Ordinance amending the Administrative Code to prohibit landlords of single-family homes and condominiums covered by existing eviction controls from circumventing eviction controls through rent increases; and to clarify that a rent increase intended to defraud, intimidate, or coerce the tenant into vacating such a rental unit may qualify as tenant harassment.

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

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

Section 1. Purpose and Findings.

(a) San Francisco is experiencing a crisis shortage of affordable housing, which is contributing to a high rate of evictions and the displacement of low- and moderate-income tenant households. The Residential Rent Stabilization and Arbitration Ordinance (Admin. Code Ch. 37) addresses these concerns by imposing rent control to regulate the amount by which a landlord may increase the rent on an existing tenant; and by imposing eviction controls to regulate the bases for evictions and to mitigate the impact of evictions on tenants. The eviction controls also include provisions to regulate against tenant harassment, which has been on the rise during the housing crisis.
(b) The Costa-Hawkins Rental Housing Act, California Civil Code Sections 1954.50 et seq., guarantees the owner of a separately alienable property (hereafter, “single-family home”) to raise the rent on an existing tenant, but also states, at Section 1954.52(c), that “[n]othing in this section shall be construed to affect the authority of a public entity that may otherwise exist to regulate or monitor the basis for eviction.” The City has long exercised this authority, by regulating evictions and tenant harassment, and these regulations apply to all rental units covered by the Rent Ordinance including single-family homes.

(c) In recent years, San Francisco has witnessed multiple cases where the owner of a single-family home attempted to circumvent eviction controls and coerce a tenant to vacate a rental unit by means of an exorbitant rent increase. On March 16, 2015, the San Francisco Chronicle reported that the landlord of a two-unit building subject to rent control had modified one of the units so that it was no longer habitable, claimed the building was a single-family home, and then increased the rent by 315% to far above market rates for comparable units in the area for the purpose of forcing the tenant to vacate the unit. The landlord intended to move into the unit herself, and therefore, under the Rent Ordinance, was required to perform an owner move-in (“OMI”) eviction and comply with certain obligations including the duty to provide the tenant a relocation payment. The landlord did not expect to collect the new rent from the tenant, but rather just wanted to coerce the tenant into leaving. In a similar case from 2017, the owner of a two-unit building allegedly removed one of the units, claimed the building was a single-family home, and then raised the rent to far above market rate by means of a 250% rent increase in an attempt to circumvent the OMI requirements and coerce the tenant into vacating the unit. Tenant advocates estimate that many similar cases arise in San Francisco every year.

(d) Owners of single-family homes have the right to raise rents on existing tenants. This ordinance merely clarifies that these owners, like any owner of any other rental housing
in the City, do not have the right to impose a rent increase harass tenants in bad faith in order to circumvent local eviction controls, and that such action constitutes harassment can occur through rent increases that are imposed in bad faith.

Section 2. The Administrative Code is hereby amended by revising Sections 37.10A and 37.10B, to read as follows:

**SEC. 37.10A. MISDEMEANORS, AND OTHER ENFORCEMENT PROVISIONS.**

* * * *

(i) It shall be unlawful for a landlord to endeavor to recover possession of a rental unit as defined in Section 37.2(r)(7) by means of a rent increase that is imposed in bad faith with an intent to defraud, intimidate, or coerce the tenant into vacating the rental unit in circumvention of Section 37.9(a), 37.9A, 37.9B, or 37.9C. Evidence of bad faith may include but is not limited to the following: (1) the rent increase was substantially in excess of market rates for comparable units; (2) the rent increase was within six months after an attempt to recover possession of the unit; and (3) such other factors as a court or the Rent Board may deem relevant.

(ii) Any person who violates Section 37.10A(a), (b), (c), (f), or (h) is guilty of a misdemeanor and shall be punished by a mandatory fine of $1,000, and in addition to such fine may be punished by imprisonment in the County Jail for a period of not more than six months. Each violation shall constitute a separate offense.

**SEC. 37.10B. TENANT HARASSMENT.**

(a) No landlord, and no agent, contractor, subcontractor or employee of the landlord, shall do any of the following, in bad faith or with ulterior motive or without honest intent:

* * * *
(5) Influence or attempt to influence a tenant to vacate a rental housing unit through fraud, intimidation or coercion; for example and without limitation, by endeavoring to recover possession of a rental unit as defined in Section 37.2(r)(7) by means of a rent increase that is imposed with an intent to defraud, intimidate, or coerce the tenant into vacating the rental unit in circumvention of Section 37.9(a), 37.9A, 37.9B, or 37.9C, in which case evidence of bad faith may include but is not limited to the following: (1) the rent increase was substantially in excess of market rates for comparable units; (2) the rent increase was within six months after an attempt to recover possession of the unit; and (3) such other factors as a court or the Rent Board may deem relevant.

* * * *

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

Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

Section 5. Application and Enforcement. This ordinance is intended to be interpreted and applied consistent with prior judicial orders and decisions concerning Administrative Code
Section 37.10B, including but not limited to page 1, lines 12-14, of the May 19, 2009, Order in Larson v. City and County of San Francisco, S.F. Super. Case No. 509-085 (holding that the phrase “without ulterior motive and with honest intent” is severed from Section 37.10B); and Larson v. City and County of San Francisco (2011) 192 Cal. App. 4th 1263 (holding that the Rent Board is precluded from making rent reductions under Section 37.10B(a)(5)).

Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

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

By: MANU PRADHAN
Deputy City Attorney

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December 05, 2018 Rules Committee - RECOMMENDED

December 11, 2018 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE
  Ayes: 11 - Brown, Cohen, Fewer, Kim, Mandelman, Peskin, Ronen, Safai, Stefani, Tang and Yee

December 11, 2018 Board of Supervisors - PASSED ON FIRST READING AS AMENDED
  Ayes: 11 - Brown, Cohen, Fewer, Kim, Mandelman, Peskin, Ronen, Safai, Stefani, Tang and Yee

January 15, 2019 Board of Supervisors - FINALLY PASSED
  Ayes: 10 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani and Yee
  Excused: 1 - Walton

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 1/15/2019 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

Date Approved: 1/25/19