

File No. 110153 Committee Item No. 2
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Economic Development Date April 11, 2011

Board of Supervisors Meeting Date _____

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Completed by: Alisa Somera Date April 7, 2011
Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Administrative Code - Residential Rent Ordinance - Good Samaritan Base Rent Following
Emergency Dislocation of Tenant]

Ordinance amending Administrative Code Chapter 37 Residential Rent Arbitration and
Stabilization Ordinance, by amending Section 37.2(a) to provide for temporary Good
Samaritan base rent when a landlord and new tenant agree for the tenant to commence
occupancy following an emergency such as fire or earthquake or landslide that
required unexpected vacation of the tenant's previous unit, and the agreement includes
a reduced rent rate for up to the first three hundred sixty-five (365) days of occupancy
(Original Good Samaritan Status Period); initial base rent for purposes of calculating
annual CPI increases per Section 37.3 shall be the rent payable upon expiration of the
Original Good Samaritan Status Period, or upon expiration of any Extended Good
Samaritan Status Period as agreed by the landlord and tenant in writing, for a total of
no more than 730 days of Original and Extended Good Samaritan Status days
combined; Good Samaritan status may be utilized only upon written certification by a
specified City Official, that identifies the emergency and the resulting unit vacation on
grounds of public health, safety, and habitability.

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

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

Section 1. The San Francisco Administrative Code is hereby amended by amending
Section 37.2, to read as follows:

1 Sec. 37.2. - DEFINITIONS.

2 (a) Base Rent.

3 (1) That rent which is charged a tenant upon initial occupancy plus any rent increase
4 allowable and imposed under this Chapter; provided, however, that:

5 (A) ~~b~~Base rent shall not include increases imposed pursuant to Section 37.7, and

6 (B) ~~b~~Base rent shall not include utility passthroughs or water revenue bond
7 passthroughs or general obligation bond passthroughs pursuant to Sections 37.2(q),
8 37.3(a)(5)(B), and 37.3(a)(6).

9 (C) Base rent for tenants of RAP rental units in areas designated on or after July 1,
10 1977, shall be that rent which was established pursuant to Section 32.73-1 of the San
11 Francisco Administrative Code. Rent increases attributable to the City Administrator's
12 amortization of an RAP loan in an area designated on or after July 1, 1977, shall not be
13 included in the base rent.

14 (D) **Good Samaritan Status.** As of February 8, 2011 and after, for tenants who commence
15 occupancy in Good Samaritan Status, initial base rent for purposes of calculating the annual allowable
16 Consumer Price Index increase ("CPI," see Section 37.3(a)(1)) shall be calculated according to that
17 Good Samaritan Status.

18 Good Samaritan occupancy status occurs when a landlord and new tenant agree for the tenant
19 to commence occupancy following an emergency such as fire or earthquake or landslide that required
20 unexpected vacation of the tenant's previous unit, and the agreement includes a reduced rent rate for
21 the replacement unit for up to the first three hundred sixty-five (365) days ("Original Good Samaritan
22 Status Period"). "Reduced rent rate" means the rent the tenant was paying for the previous unit at the
23 time of the emergency or an amount up to ten (10) percent above that amount, except that if the owner
24 of the previous unit is the same as the owner of the replacement unit then "reduced rent rate" means
25 the rent the tenant was paying for the previous unit at the time of the emergency.

1 The initial base rent used for calculation of the annual allowable Consumer Price Index
2 increase (see Section 37.3(a)(1)) shall be the rent rate applicable on the day after expiration of the
3 Original Good Samaritan Status Period, or the rent payable as of the day following expiration of any
4 landlord and tenant Extended Good Samaritan Status agreement (see Section 37.2(a)(1)(D)(i)).

5 (i) The landlord and tenant may agree, in writing, to extend the reduced rent rate for a period
6 of time beyond the Original Good Samaritan Status Period, up to a total of seven hundred thirty (730)
7 from the beginning to the end of all Good Samaritan Status ("Extended Good Samaritan Status
8 Period").

9 (ii) By accepting occupancy in Good Samaritan Status, a tenant does not waive any right that
10 he or she otherwise may have under Chapter 37 or other source of law, to compensation based on the
11 emergency vacation of the tenant's previous unit.

