

1 CITY AND COUNTY OF SAN FRANCISCO
2 RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD
3

4
5 **RULES AND REGULATIONS**

6 * * * * *

7
8 Adding Sections 13.10, 13.11, 13.12, 13.13, and 13.14
9 **Effective Date: July 12, 2022**

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11
12 Rent Board Office: 25 Van Ness Avenue, Suite 320
13 San Francisco, California 94102-6033
14
15 Office Hours: 8:00 a.m. – 5:00 p.m. Monday – Friday
16 Phone Counseling Hours: 9:00 a.m. – Noon, 1:00 p.m. – 4:00 p.m.
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SAN FRANCISCO RENT BOARD
LIST OF RECENT AMENDMENTS TO THE RULES AND REGULATIONS — 7/22

Following is a list of recent amendments to the Rent Board’s Rules and Regulations:

1. Amendments to the Rules and Regulations

<u>EFFECTIVE DATE</u>	<u>RULES & REGULATIONS SECTION</u>	<u>AMENDMENT</u>
6/16/20	1.17, 1.18	Implements recent amendments to Rent Ordinance Sections 37.2 and 37.3 extending eviction controls to units constructed after June 13, 1979 and units that have undergone a substantial rehabilitation.
8/11/20	10.15	Allows tenants to seek relief from payment of some general obligation bond passthrough amounts by filing a Tenant Financial Hardship Application, in conformance with recent amendments to Rent Ordinance Section 37.3.
2/16/21	1.10, 2.10, 2.11	Clarifies the participatory role and voting rights of Alternate Board Members; requires the Board to hold elections on an annual basis, allows Board Officers to be re-elected at the expiration of each one-year term.
7/12/22	13.10, 13.11, 13.12, 13.13, 13.14	Adds Section 13 titled “Reporting Obligations Under Ordinance Section 37.15” regarding the requirements of the Rent Board’s Housing Inventory Reporting Requirements.

**SAN FRANCISCO RENT BOARD
RULES AND REGULATIONS**

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1 **PART I** **DEFINITIONS**

2 **Section 1.10 Alternates**

3 (Amended February 16, 2021)

4 "Alternate" means an alternate member of the Rent Stabilization and Arbitration Board.

5 An alternate who is present at a meeting of the Board shall act as member for all purposes
6 whenever the member for whom the alternate serves as alternate is not present or has been
7 excused from considering or voting on any matter, unless the alternate is also excused.

8 **Section 1.11 Anniversary Date**

9 (Amended March 11, 1986; Subsection (a) renumbered and Subsection (b) added
10 December 20, 1994; Subsection (b) repealed and adopted April 25, 1995;
11 effective February 1, 1995)

12 (a) The anniversary date is the date on which the tenant's current rent became
13 effective except in the case of certified capital improvements, rehabilitation, and/or energy
14 conservation work which, when granted, do not affect or change the anniversary date. The next
15 allowable rent increase shall take effect no less than one year from the anniversary date, but
16 when imposed after one year, shall set a new anniversary date for the imposition of future rent
17 increases.

18 (b) For Newly Covered Units, the first anniversary date shall be the date of the last
19 lawful and effective rent increase imposed on or before May 1, 1994 or the date the tenancy
20 commenced, whichever occurred later. The next allowable rent increase shall take effect no less
21 than one year from the anniversary date, but, if it takes effect after more than one year, its
22 effective date shall be the new anniversary date for purposes of future rent increases.

23 **Section 1.12 Annual Rent Increase**

24 (Amended February 21, 1984; effective March 1, 1984; amended December 8,
25 1992; Subsection (b) amended August 20, 1996; amended June 10, 2008)

26 (a) Where a landlord is entitled to an annual rent increase to be effective from
27 December 8, 1992 through February 28, 1993, the allowable amount of increase is 1.6%.
28 Thereafter, the annual allowable increase determined by the Board shall become effective each
March 1, and shall be no more than 60% of the percentage increase in the Consumer Price
Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region as
published by the U.S. Department of Labor for the 12 month period ending October 31. In

1 determining the allowable percentage rent increase, numbers of .04 and below shall be rounded
2 down to the nearest tenth decimal place, and numbers of .05 and above shall be rounded up to
3 the nearest tenth decimal place. In no event, however, shall the allowable annual increase be
4 greater than seven percent (7%). The Rent Board shall publish the annual allowable increase
5 amount on or about January 1. The published increase shall be determined only once for each
6 12 month period and shall remain in effect until the next scheduled recalculation.

7 (b) Where a landlord was entitled to an annual rent increase between March 1, 1992
8 and December 7, 1992, the allowable amount of increase is 4%. If a landlord did not impose the
9 4% increase to which the landlord was entitled during the period March 1, 1992 to December 7,
10 1992, the landlord may impose the increase at any time, even if two years have not elapsed
11 since the effective date of the last annual increase.

12 (c) Where a landlord is entitled to an annual rent increase to be effective from
13 December 8, 1992 through February 28, 1993, the allowable amount of increase is 1.6%. Any
14 notice of rent increase which imposes only a 4% or less annual increase effective during the
15 above period is lawful in the amount of 1.6%, and only that portion of the increase above 1.6% is
16 null and void, provided that the increase is given in good faith without knowledge of the effective
17 date of Proposition H. Nothing in this Regulation shall affect any banking rights that the landlord
18 may have.

19 (d) For rent increases effective during the period December 8, 1992 through
20 February 28, 1993, where a tenant has received a notice of increase in excess of the allowable
21 amount but has not yet paid the requested amount, the notice shall be null and void. Nothing in
22 this Regulation shall affect any banking rights that the landlord may have.

23 **Section 1.13 Capital Improvements**
24 (Amended February 28, 1989)

25 "Capital Improvements" means those improvements which materially add to the value of
26 the property, appreciably prolong its useful life, or adapt it to new uses, and which may be
27 amortized over the useful life of the improvement of the building. Capital Improvements do not
28 include normal routine maintenance and repair. (For example, the patching of a roof is not a

1 capital improvement while the partial or complete replacement of the old roof is; repair of a
2 foundation is considered a capital improvement and not a repair.) Repairs which are incidental to
3 a capital improvement project, or replacement of an item normally considered a capital
4 improvement, are also defined as capital improvements. Capital Improvements otherwise eligible
5 are not eligible if the landlord charges a use fee such as where the tenant must deposit coins to
6 use a landlord-owned washer and dryer.

7 **Section 1.14 Energy Conservation**

8 Work performed pursuant to the requirements of Article 12 of the San Francisco Housing
9 Code.

10 **Section 1.15 Newly Covered Unit**

(Adopted April 25, 1995, effective February 1, 1995)

11 "Newly Covered Unit" shall mean a Rental Unit that became subject to the Rent
12 Ordinance on December 22, 1994 as a result of the passage of Proposition I in November 1994
13 because, as of that date, the unit was located in a building containing four Rental Units or less,
14 and an owner (who held in good faith at least a fifty percent (50%) recorded fee interest) had
15 occupied the building as a principal place of residence for at least six continuous months.

