FILE NO. 031992 ORDINANCE NO. 99-04

[Relocation of Persons Affected by Lead Hazards.]

Ordinance amending Section 596 of the San Francisco Health Code and Sections 37.3, 37.9, 72.1 to 72.3, inclusive, and 72.5 of the San Francisco Administrative Code providing for orders to vacate and notices to pay relocation benefits, providing for a hearing process under Article 11 of the Health Code if a notice to pay relocation benefits is not complied with, disallowing passthroughs to tenants of the costs of lead remediation performed in accordance with Article 11 of the Health Code when lead hazards remedied are a result of deferred maintenance; authorizing landlords to temporarily recover possession of a unit for the purposes of performing lead remediation as required by the Department in accordance with Article 11 of the Health Code but only for the minimum time required to perform the remediation; increasing relocation payments required under Chapter 72 and indexing those relocation payments to the Consumer Price Index as of July 1, 2004; and providing an alternative to making relocation payments if a comparable dwelling unit is made available.

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

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

Section 1. The San Francisco Health Code is hereby amended by amending Section 596, to read as follows:

SEC. 596. ENFORCEMENT.

(a) **Complaints.** Whenever a written or oral complaint is made to the Department a nuisance as defined by Section 581 exists in a building or structure or on a property, the

Director shall inspect the building, structure or property to verify the existence of a nuisance thereon.

(b) **Notice to Abate.** Whenever the Director determines that a nuisance, as defined by Section 581 of this Article, exists in a building or structure or on a property, the Director shall cause a Notice to Abate to be served either personally or by first class mailing to the Responsible Parties. If the Notice to Abate is served on the Owner by mail, it shall be mailed to the address that appears on the last assessment rolls of the City and County of San Francisco. If the Notice to Abate is served on the Manager by mail, it shall be mailed to the Manager's principal place of business or to the address of the building, structure or property. If the Notice of Abate is served on any other Person who created a condition that constitutes a nuisance, it shall be mailed to the Person's last known address at which such Person receives mail, if ascertainable. Thereafter, the Director may cause a copy thereof to be posted in a conspicuous place on the building, structure or property. The failure of a Responsible Parties to receive such notice when sent in the manner set forth in this Subsection shall not effect in any manner the validity of any proceeding against that party under this Article.

(c) ***Order to Vacate.*** *The Director may order a premises vacated if she or he determines that relocation is warranted upon discovery of a nuisance, as defined by Section 581(b)(10) of the Health Code, or at the discretion of the Director, to protect the health of occupants. The order shall be to the affected tenant(s) and owner. A copy of the order shall be served upon the Owner and the affected tenant(s) and posted in conspicuous places at the affected premises. The order shall specify the time within which the premises is to be vacated and advise the tenants that they may be eligible for assistance pursuant to Chapter 72 of the San Francisco Administrative Code. The order shall further advise that the premise vacated hereunder shall not be reoccupied without written permission of the Director. Such permission shall be granted when the nuisance, as defined by Section 581(b)(10) of the Health Code, is abated.*

(d) ***Notice to Pay Relocation Benefits.*** *Whenever the Director determines that a nuisance, as defined by Section 581(b)(10) of this Article, exists in a building or structure or on a property, and issues a Notice to Abate, pursuant to subsection (b) of this section, and an Order to Vacate, pursuant to subsection (c) of this Section, the Director shall issue to the Responsible Party a Notice to Pay Relocation Benefits to the affected tenant(s) pursuant to Chapter 72 of the San Francisco Administrative Code. The Director shall cause a Notice to Pay Relocation Benefits to be served either on the Responsible Party or sent by first class mailing to the Responsible Parties. If the Notice to Pay Relocation Benefits is served on the Owner by mail, it shall be mailed to the address that appears on the last assessment rolls of the City and County of San Francisco. If the Notice to Pay Relocation Benefits is served on the Manager by mail, it shall be mailed to the Manager's principal place of business or to the address of the building, structure or property. Thereafter, the Director may cause a copy thereof to be posted in a conspicuous place on the building, structure or property. The failure of a Responsible Parties to receive such notice when sent in the manner set forth in this Subsection shall not effect in any manner the validity of any proceeding against that party under this Article.*

(*e*~~e~~) **Contents of Notice to Abate** ***or Notice to Pay Relocation Benefits*****.**

(1) The *N*~~n~~otice *to abate* shall state with reasonable specificity a description of the nuisance such that the Responsible Parties can reasonably understand the nature of the nuisance to be abated. The *N*~~n~~otice *to abate* shall direct the Responsible Parties to abolish, abate, and remove the nuisance within a reasonable period of time set by the Director given the nature and severity of the nuisance and any other circumstances of which the Director is aware of. Such time period shall not exceed 30 days.

(2) *The Notice to Pay Relocation Benefits shall state the Director has determined that the affected tenant(s) are eligible for relocation benefits as described in San Francisco Administrative Code Chapter 72 such that the Responsible Parties can reasonably understand the nature of their obligations under to Chapter 72. The Notice to Pay Relocation Benefits shall direct the Responsible*

Parties to commence making the required relocation payments to the affected tenant(s) at least 12 hours prior to the date that the affect tenant(s) must vacate the unit.

