provides for a rent limitation to a  
9 qualified tenant, shall be subject to the following:

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

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

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

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

1 governmental agency that provides for a rent limitation to a qualified tenant.

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

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

6 **((d)) (e) Effect of Deferred Maintenance on Passthroughs for Lead**  
7 **Remediation Techniques.**

8 (1) When lead hazards, which have been remediated or abated pursuant to  
9 San Francisco Health Code Article 26, are also violations of State or local housing health and  
10 safety laws, the costs of such work shall not be passed through to tenants as either a capital  
11 improvement or an operating and maintenance expense if the hearing officer finds that the  
12 deferred maintenance, as defined herein, of the current or previous landlord caused or  
13 contributed to the existence of the violation of law.

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

22 (3) For purposes of the evaluation of petitions for rent increases for lead  
23 remediation work, maintenance is deferred if a reasonable landlord under the circumstances  
24 would have performed, on a regular basis, the maintenance work required to keep the  
25 premises from being in violation of housing safety and habitability standards set forth in

1 California Civil Code Section 1941 and the San Francisco Municipal Code. In order to prevail  
2 on a deferred maintenance defense, a tenant must show that the level or repair or remediation  
3 currently required would have been lessened had maintenance been performed in a more  
4 timely manner.

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7  
8 **Section 3.** Chapter 37A of the San Francisco Administrative Code “Residential Rent  
9 Stabilization and Arbitration Fee,” is hereby amended by amending Section 37A.1 to read as  
10 follows:

11  
12 **SEC. 37A.1. SCOPE.** This Chapter is applicable to all residential units in the City and  
13 County of San Francisco, including residential units which are exempt from the rent increase  
14 limitation provisions (but not other provisions) of Chapter 37 pursuant to the Costa-Hawkins  
15 Rental Housing Act (Civil Code §§1954.50, et seq.) and/or San Francisco Administrative Code  
16 §37.3(d). For purposes of this Chapter, “residential units” are dwelling units and guest rooms  
17 as those terms are defined in Sections 400 and 401 of the San Francisco Housing Code. The  
18 term shall not include:

19 (a) Guest rooms exempted or excluded from regulation under Chapter 41 of this  
20 Code;

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

**RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD**

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

6           (d)   Dwelling units whose rents are controlled or regulated by any government unit,  
7 agency or authority, excepting those units which are subject to the jurisdiction of the  
8 Residential Rent Stabilization and Arbitration Board. However, Section 8 certificate, voucher  
9 and related programs administered by the San Francisco Housing Authority, which are subject  
10 in whole or in part to the jurisdiction of the Residential Rent Stabilization and Arbitration Board  
11 shall remain exempt from the fee;

12           (e)   Any dwelling unit for which the owner has on file with the Assessor a current  
13 homeowner's exemption;

14           (f)   Any dwelling unit which is occupied by an owner of record on either a full-time or  
15 part-time basis and which is not rented at any time, provided that the owner file with the Tax  
16 Collector an affidavit so stating;

17           (g)   Dwelling units located in a structure for which a certificate of final completion  
18 and occupancy was first issued by the Bureau of Building Inspection after June 13, 1979;

19           (h)   Dwelling units in a building which, after June 13, 1979, has undergone  
20 substantial rehabilitation as that term is defined in Chapter 37 of this Code.

21  
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23  
24 **Section 4. SEVERABILITY.** If any part or provision of this Ordinance, or the application  
25 thereof to any person or circumstance, is held invalid, the remainder of this Ordinance,

**RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD**

1 including the application of such part or provision to other persons or circumstances, shall not  
2 be affected thereby and shall continue in full force and effect. To this end, provisions of this  
3 Ordinance are severable.

4  
5  
6 APPROVED AS TO FORM:  
7 LOUISE H. RENNE, City Attorney

8  
9 By:   
10 MARIE CORLETT BLITS  
11 Deputy City Attorney  
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# City and County of San Francisco

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

## Tails

## Ordinance

**File Number:** 991315

**Date Passed:**

Ordinance amending San Francisco Administrative Code Chapter 37 "Residential Rent Stabilization and Arbitration Ordinance" by amending Sections 37.2 and 37.3 in order to implement and conform to the Costa-Hawkins Rental Housing Act (California Civil Code Sections 1954.50, et seq.), by removing the rental rates of most single-family homes and condominiums from rent control after specified dates, and by authorizing rent increases in rent controlled units upon specified subletting or assignment. However, specified units with serious long-term health, safety, fire or Building Code violations are excluded; unless a tenant who is party to a rent/lease agreement notifies the owner in writing, an owner's acceptance of rent does not waive the owner's right to establish initial rent or to enforce a sublease/assignment prohibition; termination or nonrenewal of an owner's contract or recorded agreement with a government agency that provides rent limitations for qualified tenant(s) requires 90 days written notice to the tenant(s), and the owner may not set the initial rent for the affected unit for three years except as specified. Also, amending San Francisco Administrative Code Chapter 37A "Residential Rent Stabilization and Arbitration Fee" by amending Section 37A.1 to provide that the fees remain applicable to defined units that are exempt from the rent control provisions but not from the other provisions of Chapter 37.

May 8, 2000 Board of Supervisors — CONTINUED ON FIRST READING

Ayes: 9 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Teng, Yaki  
Excused: 2 - Newsom, Yee

May 15, 2000 Board of Supervisors — PASSED ON FIRST READING

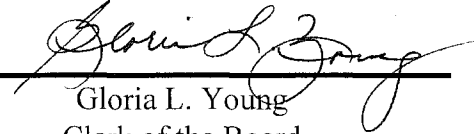
Ayes: 10 - Ammiano, Becerril, Bierman, Brown, Katz, Leno, Newsom, Teng,  
Yaki, Yee  
Excused: 1 - Kaufman

May 22, 2000 Board of Supervisors — FINALLY PASSED

Ayes: 8 - Ammiano, Becerril, Bierman, Brown, Leno, Teng, Yaki, Yee  
Absent: 2 - Katz, Newsom  
Excused: 1 - Kaufman

File No. 991315

I hereby certify that the foregoing Ordinance  
was FINALLY PASSED on May 22, 2000 by  
the Board of Supervisors of the City and  
County of San Francisco.



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Gloria L. Young  
Clerk of the Board

JUN - 2 2000

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Date Approved



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Mayor Willie L. Brown Jr.