16 **Section 1.16 Proposition I Affected Unit**

(Adopted April 25, 1995, effective February 1, 1995)

17 "Proposition I Affected Unit" shall mean a Newly Covered Unit, as well as a unit that
18 would have been subject to the Rent Ordinance on December 22, 1994 regardless of the
19 passage of Proposition I at the November 1994 election, but that would have become exempt
20 within a reasonable period of time thereafter if Proposition I had not passed. If the unit is not a
21 Newly Covered Unit, the landlord must have:
22

23 (a) resided in the building prior to November 9, 1994;

24 (b) initiated renovations on a unit in the same building prior to November 9, 1994 for
25 the purpose of residing in that unit, and at the conclusion of the renovations the landlord must
26 have resided in that unit;

27 (c) served an eviction notice pursuant to Section 37.9(a)(8) prior to November 9,
28 1994 and some time thereafter the landlord must have resided in the building;

1 (d) initiated renovations (with all necessary permits) prior to November 9, 1994,
2 which renovations were ordered by a governmental agency in order to reduce the total number
3 of units in the building to four or less; or

4 (e) did any of the above within three months of becoming owner of record of the unit
5 if the landlord was not owner of record prior to November 9, 1994, but had entered into an
6 agreement to purchase the unit which agreement became non-contingent on or after September
7 1, 1993 and prior to November 9, 1994.

8 **Section 1.17 Rental Units**

9 (Subsection (e) amended February 21, 1989; Subsection (c) amended
10 February 14, 1995; Subsection (e) deleted March 7, 1995; Renumbered effective
11 February 1, 1995; Amended subsection (g) and added (h) March 11, 1997;
12 Subsection (i) added May 18, 1999; prior subsections (e-g) deleted
13 effective June 16, 2020))

14 “Rental Unit” means a residential dwelling unit, regardless of zoning or legal status, in the
15 City and County of San Francisco and all housing services, privileges, furnishings (including
16 parking facilities supplied in connection with the use or occupancy of such unit), which is made
17 available by agreement for residential occupancy by a tenant in consideration of the payment of
18 rent. The term does not include:

19 (a) Housing accommodations in hotels, motels, inns, tourist homes, rooming and
20 boarding houses, provided that at such time as an accommodation has been occupied by a
21 tenant for thirty-two (32) continuous days or more, such accommodation shall become a rental
22 unit;

23 (b) dwelling units in a non-profit cooperative owned, occupied, and controlled by a
24 majority of the residents;

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

(d) dwelling units whose rents are controlled or regulated by any government unit,

1 agency, or authority excepting those unsubsidized and/or unassisted units which are insured by
2 the United States Department of Housing and Urban Development;

3 (e) commercial space where there is incidental and infrequent residential use;

4 (f) a residential unit, wherein at the inception of the tenancy there was residential
5 use, there is no longer residential use and there is a commercial or other non-residential use.

6 The presumption shall be that the initial use was residential unless proved otherwise by the
7 tenant.

8 **Section 1.18 New Construction and Substantial Rehabilitation**

(Amended August 29, 1989; September 5, 1989; September 26, 1989; June 18,
9 1991; renumbered effective February 1, 1995; amended February 4, 2003;
10 amended April 14, 2015; retitled and amended June 16, 2020)

11 For the purpose of determining whether or not a rental unit is exempt from rent
12 regulations pursuant to Rent Ordinance Section 37.3(g), the following definitions shall apply:

13 (a) "New Construction" refers to a newly constructed rental unit for which a Certificate
14 of Occupancy was first issued after June 13, 1979, provided there was no residential use of the
15 unit prior to the issuance of the Certificate of Occupancy; or a live/work unit in a building where
16 all of the following conditions have been met:

17 (1) a lawful conversion to commercial/dwelling use occupancy has occurred;

18 (2) a Certificate of Occupancy has been issued by the San Francisco Department of
19 Building Inspection after June 13, 1979; and

20 (3) there has been no residential tenancy in the building of any kind between June
21 13, 1979 and the date of issuance of the Certificate of Occupancy.

22 (b) "Substantial rehabilitation" means the renovation, alteration or remodeling of a
23 containing essentially uninhabitable residential rental units of 50 or more years of age which
24 require substantial renovation in order to conform to contemporary standards for decent, safe
25 and sanitary housing in place of essentially uninhabitable buildings. Substantial rehabilitation
26 may vary in degree from gutting and extensive reconstruction to extensive improvements that
27 cure substantial deferred maintenance. Cosmetic improvements alone such as painting,
28 decorating and minor repairs, or other work which can be performed safely without having the

1 units vacated, do not qualify as substantial rehabilitation.

2 Improvements will not be deemed substantial unless the cost of the work for which the
3 landlord has not been compensated by insurance proceeds equals or exceeds seventy-five
4 percent (75%) of the cost of newly constructed residential buildings of the same number of units
5 and type of construction, excluding land costs and architectural/engineering fees. The
6 determination of the cost of newly constructed residential buildings shall be based upon the cost
7 schedule of the Department of Building Inspection required by Section 107A.2 of the San
8 Francisco Building Code (the "DBI Cost Schedule") for purposes of determining permit fees. The
9 schedule in effect on the date of the Notice of Completion of the improvements shall apply.

10 Where the landlord is seeking to recover possession of a rental unit under Section 37.9(a)(12) of
11 the Rent Ordinance, improvements will not be deemed substantial unless the estimated cost of
12 the proposed work for which the landlord will not be compensated by insurance proceeds equals
13 or exceeds seventy-five percent (75%) of the cost of newly constructed residential buildings of
14 the same number of units and type of construction, excluding land costs and
15 architectural/engineering fees, based upon the DBI Cost Schedule. For purposes of such
16 evictions under 37.9(a)(12) of the Rent Ordinance, there shall be a rebuttable presumption that
17 the cost stated for the work in the applicable approved construction permits is the estimated cost
18 of the proposed work. For purposes of determining whether improvements are substantial under
19 Section 37.9(a)(12), the determination of the cost of newly constructed residential buildings shall
20 be based upon the DBI Cost Schedule. The schedule in effect on the date the notice to quit is
21 served shall apply. Where the landlord is seeking to recover possession of several units in the
22 same building under Section 37.9(a)(12) of the Rent Ordinance for one proposed substantial
23 rehabilitation project, the schedule posted and in effect on the date of service of the first notice of
24 termination shall apply. A landlord who recovers possession of a rental unit under Section
25 37.9(a)(12) must file a petition with the Rent Board for exemption based on substantial
26 rehabilitation within the earlier of: (i) two years following recovery of possession of the rental
27 unit; or (ii) one year following completion of the work. A landlord who fails to file a petition within
28 such time and thereafter obtain a determination that the property has undergone a substantial

1 rehabilitation from the Board shall be rebuttably presumed to have wrongfully recovered
2 possession of the tenant's rental unit in violation of Section 37.9(f).