(~~3~~2) The notice*s* shall further advise the Responsible Parties that if they fail to comply with the notice, the Director may: (A) hold a Director's Hearing to be held to consider whether it would be appropriate to issue a Director's Order to abate the nuisance and other appropriate orders as provided for in this Article or (B) cause the abatement and removal of the nuisance and the Owner shall be indebted to the City and County of San Francisco for the costs, charges, and fees incurred by the City and County of San Francisco by reason of the abatement and removal of such nuisance *or (C) offer relocation services to the affected tenant(s) and the Owner shall be indebted to the City and County of San Francisco for the costs, charges, and fees incurred by the City and County of San Francisco by reason of the provision of the relocation services.*

(~~4~~3) The notice *s* shall inform the Responsible Party that they maybe liable for other charges, costs, including administrative costs, expenses incurred by the Department, fines, and penalties as provided for in this Article.

(~~5~~4) The notice*s* shall state the name, business address and telephone number of the Department staff who may be contacted regarding the building, structure or property in question.

(~~6~~5) At the discretion of the Director and to assure lawful disposal of any items constituting a nuisance in whole or in part, the notice*s* may contain a requirement that the Responsible Party abating the nuisance *or making the relocation payments* provide to the Director proof of lawful disposal of such items *or the payment of such relocation benefits,* and the form of such proof acceptable to the Director.

(~~d~~) **Action by the Director.** If the nuisance is not abated and removed within the time period set forth in the notice, *or the relocation benefits are not made within the time period set*

forth in the notice, the Director shall either: (1) hold a Director's Hearing in accordance with this Section or (2) abate and remove the nuisance as soon as practicable *or (3) offer relocation services to the affected tenant(s)*. The Owner shall be assessed a re-inspection fee as provided in Section 609 of this Code to cover the Department's costs incurred to verify the abatement of the nuisance.

(*ge*) **Notice of Hearing.**

(1) If the Responsible Parties failed to comply with the Notice to Abate *or the Notice to Pay Relocation Benefits*, the Director may hold a hearing by serving a copy of the Notice to Abate *or the Notice to Pay Relocation Benefits*, together with a notice of the time and place set for the hearing thereof, by personally service or by certified mail upon the Responsible Parties. The Director shall post a copy of the Notice to Abate *or the Notice to Pay Relocation Benefits*, together with the Notice of Hearing in conspicuous places throughout the building, structure or property. The time fixed for the hearing shall not be less than 30 days after service and posting of the copy of the Notice of Hearing; except in those circumstances where the Director has issued a written determination that the nuisance constitutes a severe and immediate hazard to life, health or safety in which case the time fixed for the hearing shall not be less than 12 hours after personal service and posting the Notice of Hearing. The Notice of Hearing shall inform all persons interested to appear at the hearing to show cause, if any, why the building, structure, or property should not be declared a nuisance or in the case where the Department has abated and removed the nuisance, why a lien should be not placed against the property for the costs incurred by the Department. In the case of unsanitary buildings, said notice shall also state that the hearing may result in the revocation of the certificate of sanitation, if any, and the mandatory vacation of occupants from the building.

(2) If the Notice of Hearing is served by certified mail on the Owner, the Director shall mail the Notice of Hearing to the address as it appears on the last assessment rolls of

the City and County of San Francisco. If the Notice is served by certified mail on the Manager, the Director shall mail the Notice of Hearing to the Manager's principal place of business, if any, or to the address of the building, structure or property in question. If the Notice of Hearing is served by certified mail on any Person who created the condition that constitutes a nuisance, the Director shall mail the Notice of Hearing to the last known address of such Person at which it receives mail, if ascertainable. The failure of the Responsible Parties to receive such notice when sent in the manner set forth in this Subsection shall not effect in any manner the validity of any proceeding under this Article.

(~~h~~*h*) **Director's Hearing.** A public hearing shall be held at the time and place designated in the Notice of Hearing. Subject to the procedures prescribed by the Director for the orderly conduct of the hearing, all persons having an interest in the building, structure or property in question or having knowledge of facts material to the Notice to Abate *or the Notice to Pay Relocation Benefits* may present evidence for consideration by the Director. Any hearing conducted pursuant to this Section shall be electronically recorded.

(~~i~~*i*) **Director's Order.**

(1) Within 30 days after the conclusion of the hearing, the Director shall issue a written order setting forth finding of facts and a determination based upon the facts found in the record whether or not a nuisance, as defined by Section 581, exists or had existed in the building or structure or on the property and if the Department abated and removed the nuisance, the costs of abatement and removal of the nuisance by the Department, *or a written order setting forth finding of facts and determination based upon the facts found the record whether or not the relocation benefits have been paid and if the Department arranged for the relocation of the affected tenant(s), the costs of that relocation to the Department*. The order shall be served on the Responsible Parties in the same manner as set forth in Subsection (e) of this Section and

shall be served on all other parties who provided testimony at the hearing by first class mail, if such parties request at or before the hearing that the order be sent to them.