12 (iii) Good Samaritan Status may only be utilized upon certification in writing by one of the
13 following officials, or his or her designee, that as a result of fire, earthquake, landslide, or similar
14 emergency situation, the tenant's previous unit is in such condition that, as a matter of public health
15 and safety and as a matter of habitability, the tenant cannot or should not reside there until the unit has
16 been appropriately repaired:

17 Mayor;

18 Fire Chief;

19 Director of the Department of Building Inspection;

20 Director of the Department of Public Health; or

21 Other Official as authorized by law.

22 The Rent Board shall make a form available, that the Official may use for this purpose.

23 (iv) The Rent Board shall make a form available explaining that tenant occupancy in Good
24 Samaritan Status is temporary in nature, and that the landlord may reset the rent to a higher base rent
25 upon expiration of the Good Samaritan rental agreement. The Good Samaritan landlord is strongly

1 encouraged to provide the tenant with this disclosure form. However, failure by the Rent Board to
2 make such a disclosure form available or failure by the landlord to provide the tenant with such
3 disclosure form will not prevent the landlord from setting a new base rent upon expiration of the Good
4 Samaritan agreement (whether Original or Extended), or otherwise impact any rights that the landlord
5 may have regarding the tenancy.

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

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

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

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

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

5 (B) For any tenant occupying a unit upon the expiration or termination, for whatever
6 reason, of a project-based HAP contract under Section 8 of the United States Housing Act of
7 1937 (42 USC Section 1437f, as amended), the base rent for each such unit following
8 expiration or termination shall be the "contract rent" in effect for that unit immediately prior to
9 the expiration or termination of the project-based HAP contract.

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

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

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

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

24 (e) Energy Conservation Improvements. Work performed pursuant to the requirements
25 of Chapter 12 of the San Francisco Housing Code.

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

4 (f.1) Reserved.

5 (g) Housing Services. Services provided by the landlord connected with the use or
6 occupancy of a rental unit including, but not limited to: quiet enjoyment of the premises,
7 without harassment by the landlord as provided in Section 10B; repairs; replacement;
8 maintenance; painting; light; heat; water; elevator service; laundry facilities and privileges;
9 janitor service; refuse removal; furnishings; telephone; parking; rights permitted the tenant by
10 agreement, including the right to have a specific number of occupants, whether express or
11 implied, and whether or not the agreement prohibits subletting and/or assignment; and any
12 other benefits, privileges or facilities.

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

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

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

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

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

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

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

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

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

13 (q) Rent Increases. Any additional monies demanded or paid for rent as defined in
14 item (p) above, or any reduction in housing services without a corresponding reduction in the
15 monies demanded or paid for rent; provided, however, that: (1) where the landlord has been
16 paying the tenant's utilities and the cost of those utilities increases, the landlord's passing
17 through to the tenant of such increased costs pursuant to this Chapter does not constitute a
18 rent increase; (2) where there has been a change in the landlord's property tax attributable to
19 a general obligation bond approved by the voters between November 1, 1996 and November
20 30, 1998, or after November 14, 2002, the landlord's passing through to the tenant of such
21 increased costs in accordance with this Chapter (see Section 37.3(a)(6)) does not constitute a
22 rent increase; (3) where there has been a change in the landlord's property tax attributable to
23 a San Francisco Unified School District or San Francisco Community College District general
24 obligation bond approved by the voters after November 1, 2006, the landlord's passing
25 through to the tenant of such increased costs in accordance with this Chapter (see Section

1 37.3(a)(6)) does not constitute a rent increase; and, (4) where water bill charges are
2 attributable to water rate increases resulting from issuance of water revenue bonds authorized
3 at the November 5, 2002 election, the landlord's passing through to the tenant of such
4 increased costs in accordance with this Chapter (see Section 37.3(a)(5)(B)) does not
5 constitute a rent increase.

6 (r) Rental Units. All residential dwelling units in the City and County of San Francisco
7 together with the land and appurtenant buildings thereto, and all housing services, privileges,
8 furnishings and facilities supplied in connection with the use or occupancy thereof, including
9 garage and parking facilities.