3 **Section 1.19 Tenant's Utilities**

4 (Renumbered effective February 1, 1995; amended August 24, 2004; amended
5 February 17, 2009)

6 For the purpose of Ordinance Section 37.2(q) and Sections 4.11 and 6.16 of these Rules,
7 "Tenant's Utilities" means charges for natural gas or electricity provided directly to the unit
8 occupied by the tenant or to the building in which the unit is located and benefiting the tenant,
9 whether paid by the tenant alone, by the landlord alone, or part by the tenant and part by the
10 landlord.

11 **Section 1.20 Wrongful Eviction**

12 (Renumbered effective February 1, 1995)

13 "Wrongful Eviction" means the serving of a notice to quit a rental unit, the making of a
14 demand for possession of a rental unit, or the prosecution of an Unlawful Detainer action in
15 violation of the Ordinance.

16 **Section 1.21 Tenant In Occupancy**

17 (Effective June 5, 2001; amended for clarification December 3, 2002)

18 A tenant in occupancy is an individual who otherwise meets the definition of tenant as set
19 forth in Ordinance Section 37.2(t), and who actually resides in a rental unit or, with the
20 knowledge and consent of the landlord, reasonably proximate rental units in the same building
21 as his or her principal place of residence. Occupancy does not require that the individual be
22 physically present in the unit or units at all times or continuously, but the unit or units must be the
23 tenant's usual place of return. When considering whether a tenant occupies one or more rental
24 units in the same building as his or her "principal place of residence," the Rent Board must
25 consider the totality of the circumstances, including, but not limited to the following elements:

- 26 (1) the subject premises are listed as the individual's place of residence on any motor
27 vehicle registration, driver's license, voter registration, or with any other public agency, including
28 Federal, State and local taxing authorities;
- (2) utilities are billed to and paid by the individual at the subject premises;
- (3) all of the individual's personal possessions have been moved into the subject

1 premises;

2 (4) a homeowner's tax exemption for the individual has not been filed for a different
3 property;

4 (5) the subject premises are the place the individual normally returns to as his/her
5 home, exclusive of military service, hospitalization, vacation, family emergency, travel
6 necessitated by employment or education, or other reasonable temporary periods of absence;
7 and/or

8 (6) Credible testimony from individuals with personal knowledge or other credible
9 evidence that the tenant actually occupies the rental unit or units as his or her principal place of
10 residence.

11 A compilation of these elements lends greater credibility to the finding of "principal place
12 of residence" whereas the presence of only one element may not support such a finding.

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1 **PART II BOARD ORGANIZATION AND PROCEDURES**

2 **Section 2.10 Election of Officers**

3 (Amended February 21, 1989; amended February 16, 2021)

4 The members of the Board, including alternates, shall elect, or re-elect, from among
5 themselves a President and Vice-President for a term of one year. The election of each officer
6 shall require a vote of the majority of the members. Board Officers may be replaced or re-elected
7 at the expiration of each one-year term.

8 The election of officers shall be held annually as part of its regular January Board
9 Meeting, or at any other regular or special meeting of the Board, provided notice of such an
10 election is sent to the members and alternates at least ten (10) days prior to the meeting at
11 which the election will be held. The President or any two members may call a special meeting for
12 the election of officers, if needed, or call for such an election at a regular Board meeting,
13 provided the notice required in this section is given.

14 **Section 2.11 Board Alternates**

15 (Amended February 21, 1989; amended February 16, 2021)

16 Alternates may participate in discussion and deliberations and may preside over appeal
17 hearings and vote on Board resolutions and other Board governance, but will only be allowed to
18 vote on appeal decisions and regulation changes when the member for whom the alternate
19 serves as alternate is not present or has been excused from consideration of or voting on a
20 matter by the Board.

21 **Section 2.12 Decisions by the Board**

22 A decision of the Board shall require a majority of all the members of the Board. All
23 decisions of the Board shall be recorded by roll call vote and a record of such actions shall be
24 available to the public. Each member present at a meeting shall vote either for or against any
25 question put to a vote, unless excused from voting by a motion adopted by a majority of the
26 members present.

27 **Section 2.13 Board Meetings**

28 (Amended June 17, 1986; June 18, 1991; January 18, 1994;
new section (e) added; amended March 23, 2004)

1 (a) The Board shall meet on the first Tuesday of each month at 6:00 p.m. at Room
2 70, Lower Level, 25 Van Ness Avenue, San Francisco, California, 94102 except (i) when that
3 day falls on a legal holiday or election day, the meeting shall be held on the next Tuesday which
4 is neither a legal holiday nor an election day, or (ii) when the Board designates an alternate date
5 or place for the meeting, the meeting shall be held on the designated date and at the designated
6 place.

7 (b) The Board shall meet at such other times as necessary to stay current with the
8 workload or tend to administrative matters.

9 (c) Special meetings may be held any time, upon compliance with Charter provision
10 3.500.

11 (d) Meetings shall be open to the public, except that any member may require that
12 matters for which meetings in executive session are allowed by law be discussed and
13 considered in executive session, provided all votes of the members shall be matters of public
14 record.

15 (e) For purposes of testimony at Public Hearings before the Board, members of the
16 public shall be limited to testimony of three minutes duration. The Board shall have the authority
17 to waive this limitation at its discretion.

18 **Section 2.14 Agenda**

19 Except for meetings in executive session, the agenda for each meeting of the Board shall
20 be sent to each member and alternate with notice of the meeting. Notices of meetings and
21 agendas shall be prepared and filed with the Public Library in the manner and within the times
22 required by law. Matters on any meeting's agenda may be considered and decided out of the
23 order on which they appear on the agenda upon approval of the members present. Except
24 where prohibited by public notice requirements, the Board may, at any meetings, consider and
25 decide matters not on the agenda for that meeting if the members present unanimously approve.

26 **Section 2.15 Per Diem Compensation**

27 (Amended September 21, 1999; amended March 23, 2004;
28 amended August 24, 2004)

Each member shall receive \$75.00 for each Board meeting attended if the meeting lasts

1 for six hours or more in a single twenty-four hour period, and \$70.00 if the meeting lasts less
2 than six hours in a single twenty-four hour period. If a member or the alternate is not in
3 attendance for an entire meeting, compensation shall be determined by reference to the actual
4 aggregate time the member was in attendance in proportion to the total time of the meeting.