(2) Upon a finding that a nuisance exists in the building or structure or on the property, *or a finding that appropriate relocation benefits have not been paid*, the Director shall require in the order the abatement of the nuisance *or the payment of the benefits* within a specified time period not to exceed 30 days. The time period shall be determined based on the nature and severity of the nuisance and any other circumstances of which the Director is aware. The order shall state *either* that failure to abate and remove the nuisance will result in the abatement of the nuisance by the Department and that the Owner shall become indebted to the City and County of San Francisco for the costs, charges, and fees incurred by reason of the abatement and removal of such nuisance upon demand, *or that failure to make the relocation benefit payments will result in the offering of relocation services to the affected tenant(s) by the Department and that the Owner shall become indebted to the City and County of San Francisco for the costs, charges, and fees incurred by reason of the making such relocation services available upon demand*. The order shall inform the Responsible Parties that it shall be indebted to the City and County of San Francisco for all administrative costs incurred by the Department in the prosecution of the abatement action *or the prosecution of the relocation benefit payment action* and that such costs are due upon demand. The order shall further state that failure to pay such costs, charges, and fees may result in a lien against the property. The order shall require the Responsible Parties to abate and remove the nuisance in compliance with all applicable federal, State, and local laws and regulations *or shall require the Responsible Parties to make the relocation benefit payments in compliance with all applicable local laws*.

(3) In the case where Director determines that a nuisance had existed and that the Department had abated and removed the nuisance, *or where the Direction determines that the relocation benefits were owed to the affected tenant(s) and the Director provided relocation services to*

the affected tenant(s), the order shall itemize the costs of abatement and removal *or provision of relocation services,* and all administrative costs incurred by the Department. The order shall notify the Owner that a lien will be assessed against the property for any outstanding costs if the Owner fails to reimburse the Department for the costs incurred by the Department as a result of the abatement and removal of the nuisance *or the provision of relocation services* within ten (10) days of the service of the order and that the lien shall also include additional charges for administrative expenses of $1,000 or 10 percent of the costs of abatement and removal, whichever is higher, and interest at a rate of 1-1/2 percent per full month compounded monthly from the date of recordation of the lien on all fees and charges due as aforesaid.

(4) The order shall advise the Responsible Parties that the order issued is final and of the Owner's right to petition the Superior Court of San Francisco for appropriate relief pursuant to Section 1094.6 of the California Code of Civil Procedures. The order shall notify the Owner that the filing of a petition with the Superior Court shall not automatically stay the effectiveness of the order or extend the time period in which the Responsible Parties have to abate the nuisance.

(5) In case of an unsanitary building, the Director shall revoke the certification of sanitation, if the building is a hotel and may order the vacation of any unsanitary building for all purposes, and shall cause a copy of said order to be posted in conspicuous places throughout the aforesaid structure, building or part thereof determined by the Director to be a nuisance, and a copy thereof is to be personally served upon the Owner thereof or his agent, or the lessee or the occupant thereof. The order shall specify the time within which said structure, building or part thereof determined by the Director to be a nuisance shall be vacated. The order shall further advise that structure, building or part thereof vacated hereunder shall not be reoccupied without the written permission of the Director. Such

permission shall be granted when the nuisance cited is abated within the time set forth in the order.

(~~j~~i) **Regulations.** The Director is hereby empowered to promulgate administrative regulations to implement the provisions of this Article and applicable provisions of State law.

Section 2. The San Francisco Administrative Code is hereby amended by amending Sections 37.3, 37.9, 72.1 to 72.3, inclusive, and 72.5, 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.** A landlord may impose rent increases based upon the cost of capital improvements, rehabilitation or energy conservation measures 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 and 15, 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 and 15.

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

(5) **Water: Charges Related to Excess Water Use, and 50% Passthrough of Water Bill Changes Attributable to Water Rate Increases Resulting From Issuance of Water System Improvement Bonds Authorized at the November 2002 Election.**

(A) **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:

(i)(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

(ii)(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

(iii)(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.

(B) Fifty Percent (50%) Passthrough of Water Bill Charges Attributable to Water Rate Increases Resulting From Issuance of Water System Improvement Revenue Bonds Authorized at the November 2002 Election. A landlord may pass through fifty percent (50%) of the water bill charges attributable to water rate increases resulting from issuance of Water System Improvement Revenue Bonds authorized at the November 5, 2002 election (Proposition A), to any unit that is in compliance with any applicable laws requiring water conservation devices. The landlord is not required to file a petition with the Board for approval of such a cost passthrough. Such cost passthroughs are subject to the following:

(i) Affected tenants shall be given notice of any such passthrough as provided by applicable notice of rent increase provisions of this Chapter 37, including but not limited to Section 37.3(b)(3).

(ii) A tenant may file a hardship application with the Board, and be granted relief from all or part of such a cost passthrough;

(iii) If a tenant's hardship application is granted, the tenant's landlord may utilize any available Public Utilities Commission low-income rate discount program or similar program for water bill reduction, based on that tenant's hardship status;

(iv) A landlord shall not impose a passthrough pursuant to Section 37.3(a)(5)(B) 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 water bill charges attributable to water rate increases resulting from issuance of any water revenue bonds authorized at the November 5, 2002 election was included in the comparison year cost totals.

(v) Where a tenant alleges that a landlord has imposed a water revenue bond passthrough that is not in compliance with Section 37.3(a)(5)(B), the tenant may petition for a hearing under the procedures provided by Section 37.8. In such a hearing the landlord shall have the burden of proving the accuracy of the calculation that is the basis for the increase. Any tenant petition challenging such a passthrough must be filed within one year of the effective date of the passthrough.

(vi) A tenant who has received a notice of passthrough or a passthrough under this Section 37.3(a)(5)(B) shall be entitled to receive a copy of the applicable water bill from the landlord upon request.