10 Garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks,
11 patios, or gardens on the same lot, or kitchen facilities or lobbies in single room occupancy
12 (SRO) hotels, supplied in connection with the use or occupancy of a unit, may not be severed
13 from the tenancy by the landlord without just cause as required by Section 37.9(a). Any
14 severance, reduction or removal permitted under this Section 37.2(r) shall be offset by a
15 corresponding reduction in rent. Either a landlord or a tenant may file a petition with the Rent
16 Board to determine the amount of the rent reduction.

17 The term "rental units" shall not include:

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

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

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

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

19 (A) For purposes of Sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6, 37.9, 37.9A,
20 37.10A, 37.11A and 37.13, and the arbitration provisions of Sections 37.8 and 37.8A
21 applicable only to the provisions of Sections 37.3(a)(10)(A), the term "rental units" shall
22 include units occupied by recipients of tenant-based rental assistance where the tenant-based
23 rental assistance program does not establish the tenant's share of base rent as a fixed
24 percentage of a tenant's income, such as in the Section 8 voucher program and the "Over-
25 FMR Tenancy" program defined in 24 CFR Section 982.4;

1 (B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9, 37.9A,
2 37.10A, 37.11A and 37.13, the term "rental units" shall include units occupied by recipients of
3 tenant-based rental assistance where the rent payable by the tenant under the tenant-based
4 rental assistance program is a fixed percentage of the tenant's income; such as in the Section
5 8 certificate program and the rental subsidy program for the Housing Opportunities for
6 Persons with Aids ("HOPWA") program (42 U.S.C. Section 12901 et seq., as amended);

7 (C) The term "rental units" shall include units in a building for which tax credits are
8 reserved or obtained pursuant to the federal low income housing tax credit program (LIHTC,
9 Section 42 of the Internal Revenue Code, 26 U.S.C. Section 42), that satisfy the following
10 criteria:

11 (i) Where a tenant's occupancy of the unit began before the applicable LIHTC
12 regulatory agreement was recorded; and,

13 (ii) Where the rent is not controlled or regulated by any use restrictions imposed by the
14 City and County of San Francisco, the San Francisco Redevelopment Agency, the State of
15 California Office of Housing and Community Development, or the United States Department of
16 Housing and Urban Development.

17 Nothing in this Section 37.2(r)(4)(C) precludes a landlord from seeking an exemption
18 from rent regulation on the basis of substantial rehabilitation under Section 37.2(r)(6).

19 This Section 37.2(r)(4)(C) definition of "rental unit" shall apply to any unit where the
20 qualifying tenant (see Section 37.2(r)(4)(C)(i)) is in possession of the unit on or after the
21 effective date of this ordinance (Ord. No. 281-06), including but not limited to any unit where
22 the tenant has been served with a notice to quit but has not vacated the unit and there is no
23 final judgment against the tenant for possession of the unit as of the effective date of this
24 ordinance (Ord. No. 281-06).

1 (5) Rental units located in a structure for which a certificate of occupancy was first
2 issued after the effective date of this ordinance; (A) except as provided for certain categories
3 of units and dwellings by Section 37.3(d) and Section 37.9A(b) of this Chapter, (B) except as
4 provided in a development agreement entered into by the City under San Francisco
5 Administrative Code Chapter 56; and (C) except as provided for foreclosed units and
6 dwellings by Section 37.9D.

7 (6) Dwelling units in a building which has undergone substantial rehabilitation after the
8 effective date of this ordinance; provided, however, that RAP rental units are not subject to
9 this exemption; and except as provided for foreclosed units and dwellings by Section 37.9D.

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

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

22 (t) Tenant. A person entitled by written or oral agreement, sub-tenancy approved by
23 the landlord, or by sufferance, to occupy a residential dwelling unit to the exclusion of others.
24
25

1 (u) Tenant-Based Rental Assistance. Rental assistance provided directly to a tenant or
2 directly to a landlord on behalf of a particular tenant, which includes but shall not be limited to
3 certificates and vouchers issued pursuant to Section 8 of the United States Housing Act of
4 1937, as amended (42 U.S.C. Section 1437f) and the HOPWA program.

5 (v) Utilities. The term "utilities" shall refer to gas and electricity exclusively.
6

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

9 By:


10 MARIE CORLETT BLITS
11 Deputy City Attorney
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