5 **Section 2.16 Financial Disclosure and Conflict of Interest Statement**

6 Pursuant to the conflict of interest code adopted by the Board pursuant to Government
7 Code Section 87300 and approved by the Board of Supervisors, all members shall disclose all
8 present holdings and interests in real property, including interests in corporations, trusts, or other
9 entities with real property holdings, in accordance with applicable state law.

10 **Section 2.17 Conflict of Interest**

11 No member of the Board or member of the staff of the Board may participate in the
12 consideration or decision of any case in which such person has any personal interest, including
13 an equity interest, an interest as a landlord, tenant or management person, or is related by blood
14 or marriage or adoption to a landlord or tenant involved.

15 **Section 2.18 Waiver of Regulations**

16 (Amended August 29, 1989; September 27, 1994)

17 The Board may grant exception to these regulations for good cause shown in the interest
18 of justice or to prevent hardship. If a majority of the board votes to accept a landlord or tenant
19 appeal on the basis of financial hardship, they may delegate their authority to hear and decide
20 such a claim to an Administrative Law Judge, subject to the right of appeal to the board.

21 **Section 2.19 Advisory Opinions**

22 No advisory opinion, oral or written, shall be given by the Board, or any of its members,
23 except upon the vote of a majority of the Board.

24 **Section 2.20 Index of Decisions**

25 The Board shall establish and continuously maintain a file of decisions and opinions
26 issued by Administrative Law Judges and the Board, properly indexed as to subject matter and
27 available for public inspection in the Board office between the hours of 9 a.m. - 5 p.m. on
28

1 weekdays, excluding holidays. Copies of decisions and opinions may be reproduced at the
2 expense of the person requesting the copies, at a price equal to the cost of such reproduction to
3 the Board, as determined by the Executive Director. Funds so received shall be deposited with
4 the Controller.

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1 **PART III FEES**

2 **Section 3.10 Amount of Fees**

3 (Amended December 16, 1986; February 10, 1987; September 19, 1989)

4 For each building for which the landlord seeks to pass on the cost of capital
5 improvements, rehabilitation, and/or energy conservation work, or substantial rehabilitation
6 certification, there shall be deposited with the Rent Board by the landlord an amount which shall
7 cover the cost of hiring an estimator. This cost shall be based on the actual cost of hiring the
8 estimator. These costs shall be posted at the Rent Board. If an estimator is not used, this portion
9 of the fee shall be returned to the applicant.

10 **Section 3.11 Waiver of Fees**

11 (Deleted September 19, 1989)

12 **Section 3.12 Deposit of Estimator Fees**

13 (Amended September 19, 1989)

14 Estimator fees shall be paid by check or money order payable to the Residential Rent
15 Stabilization and Arbitration Board. Fees collected by the Rent Board shall be deposited with the
16 Controller and credited to the appropriate fund.
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PART IV RENT INCREASES NOT REQUIRING APPROVAL BY THE RENT BOARD

Section 4.10 Notice

(Amended February 21, 1984, effective March 1, 1984; amended August 29, 1989; June 18, 1991; Subsection (d) added on January 31, 1995 and February 14, 1995; repealed April 25, 1995, effective February 1, 1995; amended September 21, 1999)

(a) Those landlords not seeking a rental increase which exceeds the limitations set forth in Section 37.3 of the Rent Ordinance shall inform the tenant in writing on or before the date the notice is given of the following:

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

(2) which portion of the rent increase reflects the costs of capital improvements, rehabilitation, and/or energy conservation work which have been certified;

(3) which portion of the rent increase reflects the passthrough of charges for gas and electricity, which charges shall be explained;

(4) which portion of the rent increase reflects the amortization of a RAP loan.

(b) Any rent increase which does not conform with the provisions of this Section shall render the entire rent increase null and void, unless the amount requested equals no more than the allowable annual and banked rent increase(s), provided, however, that in the event such increases are given in a good faith effort to comply with the Ordinance and Regulations and do not exceed limitations by more than one-half of one percent of the prior base rent, Administrative Law Judges shall readjust the base rent to reflect the proper percentage increase.

(c) To be effective, any rent increase notices given on or after March 1, 1984 must conform with the provisions of 4.10(a). If, however, the landlord serves a notice of rent increase prior to March 1, 1984 and it takes effect on or after that day, the following rules shall apply:

(1) Notices which requested an increase above seven percent (7%) without filing a landlord's petition will remain null and void in their entirety;

(2) if the landlord has filed a petition for an amount above seven percent (7%) based on Parts 6, 7, or 8 of these Rules, the correct annual increase will be effective as of the date the notice given was to become effective; and,

1 (3) notices which request an increase of seven percent (7%) or less without
2 filing a landlord's petition, will only be null and void as to that portion which exceeds the
3 allowable annual rent increase.

4 **Section 4.11 Computation of Passthrough of Gas and Electricity**
5 (Amended June 17, 1986; amended August 24, 2004)

6 The following provisions shall apply to utility passthroughs where the notice of rent
7 increase for the utility passthrough was served prior to or on November 1, 2004, except that with
8 respect to such utility passthroughs, the passthrough shall be discontinued twelve months after it
9 was imposed or by December 31, 2004, whichever is later.

10 (a) No landlord may pass through any increase in the cost of the utilities to a tenant
11 until the tenant has occupied one or more units in the subject building for one continuous year.
12 Each utility passthrough may be charged to the tenant only at the time of an annual rent
13 increase.

14 (b) Where a landlord pays for gas, electricity, and/or steam and seeks to recover the
15 increase in the cost of these utilities from tenants, the landlord shall calculate the amount of such
16 increase by using either of the following two methods, both of which should always yield the
17 same results:

18 (1) Method 1: Compile the utilities receipts for the two calendar years
19 preceding the first noticing of the utility passthrough. The calendar year immediately preceding
20 the noticing shall be referred to as the "comparison year;" the calendar year preceding the
21 "comparison year" shall be referred to as the "base year." The base year will remain the same
22 for all future calculations, except where the pass through is discontinued pursuant to subsection
23 (c) below. Different tenants in the same building may have different base years depending on
24 when they moved into the building and when utility increases were first passed through to them.

25 (i) Calculate the total utility cost for the comparison year and the total
26 utility cost for the base year.

27 (ii) Subtract the total base year utility cost from the total comparison
28 year utility cost. If there is no increase or if there has been a decrease, no pass through for the

1 current calendar year is allowed and any increase levied in a prior year must be discontinued.

2 (iii) Divide the resulting figure, if greater than zero, by 12 to determine
3 the average monthly utility increase or decrease for the entire building.

4 (iv) Divide the average monthly utility increase or decrease by the
5 number of rooms in the building. For the purposes of this section the number of rooms in a
6 building shall be calculated by presuming that single rooms without kitchens are one room units,
7 studios are two room units, one bedroom units without a separate dining room are three room
8 units, and so on.