(vii) The amount of permissible passthrough per unit under this Section 37.3(a)(5)(B) shall be determined as follows:

(1) The San Francisco Public Utilities Commission will determine the charge per unit of water, if any, that is attributable to water rate increases resulting from issuance of water system improvement revenue bonds authorized at the November 5, 2002 election.

(2) The charge identified in Section 37.3(a)(5)(B)(vii)(1) shall be multiplied by the total units of water used by each customer, for each water bill. The result is the total dollar amount of the water bill that is attributable to water rate increases resulting from issuance of water system improvement revenue bonds authorized at the November 5, 2002 election. That charge shall be a separate line item on each customer's water bill.

(3) The dollar amount calculated under Section 37.3(a)(5)(B)(vii)(2) shall be divided by two (since a 50% passthrough is permitted), and then divided by the total number of units covered by the water bill, including commercial units. The resulting dollar figure shall be divided by the number of months covered by the water bill cycle (most are two-month bill cycles), to determine the amount of that water bill that may be passed through to each residential unit for each month covered by that bill.

(4) These passthroughs may be imposed on a monthly basis. These passthroughs shall not become part of a tenant's base rent. The amount of each passthrough may vary from month to month, depending on the amount calculated under Sections 37.3(a)(5)(B)(vii)(1) through (3).

(viii) The Board may amend its rules and regulations as necessary to implement this Section 37.3(a)(5)(B).

(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 November 14, 2002 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 20,2001] must be disclosed and approved by the voters:

The amount of such increase 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:

(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.

(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.

(iii) The dollar amount calculated under Subsection (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 November 14, 2002.

(C) Landlords may pass through to each unit in a particular property the dollar amounts calculated under these Subsections 37.3(a)(6)(A) and (B). These passthroughs may be imposed only on the anniversary date of each tenant's occupancy of the property. These passthroughs 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) and (B). Each annual passthrough shall apply only for the 12 month period after it is imposed. A landlord may impose the passthroughs 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.

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

(E) Landlords must provide to tenants, 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 (D). This completed form shall be provided in addition to the Notice of Rent Increase required under Section 37.3(b)(5). Where a tenant alleges that a landlord has imposed a charge which exceeds the limitations set forth in this Subsection (6), the tenant may petition for a hearing under the procedures provided by Section 37.8. In such a hearing, the landlord shall have the burden of proving the accuracy of the calculation that is the basis for the increase. Any tenant petition challenging such a passthrough must be filed within one year of the effective date of the passthrough.

(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 *11 or* 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 *11 or* 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 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 the passthrough of increased water bill charges attributable to water rate increases resulting from issuance of water revenue bonds authorized at the November 2002 election as provided by Section 37.3(a)(5)(B)), which charges and calculations of charges shall be explained in writing on a form provided by the Board; or the passthrough of general obligation bond measure costs as provided by Section 37.3(a)(6), 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*~~ *are* remediated or abated pursuant to San Francisco Health Code Article*s 11 or* 26, *or* are ~~*also*~~ violations of State or local housing and/or health and safety laws, *there shall be a rebuttable presumption that the lead hazards are caused or created by deferred maintenance as defined herein of the current or previous landlord. If the landlord*

fails to rebut the presumption, 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*~~. *If the landlord rebuts the presumption, he or she shall be entitled to a rent increase if otherwise justified by the standards set forth in this Chapter.*

~~*(1) 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.*~~

(2) 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.

SEC. 37.9. EVICTIONS.

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

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

(1) The tenant:

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

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

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

(B) Habitually pays the rent late; or

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

(2) The tenant has violated a lawful obligation or covenant of tenancy other than the obligation to surrender possession upon proper notice or other than an obligation to pay a charge prohibited by Police Code Section 919.1, and failure to cure such violation after having received written notice thereof from the landlord, provided further that notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit as a result of subletting of the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet following a written request by the tenant, so long as the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord; or

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

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

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

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

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

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

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

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

purposes of this Section 37.9(a)(8)(ii), the term spouse shall include domestic partners as defined in San Francisco Administrative Code Sections 62.1 through 62.8.

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

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

possession, so as to avoid moving into a comparable unit, or to avoid offering a tenant a replacement unit.

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

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

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

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

(10) The landlord seeks to recover possession in good faith in order to demolish or to otherwise permanently remove the rental unit from housing use and has obtained all the necessary permits on or before the date upon which notice to vacate is given, and does so

without ulterior reasons and with honest intent; provided that a landlord who seeks to demolish an unreinforced masonry building pursuant to Building Code Chapters 14 and 15 must provide the tenant with the relocation assistance specified in Section 37.9A(f) below prior to the tenant's vacating the premises; or

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

(12) The landlord seeks to recover possession in good faith in order to carry out substantial rehabilitation, as defined in Section 37.2(s), and has obtained all the necessary

permits on or before the date upon which notice to vacate is given, and does so without ulterior reasons and with honest intent. Notwithstanding the above, no landlord shall endeavor to recover possession of any unit subject to a RAP loan as set forth in Section 37.2(m) of this Chapter except as provided in Section 32.69 of the San Francisco Administrative Code; or

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

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

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

(c) A landlord shall not endeavor to recover possession of a rental unit unless at least one of the grounds enumerated in Section 37.9(a) or (b) above is the landlord's dominant motive for recovering possession and unless the landlord informs the tenant in writing on or before the date upon which notice to vacate is given of the grounds under which possession is sought and that advice regarding the notice to vacate is available from the Residential Rent Stabilization and Arbitration Board, before endeavoring to recover

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

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

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

(f) Whenever a landlord wrongfully endeavors to recover possession or recovers possession of a rental unit in violation of Sections 37.9 and/or 37.10 as enacted herein, the

tenant or Board may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages, (including damages for mental or emotional distress), and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of Section 37.9 or 37.10A herein. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court. The remedy available under this Section 37.9(f) shall be in addition to any other existing remedies which may be available to the tenant or the Board.

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

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

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

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

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

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

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

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

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

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

(4) Within 30 days of personal service by the landlord of a written request, or, at the landlord's option, a notice of termination of tenancy under Section 37.9(a)(8), the tenant must submit a statement, with supporting evidence, to the landlord if the tenant claims to be a member of one of the classes protected by Section 37.9(i). The written request or notice shall

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

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

SEC. 72.1. INTENT AND PURPOSE.

(a) The Board of Supervisors finds that residents who are required to vacate their units because an order to abate has been issued by the Director of the Department of Building Inspection ("DBI") or Director of Public Health ("DPH"), stating that there are unsafe housing conditions due to the presence of lead hazards or the unpermitted status or occupancy of the unit discovered as a result of a lead hazard inspection of the building pursuant to San Francisco Health Code Article*s 11 and* 26, may experience relatively greater difficulty finding affordable replacement housing because of the expediency with which the displacement occurs. Moreover, an order to abate may require temporary vacation to protect occupant

health and safety because the work necessary to make the unit habitable cannot be performed while the occupants remain in place.

(b) The City and County of San Francisco has embarked on ~~*an*~~ *several* ambitious program*s* to eradicate lead hazards throughout significant portions of the housing stock. ~~*An investigation*~~ *Investigations* under ~~*this*~~ *these* enforcement program*s are* ~~*is*~~ triggered by the presence of a child *who is at risk for lead poisoning or when activities resulting in the disturbance of lead-based paint are performed so as to generate uncontrolled lead hazards* ~~*with elevated levels of lead in their blood, commonly known as a lead-poisoned child*~~. Many ~~*lead poisoned*~~ children *at risk for lead poisoning* reside in low-income households. Additionally, many of the housing units in which ~~*lead poisoned*~~ children *at risk for lead poisoning* reside are also units that are not safe for residential use or occupancy.

(c) In order to insure that these enforcement efforts reach the greatest possible number of households with ~~*lead poisoned*~~ children *at risk for lead poisoning* and housing units with lead hazards, there must be incentives and protections for those occupants who, by reporting lead hazards, risk the temporary or permanent loss of their affordable housing.

(d) The Board of Supervisors specifically finds that tenants displaced as a result of lead hazard relocation suffer a financial burden because of the acute lack of resources available for locating and securing suitable relocation housing. Additional hardship is often caused by lack of safe and decent comparably sized and located housing at an affordable rent. Local government has often assisted such displaced tenants with moving and associated relocation expenses. Resources to continue provision of this assistance have become increasingly scarce. Moreover, tenants displaced under these circumstances often require public health, transportation, storage and other public services on an interim basis, due to the health impacts of unsafe or hazardous housing.

~~*(e) The Board of Supervisors further finds that funds allocated to the Department of Public Health should be available to provide relocation assistance to tenants who will be temporarily relocated for 30 days or less for abatement of the lead hazard.*~~

(~~e~~*f*) ~~*However, the*~~ *The* Board of Supervisors has determined that if a landlord is obliged under this Chapter and under Chapter 37 of the San Francisco Administrative Code or any State or federal law to provide relocation assistance greater than that which is provided in this Chapter, the greatest amount of relocation assistance shall be made available.

(~~f~~*g*) In order to ensure that adequate relocation assistance is available to lawful tenants ~~*and owner-occupants*~~ who are subject to lead hazard relocation and to provide that assistance in a manner that is as equitable as possible to the tenant, the landlord~~*, the owner-occupant*~~ and the public at large, the Board of Supervisors finds and declares that this *Chapter* ~~*Ordinance*~~ is necessary to protect and further the public health, safety and welfare.

SEC. 72.2. DEFINITIONS.

For the purpose of this Chapter, the following terms are as defined below:

Child At Risk For Lead Poisoning. *A child up to 72 months of age.*

Citing Department. The ~~*Childhood Lead Prevention Program within the*~~ Department of Public Health or its successor agency and the Department of Building Inspection or its successor agency.

Director-DPH. Director of Public Health or his or her designee.

Director-DBI. Director of Building Inspection or his or her designee.

Household. An individual, two or more persons related by blood or marriage, or a group of persons who are not related by blood or marriage and who live together, before and after the relocation, in a dwelling unit or portion of a dwelling unit.

Landlord. An owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any dwelling unit or portion thereof, any nonresidential building, or any other premises in the City and County of San Francisco, and the agent, representative or successor of any of the foregoing.

Lead Hazard. Any condition *that constitutes a nuisance in accordance with Section 581(b)(10) of the San Francisco Health Code* ~~*that exposes children to lead from any source, including but not limited to lead-contaminated water, lead-contaminated dust, lead-contaminated soil, lead-based paint on impact surfaces, friction surfaces, or accessible surfaces, or deteriorated lead-based paint*~~.

Lead Hazard Relocation. Relocation as a result of the presence of a lead hazard in the resident's unit or as a result of an lead hazard inspection of the building pursuant to the San Francisco Health Code, San Francisco Building Code or San Francisco Housing Code.