9 (v) If a utility pass through has been instituted, subsequent
10 passthroughs shall be determined for the immediately following year by calculating the utility cost
11 for the calendar year preceding the noticing of the passthrough. This amount shall become the
12 updated comparison year figure. The passthrough shall then be calculated in accordance with
13 Rules and Regulations Sections 4.11(b)(1)(ii) through 4.11(b)(1)(iv).

14 (2) Method 2: Alternatively, the landlord may choose, in subsequent years, to
15 use the prior year's "comparison year" as the current base year and subtract the updated base
16 year amount from the new comparison year total utility cost. The resulting amount would be
17 added to the prior year's total utility passthrough. The passthrough shall then be calculated in
18 accordance with Rules and Regulations Sections 4.11(b)(1)(iii) through 4.11(b)(1)(v).

19 (c) Until such time as an annual rent increase is noticed the current pass through
20 shall remain in effect. However, if a landlord does not recalculate and re-notice the pass through
21 at the subsequent annual rent increase, the entire pass through is discontinued until recalculated
22 and re-noticed. At such time as a new pass through is calculated and noticed, a new base year
23 is established which shall be the calendar year preceding the new comparison year.

24 (d) In the event that more than one year has passed since the imposition of the last
25 PG&E pass through, the landlord must adjust for any increases or decreases that have occurred
26 since the last pass through was implemented, so that the tenant receives the benefit of any utility
27 decrease that occurred in the intervening period.

28 (e) Nothing in this section or in these Rules and Regulations shall be interpreted as

1 requiring any landlord to pass through any utility increase or to raise any tenant's rent. However,
2 where the utility costs decrease in years subsequent to the passing through of an increase, the
3 tenant must be given the benefit of such decrease calculated in the same manner as any
4 increase passed through under Ordinance Section 37.2(n). A tenant may petition the Board for
5 an arbitration hearing whenever a pass through charge has been noticed or is in effect and the
6 tenant protests the amount being charged or the calculation procedure being used by the
7 landlord. If the comparison year utility costs fall below the base year costs, the landlord shall not
8 be required to reduce the rent beyond eliminating any utility pass through made in prior years.

9 (f) If the methods set forth for an increase (or decrease) in utilities in subsection (b)
10 of this Section cannot be applied for reasons beyond the control of the landlord, and in the
11 absence of a relevant agreement between the landlord and the tenant, the landlord may petition
12 the Board for an arbitration hearing to establish an appropriate alternative method, which shall
13 be used for all following years unless another method is approved by the Board.

14 (g) The amount of rent due from the tenant for any utility pass through shall be due
15 on the same date as a rent payment normally would be due.

16 (h) No amount passed through to the tenant as a utility increase shall be included in
17 the tenant's base rent for purposes of calculation of the amount of rent increases allowable
18 under the Ordinance and these Rules and Regulations.

19 (i) The provisions of this Section shall be deemed a part of every rental agreement
20 or lease, written or oral, for the possession of a rental unit subject to the Ordinance unless the
21 landlord and the tenant agree that the landlord will not pass through any utility increases, in
22 which case such agreement will be binding on the landlord and on any successor owner of the
23 building, unless such agreement is changed in accordance with applicable law.

24 (j) Where a utility increase has been lawfully passed through to the tenant, a change
25 in the ownership of the building in which the tenant's unit is located will not affect the tenant's
26 liability to pay the amount passed through or the tenant's entitlement to the benefit of decreases
27 in the utilities costs.

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1 **Section 4.12 Banking**

(Amended May 6, 1986; August 29, 1989; June 18, 1991; September 21, 1999)

2 (a) A landlord who refrains from imposing an annual rent increase, or any portion
3 thereof, may accumulate said increase and impose that amount on or after the tenant's
4 subsequent rent increase anniversary date; however, the rent may be increased only one time
5 every twelve (12) months. This banked amount may only be given at the time of an annual
6 increase. Only those increases which could have been imposed on, or subsequent to, April 1,
7 1982, may be accumulated. A full 12 months must have elapsed from the date that an annual
8 rent increase, or a portion thereof, could have been imposed before this banking section
9 becomes applicable. Banked increases shall not be compounded and shall not be rounded up;
10 provided, however, that in the event that a banked rent increase exceeds limitations by no more
11 than one-half of one percent of the prior base rent and such increase was given in a good faith
12 effort to comply with the Ordinance and Regulations, Administrative Law Judge shall readjust the
13 base rent to reflect the proper banked amounts.

14 (b) In order to impose an accumulated rent increase the landlord shall: (1) inform the
15 tenant, on or before the date upon which the landlord gives the tenant legal notice, which portion
16 of the rent increase reflects banked amount, and (2) the dates upon which said banked amount
17 is based; provided, however, that failure to include such information shall not render the increase
18 null and void.

19 **Section 4.13 Charges Related to Excess Water Use**

20 (Adopted June 18, 1991)

21 (a) A landlord may impose increases not to exceed fifty percent of the excess use
22 charges (penalties) levied by the San Francisco Water Department on a building for use of water
23 in excess of Water Department allocations upon compliance with the provisions of Ordinance
24 Section 37.3(a)(5) as follows:

25 (1) The landlord shall provide the tenant(s) with written certification that the
26 following have been installed in all units:

27 (i) permanently-installed retrofit devices designed to reduce the
28 amount of water used per flush or low-flow toilets (1.6 gallons per flush);

1 (ii) low-flow showerheads which allow a flow of no more than 2.5
2 gallons per minute; and

3 (iii) faucet aerators (where installation on current faucets is physically
4 feasible); and

5 (2) The landlord shall provide the tenant(s) with written certification that no
6 known plumbing leaks currently exist in the building and that any leaks reported by tenants in the
7 future will be promptly repaired; and

8 (3) The landlord shall provide the tenant(s) with a copy of the water bill for the
9 period in which the penalty was charged. Only penalties billed for a service period which begins
10 after April 20, 1991 may be passed through to tenants.

11 (b) The landlord shall calculate the amount of such passthrough as follows:

12 (1) Divide the excess water use penalty charge by 2 in order to obtain the
13 total amount permitted to be passed through to qualified tenants in the building.

14 (2) Divide the penalty amount determined in number (1) above by the total
15 number of rooms in the building to obtain the allowable passthrough per room. For the purposes
16 of this section the number of rooms in a building shall be calculated by presuming that single
17 rooms without kitchens are one room units, studios are two room units, one bedroom units
18 without a separate dining room are three room units, and so on. Living rooms, dining rooms and
19 other rooms of at least 70 square feet may be counted. Kitchens count as a room in all cases.

20 (3) Multiply the figure calculated in number (2) above by the number of rooms
21 in each unit to obtain the allowable passthrough per unit.