~~***Lead-Poisoned Child.*** *A child under six years old, with a venous blood lead level greater than or equal to 20 micrograms per deciliter, or a persistent venous blood lead level between 15-19 micrograms per deciliter based on consecutive measurements three to four months apart.*~~

Notice to Vacate. Any notice or order issued by Department of Public Health or Department of Building Inspection that requires the temporary or permanent vacation of the unsafe residential unit *or by the landlord in accordance with Section 37.9(a)(14) of the San Francisco Administrative Code*.

~~***Owner.*** *Any person, agent, firm or corporation having a legal or equitable interest in a dwelling unit, building, or other premises. For purposes of orders under Health Code Sections 1628 and 1630, the term "owner" shall not include entities such as banks or lending institutions holding equitable interests as security unless the entity is in actual physical control of the premises, or is performing property management activities.*~~

Order to Abate. Any *notice or* order to abate provided to a landlord or owner issued by the Department of Public Health, pursuant to Health Code Sections *596,* 1628 or 1630, the

Department of Building Inspection, pursuant to San Francisco Building Code Section 102, subsequent to a lead hazard inspection which finds that there exists a lead hazard requiring corrective action or a failure to comply with the San Francisco Housing, Building, Plumbing, Electrical or Mechanical Codes due to an unpermitted residential use and occupancy.

Owner. *Any person, agent, firm or corporation having a legal or equitable interest in a dwelling unit, building, or other premises. For purposes this Chapter, the term "owner" shall not include entities such as banks or lending institutions holding equitable interests as security unless the entity is in actual physical control of the premises.*

~~***Owner-occupant.*** *An owner whose primary residence is in the residential unit which is the subject of the order to abate.*~~

Proof of Compliance. Documentation, in such form as the citing department shall provide, that the lead hazards or conditions creating the unsafe unit have been abated pursuant to the terms and conditions of the order to abate.

Relocation Assistance. Benefits accruing to individual *lawful occupants* ~~*tenants and owner-occupants*~~ residing in unsafe residential units as defined herein.

Residential Unit. All residential dwelling units in the City and County of San Francisco together with the land and appurtenant buildings thereto, and all furnishings and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities.

Right to Occupy. The right of a tenant to reoccupy the residential unit or portion of the dwelling unit from which the tenant was displaced pursuant to the terms and conditions of this Chapter.

Tenant. A person entitled by written or oral agreement, subtenancy or by sufferance, to occupy a residential dwelling unit to the exclusion of others.

Unsafe Residential Unit. A residential unit shall be deemed unsafe for the purposes of this Chapter only if it or the common area of the building or structure in which it is located is the subject of a notice by the Director-DPH for lead hazards or by the Director-DBI for violations of the San Francisco Housing, Building, Plumbing, Electrical or Mechanical Codes due to unpermitted residential use and occupancy, where the notice of violation from DBI or DPH resulted from an inspection for lead hazards.

SEC. 72.3. CONDITIONS FOR RELOCATION ASSISTANCE.

Relocation assistance shall be provided to any lawful ~~*tenant or owner*~~-occupant who has been served with a notice to vacate based on *the presence of* ~~*a*~~ lead hazard*(s)* ~~*inspection*~~. Any notice to vacate shall be written ~~*in the appropriate languages(s) of*~~ *to* the affected tenant(s), owner(s), ~~*owner occupant(s)*~~ and/or manager(s). Any notice to vacate pursuant to which a tenant is entitled to relocation assistance under this Chapter, must comply with the relevant provisions of Sections 37.9(a)(10), (a)(11) or (a)(14) of the Administrative Code except that the landlord or owner is not obligated to pay relocation assistance as provided for in those Sections if the tenant receives relocation assistance pursuant to this Chapter. A notice to vacate based upon violations of Article*s 11 or* 26 of the San Francisco Health Code *or the San Francisco Building Code* will not be valid unless an order to abate, mandating abatement of the unsafe conditions in the residential unit from which relocation must occur, has been issued by a citing department.

A landlord may elect to temporarily relocate *lawful occupants* ~~*tenants*~~ pursuant to this Chapter for a period in excess of 30 days only if the conditions of Subsection (b) below are satisfied. A temporary relocation pursuant to this Chapter shall be subject to all rights and remedies provided by the San Francisco Administrative Code Sections 37.9(a)(11) or (a)(14) except for the payment of relocation assistance as provided therein; provided, however, that a

tenant temporarily relocated under this Chapter shall be displaced only for the lesser of (1) the time mandated by the citing department in its order to abate or (2) three months.

For purposes of this Chapter, it shall be rebuttably presumed that a *lawful occupant* ~~*tenant*~~ is entitled to relocation assistance prior to being required to vacate his or her unit if a landlord endeavors to recover possession of the unit within six months of the service of an order to abate by the citing department. This presumption shall not apply after the notice to abate has been abated.

(a) **Notice to Vacate.** In order for a *lawful occupant* ~~*tenant or owner-occupant*~~ to be eligible for relocation assistance, a landlord shall provide each *lawful occupant* ~~*tenant, or the citing department shall provide the owner-occupant*~~, in addition to any requirements for notice imposed by Sections 37.9(a)(10), (a)(11) or (a)(14) of the San Francisco Administrative Code, a notice to vacate, that states that the unit must be vacated because it is an unsafe residential unit. A copy of the order to abate shall be attached to the notice to vacate. Each notice to vacate shall state its duration and that the occupant(s) are eligible for relocation assistance, and shall include a full description of the requirements and scope of that assistance, as described herein. ~~*If a landlord elects to reduce or not pay relocation assistance under any of the exceptions set forth below, the notice to vacate shall state the exception upon which the landlord relies and the amount of relocation assistance, if any, to be paid to the tenant.*~~ It shall be rebuttably presumed that the notice provided by the landlord is valid.

(b) **Relocation Assistance Due to Tenants.** Relocation assistance in the form of a relocation payment shall be provided by the landlord to each *lawful occupant* ~~*individual adult tenant, or if the tenant is a minor, to the responsible adult with whom the minor has been residing at the premises*~~. A relocation payment shall be offered or provided ~~*only in the following circumstances: (i)*~~ where ~~*there has been*~~ an order to *vacate* ~~*abate*~~ *has been issued* by a citing department~~*; (ii) where the unit constitutes an unlawful residential use and the landlord seeks to*~~

~~*permanently remove the unit from housing use; or (iii) where the premises constitute an unlawful residential use and the landlord seeks to temporarily vacate the unit in order to convert the premises to a lawful use*~~. The amount of relocation assistance shall be based upon the length of time the tenant will be displaced from the unit; provided that in no event shall a tenant be entitled to receive relocation assistance provided by Sections 37.9(a)(11) or 37.9(a)(13) of the Administrative Code if the tenant receives relocation assistance pursuant to this Chapter.

(1) **Relocation Payment.** The landlord shall provide a relocation payment, the amount of which is based upon the length of time the tenant will be displaced from the unit, to each tenant who is a member of the household which is being displaced. For relocation payments which involve calculations of assistance on a daily basis, displacement in excess of eight hours shall constitute one day's relocation benefits.

No landlord shall be required to provide relocation payments where the landlord offers the lawful occupants a comparable dwelling unit in the same building.

(A) **Short-Term Relocation.** Short-term relocation shall apply only when the period of displacement will be up to 30 days. ~~*For purposes of short-term relocation only, the term "tenant" shall include an owner-occupant and each member of the owner-occupant's household where the owner-occupant and household members are required to vacate the residence as a result of an order to abate.*~~

Short-term relocation payments shall be as follows: The *lawful occupant* ~~*tenant*~~ shall receive a relocation payment not less than four days prior to the effective date of relocation, except that where an Emergency Order, as defined in San Francisco Health Code Section 1630 *or an order to vacate as defined in San Francisco Health Code Section 596(c)*, has been issued, relocation assistance shall be paid immediately.

(i) The amount of the relocation payment shall be a minimum of ~~*$35*~~ *$52* per person per day for temporary housing costs and a minimum of ~~*$10*~~ *$12* per person per day for the

costs of food, transportation and other quality of life services, *not to exceed payment for more than four persons. Commencing July 1, 2004, these relocation payments shall increase annually at the rate of increase in the "rent of primary residence" and "food at home" expenditure categories of the Consumer Price Index for all Urban Consumers for the San Francisco-Oakland Metropolitan Area, U. S. Department of Labor, (CPI) for the preceding 12 months, as that data is made available by the U. S. Department of Labor.*

~~*(ii) DPH, subject to approval by the Health Commission after a public hearing, shall adopt regulations which adjust this amount so that daily assistance for short-term relocation reasonably reflects the average daily housing and quality of life needs of tenants.*~~

Payments shall be made for the estimated period of time that the tenant will be displaced; provided, however, that if the relocation period is extended beyond the initial payment period, payments shall be received in increments of not less than two days.

~~*Only in the event of short-term relocation may the landlord receive funds from DPH to fulfill the landlord's obligation to pay relocation assistance pursuant to this subsection. Furthermore, owner-occupants who have received notices to vacate are entitled to short-term relocation assistance from DPH. In the event DPH's funds are insufficient to satisfy the landlord's obligation to provide relocation assistance to which the tenant is entitled, the landlord shall pay the tenant directly the entire amount of relocation assistance. The landlord may receive reimbursement from DPH at such time as there are sufficient moneys in DPH for this purpose, as determined by the Director DPH.*~~

(B) **Moderate Term Relocation.** *Relocation payment for displacements 31 days or longer shall be as follows: Landlord shall provide relocation assistance in an amount equal to two months fair market rent, as stated in the most recent schedule maintained by the Dept. of Housing and Urban Development for a comparable residential unit; provided however that the maximum amount of relocation assistance a tenant is entitled to shall not exceed the fair market rent for a two-bedroom unit. Payment of this relocation benefit shall be made at the time Notice to Pay Relocation Benefits is*

served on the landlord and Order to Vacate is served on the tenant. For payments beyond the 60th day of relocation, said payment shall be made monthly not less than five days before the 1st of the following month.