22 (c) Only those tenants in residency during the billing period in which the penalty was
23 incurred may be assessed the passthrough.

24 (d) The amount due from the tenant for any excess water use passthrough shall be
25 due on the same date as a rent payment normally would be due.

26 (e) These are one-time, non-recurring charges unless a new excess use charge is
27 applied on the next water bill, which would require new calculations and a new passthrough
28 amount.

1 (f) No amount passed through to the tenant as a water use penalty charge shall be
2 included in the tenant's base rent for purposes of calculation of the amount of rent increases
3 allowable under the Ordinance and these Rules and Regulations.

4 (g) The tenant's failure to pay the demanded amount is not a just cause for eviction,
5 as the passthrough is not defined as a rent increase under Section 37.2(o) of the Rent
6 Ordinance. The owner must seek relief for non-payment in a court of competent jurisdiction or
7 through an arbitration/mediation service.

8 (h) Nothing in this section or in these Rules and Regulations shall be interpreted as
9 requiring any landlord to pass through any increase related to excess water use charges.
10 However, the provisions of this Section shall be deemed a part of every rental agreement or
11 lease, written or oral, for the possession of a rental unit subject to the Ordinance unless the
12 landlord and tenant agree that the landlord will not pass through any excess water use penalty
13 charges, in which case such agreement will be binding on the landlord and on any successor
14 owner of the building, unless such agreement is changed in accordance with applicable law.

15 (i) Where an excess water use penalty charge has been lawfully demanded of a
16 tenant, a change in the ownership of the building in which the tenant's unit is located will not
17 affect the tenant's liability to pay the amount passed through.

18 (j) Up to 60 days following receipt by the tenant of a notice of an excess use charge
19 passthrough, a tenant may object to the passthrough on the following grounds:

20 (1) The landlord has not provided written certification that the required water
21 conservation measures have been installed;

22 (2) The landlord has not provided written certification that no known plumbing
23 leaks exist;

24 (3) The landlord has not provided a copy of the bill for the period of the
25 penalty charge;

26 (4) The penalty was incurred during a service period that began prior to April
27 20, 1991;

28 (5) The tenancy began after the period of the billing charges accrued;

1 (6) The landlord has failed to appeal an allotment based on an occupancy
2 level that has changed after March 1, 1991, after having been requested to do so;

3 (7) The penalty reflects a 25% or more increase in consumption over the prior
4 billing period, unrelated to increased occupancy or other known use and the property has not
5 been inspected by a licensed plumber or the Water Department; and/or

6 (8) The passthrough is calculated using an incorrect room count.

7 (k) In order to object to the imposition of a water penalty charge passthrough, the
8 tenant shall follow the below procedure:

9 (1) A complaint shall be filed on a form supplied by the Board

10 (2) The Board shall request that the landlord provide certification of
11 compliance with the requirements of Ordinance Section 37.3(a)(5). If the landlord is alleged not
12 to have implemented required water conservation measures, the landlord shall be required to
13 provide certification from a licensed plumber or the San Francisco Water Department.

14 (3) Based on documentation provided by the landlord, the Rent Board shall
15 approve or deny the passthrough and notify both parties of the determination.

16 (4) The Board's determination is not subject to appeal to the Rent Board
17 Commissioners.

18 (5) The filing of a complaint by a tenant does not relieve the tenant of his or
19 her obligation to pay the passthrough pending a final determination.

20 **Section 4.14 Water Revenue Bond Passthrough**

21 (Effective July 20, 2005; Subsection (l) amended July 12, 2016, effective
22 August 13, 2016)

23 (a) A landlord may pass through fifty percent (50%) of the water bill charges
24 attributable to water rate increases resulting from issuance of Water System Improvement
25 Revenue Bonds authorized at the November 5, 2002 election (Proposition A), to any unit that is
26 in compliance with any applicable laws requiring water conservation devices. The landlord is not
27 required to file a petition with the Board for approval of a water revenue bond passthrough.

28 (b) The landlord shall give the tenant(s) legal notice of any water revenue bond
passthrough.

1 (1) The notice shall specify the dollar amount of the monthly passthrough, the
2 period of time covered by the water bill(s) that are used to calculate the passthrough and the
3 number of months that the tenant is required to pay the passthrough.

4 (2) The notice shall explain that the passthrough is based on increased water
5 bill charges attributable to water rate increases resulting from issuance of water revenue bonds
6 authorized at the November 2002 election.

7 (3) The charges and the calculation of the passthrough shall be explained in
8 writing on a form provided by the Board, which form shall be attached to the notice.

9 (4) The notice shall state that the tenant is entitled to receive a copy of the
10 applicable water bill(s) from the landlord upon request.

11 (5) The notice shall state that the unit is in compliance with any applicable
12 laws requiring water conservation devices.

13 (c) The landlord shall calculate the amount of the water revenue bond passthrough
14 as follows:

15 (1) Step 1: Compile the water bill(s) to be included in the calculation of the
16 water revenue bond passthrough. The landlord may base the calculation on a single water bill or,
17 in the alternative, on all of the water bills for any calendar year. Where the landlord elects to
18 calculate the passthrough based on calendar year, the passthrough shall be based on actual
19 costs incurred by the landlord during the relevant calendar year(s), regardless of when the water
20 bills were received or paid.

21 (2) Step 2: Add up the water bill charges attributable to water rate increases
22 resulting from issuance of Water System Improvement Revenue Bonds authorized at the
23 November 5, 2002 election. These charges are listed as a separate line item on the water bill.
24 Divide that figure by two (since a 50% passthrough is permitted) in order to obtain the total
25 amount permitted to be passed through to tenants in the building.

26 (3) Step 3: Divide the amount determined in Step 2 above by the total
27 number of units covered by the water bill(s), including commercial units, to obtain the allowable
28 passthrough per unit.

1 (4) Step 4: Divide the amount determined in Step 3 above by the number of
2 months covered by the water bill(s) to determine the monthly passthrough amount for each unit
3 covered by the water bill(s).

4 (d) The monthly passthrough amount determined in Step 4 can be imposed only for
5 the same number of months covered by the water bills that are used in the passthrough
6 calculation. For example, if the landlord imposes a water revenue bond passthrough based on a
7 single water bill with a two-month bill cycle, the monthly passthrough remains in effect for two
8 months only. If the landlord imposes a water revenue bond passthrough based on water bills for
9 charges incurred during an entire calendar year, the monthly passthrough remains in effect for
10 twelve months. If the landlord imposes a water revenue bond passthrough based on water bills
11 for charges incurred during two calendar years, the monthly passthrough remains in effect for
12 twenty-four months.