~~*Relocation payments for displacements between one and three months shall be as follows: Each tenant shall receive $1,250, but the total relocation payment shall not exceed $4,000 per household; provided further that the maximum relocation payment for a single person household shall not exceed $2,000. All relocation payments under this subsection shall be provided before the expiration of the period provided for in the notice to vacate.*~~

~~*If upon surrender of possession of the unit, a household has not received the $4,000 maximum relocation payment provided under this subsection, then upon presentation of receipts to the owner for actual costs incurred, the household may receive an additional relocation payment of up to $4,000, notwithstanding the foregoing. Actual costs includes, but are not limited to costs of moving, storage, rent in excess of the amount paid by the household to the landlord, and additional utility and transportation costs.*~~

~~*However, in no event shall the amount of relocation assistance result in living expenses greater than that which the displaced tenant had immediately prior to the effective date of relocation.*~~

(C) **Permanent Relocation.** This subsection shall apply whenever an order to abate cites an unlawful residential use and the landlord seeks to demolish or otherwise permanently remove the unit from housing use. The landlord shall provide relocation assistance in an amount equal to five months' fair market rent, as stated in the most recent schedule maintained by the Department of Housing and Urban Development (HUD) for a comparable residential unit; provided however that the maximum amount of relocation assistance to which a tenant is entitled shall not exceed five months' fair market rent for a two-bedroom unit. Relocation payment under this subsection is an obligation separate from and additional to the refund of any security deposit pursuant to California Civil Code Section

1950.5, Chapter 49 of the San Francisco Administrative Code, or any other remedy available to the tenant by law.

(2) **Relocation upon Shortened Time.** Upon the issuance of a~~n emergency order~~ *order to vacate* by the citing department requiring temporary vacation of a unit with less than 15 days' written notice, the landlord shall immediately pay to the tenant 25 percent of the per diem amount required by Subsection (A), multiplied by each day such notice was less than 15 days. This relocation payment is in addition to any other relocation payment as provided for herein.

(c) **Right to Reoccupy.** Any tenant evicted or required to vacate under the provisions of this Chapter shall have the right of first refusal to reoccupy the unit or other portion of the residential structure from which the tenant was evicted or required to vacate.

In addition, the following procedures are to be followed in affording the right of reoccupancy to the displaced tenant.

(2) The tenant shall provide the landlord with his/her address and telephone number, which the landlord will use for future notification purposes.

(3) Within 14 days of receipt of written notice from DPH that the violations have been abated or prior to the landlord's offering for rent or lease the unit or portion of the residential structure from which the tenant was displaced pursuant to this Chapter, whichever is sooner, the landlord shall notify the tenant~~, *in the appropriate language of the affected tenant(s)*~~, that she or he may exercise his/her right to reoccupy. The notice shall be given by certified mail, return receipt requested, to the address provided by the tenant ~~*and to all other addresses which the landlord has actual knowledge that the tenant resides or may be contacted*~~. *The notice shall state that the tenant shall have 30 days from receipt of the landlord's notice of the tenant's right to reoccupy to notify the landlord of acceptance or rejection of the offer and, if accepted, the tenant shall reoccupy the unit within 45 days of receipt of the landlord's offer.* ~~*The notice shall state in no less than*~~

~~*12 point type, that the tenant must accept the offer of the unit within 19 days of mailing and that failure to do so may result in the termination of all right to reoccupy.*~~

(4) If the tenant does not respond to the notice within ~~*19*~~ *30* calendar days of the date of mailing, or the landlord is unable to locate the tenant upon the exercise of good faith effort to do so, the landlord shall be deemed to have complied with this Section, and the tenant's right to reoccupy shall terminate.

(d) ***Penalties For Failure To Make Relocation Payments***

Whenever a landlord fails to make relocation payments in violation of the provisions of Administrative Code Section 72.2, the tenant may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages, (including damages for mental or emotional distress), and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of Administrative Code Section 72.2 herein. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant.

SEC. 72.5. RENT INCREASES DURING LEAD HAZARD WORK.

It shall be unlawful for a landlord to increase the amount of rent for any vacated unit pursuant to this chapter, except as otherwise permitted by Chapter 37 of the San Francisco Administrative Code.

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

By: Judith A. Boyajian
Kate Herrmann Stacy
Deputy City Attorney

Supervisor Peskin, Maxwell
BOARD OF SUPERVISORS

City and County of San Francisco

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

Tails

Ordinance

File Number: 031992 **Date Passed:**

Ordinance amending Section 596 of the San Francisco Health Code and Sections 37.3, 37.9, 72.1 to 72.3, inclusive, and 72.5 of the San Francisco Administrative Code providing for orders to vacate and notices to pay relocation benefits, providing for a hearing process under Article 11 of the Health Code if a notice to pay relocation benefits is not complied with, disallowing passthroughs to tenants of the costs of lead remediation performed in accordance with Article 11 of the Health Code when lead hazards remedied are a result of deferred maintenance; authorizing landlords to temporarily recover possession of a unit for the purposes of performing lead remediation as required by the Department in accordance with Article 11 of the Health Code but only for the minimum time required to perform the remediation; increasing relocation payments required under Chapter 72 and indexing those relocation payments to the Consumer Price Index as of July 1, 2004; and providing an alternative to making relocation payments if a comparable dwelling unit is made available.

May 18, 2004 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Gonzalez, Ma, Maxwell, McGoldrick, Peskin, Sandoval
Noes: 1 - Hall

May 25, 2004 Board of Supervisors — FINALLY PASSED

Ayes: 9 - Ammiano, Daly, Dufty, Gonzalez, Ma, Maxwell, McGoldrick, Peskin, Sandoval
Absent: 1 - Alioto-Pier
Excused: 1 - Hall

File No. 031992

I hereby certify that the foregoing Ordinance was FINALLY PASSED on May 25, 2004 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

JUN 04 2004

Date Approved

Mayor Gavin Newsom