13 (e) Where the landlord elects to calculate the water revenue bond passthrough based
14 on a single water bill, the passthrough may be imposed at any time, provided that the landlord
15 serves notice of such passthrough within sixty (60) days of receipt of the water bill. Where the
16 landlord elects to calculate the water revenue bond passthrough based on water bills for charges
17 incurred during an entire calendar year, the passthrough may be imposed at any time, provided
18 that the landlord serves notice of such passthrough to be effective on the tenant's anniversary
19 date.

20 (f) Only those tenants in residency during the billing period(s) in which the water bill
21 charges were incurred may be assessed the passthrough.

22 (g) The amount due from the tenant for any water revenue bond passthrough shall be
23 due on the same date as a rent payment normally would be due.

24 (h) The water revenue bond passthrough shall not be included in the tenant's base
25 rent for purposes of calculation of the amount of rent increases allowable under the Ordinance
26 and these Rules and Regulations.

27 (i) Nothing in this section or in these Rules and Regulations shall be interpreted as
28 requiring any landlord to pass through any water rate increases resulting from issuance of Water

1 System Improvement Revenue Bonds authorized at the November 5, 2002 election. However,
2 the provisions of this Section shall be deemed a part of every rental agreement or lease, written
3 or oral, for the possession of a rental unit subject to the Ordinance unless the landlord and
4 tenant agree that the landlord will not pass through any charges based on water rate increases
5 resulting from issuance of Water System Improvement Revenue Bonds authorized at the
6 November 5, 2002 election, in which case such agreement will be binding on the landlord and on
7 any successor owner of the building, unless such agreement is changed in accordance with
8 applicable law.

9 (j) Where a water revenue bond passthrough has been lawfully demanded of a
10 tenant, a change in the ownership of the building in which the tenant's unit is located will not
11 affect the tenant's liability to pay the amount passed through.

12 (k) Where a tenant alleges that the landlord has imposed a water revenue bond
13 passthrough that is not in compliance with Ordinance Section 37.3(a)(5)(B) and Rules and
14 Regulations Section 4.14, the tenant may petition for a hearing under the procedures provided in
15 Ordinance Section 37.8. In such a hearing, the landlord shall have the burden of proof. Any
16 tenant petition challenging such a passthrough must be filed within one year of the effective date
17 of the challenged water revenue bond passthrough. The filing of a petition by a tenant does not
18 relieve the tenant of his or her obligation to pay the passthrough pending a final determination.
19 Grounds for challenging a water revenue bond passthrough are set forth in Section 10.14 of
20 these Rules and Regulations.

21 (l) A tenant may file a hardship application with the Board requesting relief from all or
22 part of a water revenue bond passthrough pursuant to Section 10.15. Any hardship application
23 must be filed within one year of the effective date of the water revenue bond passthrough(s).
24 Payment of the water revenue bond passthrough(s) set forth in the hardship application shall be
25 stayed until a decision is made by the Administrative Law Judge on the tenant's hardship
26 application. Appeals of decisions on a tenant's hardship application shall be governed by
27 Ordinance Section 37.8(f).
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1 **Section 4.15 Effect of Vacancy**

(Added April 25, 1995, effective February 1, 1995; renumbered July 20, 2005)

2 In accordance with Section 37.3(a) of the Rent Ordinance, the Rent Ordinance does not
3 regulate initial rent levels for a new tenancy. The Rent Board does not interpret anything in
4 Section 37.12 of the Rent Ordinance to alter this general principle. However, the Rent Board
5 does find in the spirit of Section 37.12 an intent to preclude a landlord from setting a new Base
6 Rent when that landlord served an eviction notice on or after May 1, 1994 and before December
7 22, 1994 (the "Transition Period") and the eviction would not have been permissible under
8 Section 37.9 of the Rent Ordinance. Thus, for Newly Covered Units, if there was a proper
9 termination of tenancy during the Transition Period, then the landlord was/is free to set a new
10 Base Rent without limitation upon reletting the unit, and any rents paid by the new tenant that
11 exceed the initial base rent (as defined in Section 37.12(a) of the Rent Ordinance) need not be
12 refunded to the new tenant. If there was not a proper termination of tenancy during the Transition
13 Period, then the landlord was/is not entitled to set a new Base Rent, and the landlord shall be
14 required to refund any overpayments of rent in accordance with Section 37.12(b) of the Rent
15 Ordinance. A proper termination of tenancy occurs when the tenant:

- 16 (a) terminates the tenancy voluntarily;
- 17 (b) vacates the unit as a result of an eviction that would have been permissible under
18 Section 37.9 of the Rent Ordinance; or
- 19 (c) vacates the unit as a result of a notice of eviction served prior to May 1, 1994.
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1 **PART V LANDLORD PETITION FOR ARBITRATION**

2 **Section 5.10 Who must file**
3 (Amended June 5, 2001)

4 Landlords who seek to impose rent increases which exceed the rent increase limitations
5 set forth in Section 4 above, must petition for an arbitration hearing. Landlords who seek a
6 determination that a tenant is not a tenant in occupancy pursuant to Section 1.21 above must
7 petition for an arbitration hearing prior to issuing a notice of rent increase on such grounds. Any
8 petition seeking a determination that a tenant is not a tenant in occupancy shall be expedited.

9 **Section 5.11 Information to Accompany Landlord Petition**

10 Petitions shall be filed on a form supplied by the Board. The petitions shall be
11 accompanied by: 1) a statement as to why the landlord believes a rent increase should be
12 allowed, together with supporting documentation; 2) the landlord shall also submit sufficient
13 copies of the petition for distribution to each tenant.

14 **Section 5.12 Time of Filing Petition**

15 The landlord must file a petition before giving legal notice of a rent increase which
16 exceeds the limitations set forth in Part 4 above. The notice shall be in conformance with the
17 requirements set forth in Section 4.10 and shall further include the dollar amount requested
18 which exceed those limitations. The petition may be filed at any time during the calendar year.

19 **Section 5.13 Imposition of Rent Increases Granted by the Administrative Law Judge**
20 (Subsection (a) renumbered April 25, 1995, effective February 1, 1995;
21 Subsection (b) added April 25, 1995, effective February 1, 1995)

22 (a) Once a completed petition has been filed, the landlord may serve a legal notice of
23 the proposed rent increase. That portion of the requested rental increase which exceeds the
24 limitations set forth in Section 4 above shall be inoperative until a decision by the Administrative
25 Law Judge is rendered. A landlord may choose instead not to serve legal notice of a proposed
26 rent increase until after the decision of the Administrative Law Judge is rendered. In any event,
27 except in extraordinary circumstances as determined by the Board, no rent increase granted by
28 the Administrative Law Judge shall become effective until the tenant's anniversary date. For

1 example:

2 (1) Tenant's anniversary date is June 1, landlord seeks to impose a rent
3 increase exceeding the limitations set forth in Part 4 above on that date. Landlord files a petition
4 during the month of April and on May 1, gives tenant legal notice of the rent increase. That
5 portion of the increase which exceeds the limitations is inoperative until the Administrative Law
6 Judge renders his or her decision on June 15. The requested increase is granted effective as of
7 June 1. The tenant is ordered to pay the increase as well as the amount owing, on July 1.

8 (2) Tenant's anniversary date is June 1, and on that date, tenant received a 4
9 percent rent increase. On August 10, landlord files a petition seeking approval to impose a rent
10 increase based upon increased costs. A hearing is held October 1, and the requested increase
11 is approved on October 15, landlord gives legal notice on April 1, of the approved rent increase
12 to take effect on June 1.

13 (b) The landlord need not impose a rent increase (including a certified capital
14 improvement) on the first opportunity after it is granted. Rather, the landlord may impose all or a
15 portion of any such rent increase at a later date upon giving proper notice.

16 **Section 5.14 Administrative Dismissal**

17 (Added July 15, 1997)

18 Notwithstanding the acceptance of a petition, if any of the following conditions exist, the
19 Board shall dismiss the landlord's petition for arbitration without prejudice and shall not schedule
20 a hearing. Prior to dismissal of a petition, the Board shall mail to the petitioner a written notice of
21 intention to dismiss stating the specific applicable reason(s) for such dismissal. The petitioner
22 shall have thirty (30) days from the date of mailing of the notice to cure the defects in the petition
23 prior to dismissal.

24 If the petitioner fails to cure the defects in a timely and proper manner, and the petition is
25 administratively dismissed, the petitioner may file an appeal to the Board or file a new petition for
26 arbitration. Appeals shall be governed by the applicable provisions of Ordinance Section 37.8(f).

27 The filing of a new petition shall be in accordance with the Procedure for Landlord
28 Petitioners set forth in Ordinance Section 37.8(c), including the requirement that a new notice of

1 rent increase must be mailed or delivered to the tenants after the new petition is filed. Any
2 previous notice of rent increase, or portion thereof, based on a landlord's petition that was
3 administratively dismissed, shall be null and void as to that portion of the rent increase notice
4 only; other lawful portions of the rent increase notice which were not related to the landlord's
5 dismissed petition shall remain valid.

6 A petition may be administratively dismissed in the following circumstances:

7 (a) Operating and Maintenance Expense Petitions

8 (1) Where all required pages of the petition have not been submitted or filled
9 out properly;

10 (2) Where the documents submitted are not clearly divided into two groups,
11 one representing the Year 1 documents and one representing the Year 2 documents;

12 (3) Where the documents within each year are not grouped together
13 according to the categories listed in the landlord petition form;

14 (4) Where the documents submitted do not clearly show the time period
15 covered and/or the expense being claimed and no written explanation of the missing information
16 is provided with the documentation;

17 (5) Where necessary documents are omitted or missing and there is no
18 written explanation of what attempts were made to obtain the omitted or missing documents and
19 why the documents could not be submitted;

20 (6) Where the petitioner submits complete documentation for only one or two
21 categories to the exclusion of the other categories;

22 (7) Where the total amounts claimed for each category in each year do not
23 correspond to the evidence submitted.

24 (b) Comparable Rent Petitions

25 (1) Where all required pages of the petition have not been submitted or filled
26 out properly;

27 (2) Where an adequate explanation of the situation justifying the petition (e.g.,
28 extraordinary circumstances) is not provided;

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(3) Where evidence establishing that the rent for the unit is significantly below those of comparable units in the same general area is not provided;

(4) Where evidence of reasonably "comparable" units is not provided (i.e., length of occupancy of the current tenant, size and physical condition of the unit and building, and services paid by the tenant).

1 **PART VI RENT INCREASE JUSTIFICATIONS**

2 **Section 6.10 Operating and Maintenance Expenses**

3 (Subsection (a) amended effective February 28, 1989; Subsections (b), (c) and
4 (d) amended February 21, 1989; Subsections (e) and (g) amended February 28,
5 1989; Subsection (f) renumbered February 28, 1989; Subsections (a) and (b)
6 amended and Subsection (h) added May 24, 1994; Subsection (i) added January
7 31, 1995; amended March 14, 1995; repealed and adopted April 25, 1995,
8 effective February 1, 1995; entire Section renumbered and/or amended in its
9 entirety effective June 6, 1995; Section 6.10(b)(5) amended effective
10 June 20, 1995; entire Section renumbered and/or amended in its entirety effective
11 June 18, 1996; Subsection(e) amended effective March 19, 2002; entire Section
12 renumbered and/or amended in its entirety effective September 11, 2018;
13 Subsection (e)(4) added December 10, 2019)

14 Except in extraordinary circumstances, the following guidelines shall apply to increases
15 based upon Operating and Maintenance Expenses:

16 (a) A rent increase may be considered justified if it is found that the aggregate cost of
17 Operating and Maintenance Expenses has increased over a 12-month period preceding the date
18 of filing the petition ("Year 2"), compared to the Operating and Maintenance Expenses incurred
19 in the 12 months prior to Year 2 ("Year 1"), in a percentage amount of the tenant's rent above
20 the percentage amount equal to the allowable annual rent increase. Alternatively, the
21 immediately preceding two calendar years may be used. Use of a particular calculation period in
22 order to create exaggerated results is disfavored. To determine the per unit rent increase, this
23 cost increase is divided by 12 months, then divided by the number of units in the building. Only
24 those tenants in residence during Year 1 may be assessed a rent increase based on an increase
25 in Operating and Maintenance Expenses, except in cases of change of ownership following
26 commencement of tenancy.

27 (b) Operating and Maintenance Expense increases shall be based on actual costs
28 incurred by the landlord, prorated on a monthly basis where appropriate, allocated over the
period of time the services were substantially rendered and/or the costs were substantially
incurred in a manner that allows a fair comparison between Year 1 and Year 2. For example, the
cost of refuse removal shall be allocated to the time periods when refuse removal occurred, the
cost of insurance premiums shall be allocated to the period of coverage, and the cost of repair
work shall be allocated to the time when the work was performed. Proof of payment shall be

1 required.

2 (c) In the event that Operating and Maintenance Expenses have increased (as set
3 forth above), a rent increase based on these expenses will be allowed only if the per unit
4 increase amount exceeds that which has already been allowed by the annual rent increase, in
5 which event only the amount over the annual rent increase amount will be allowed. If the per unit
6 increase does not exceed the amount allowed by the annual rent increases, then only the annual
7 rent increases will be allowed.

8 (d) If the amount justified per unit exceeds the tenant's annual rent increase, an
9 additional increase may be allowed. In no event shall this additional increase allowed for
10 Operating and Maintenance Expenses result in an increase which exceeds the tenant's base
11 rent by more than an additional 7% beyond the annual allowable increase.

12 (e) Operating and maintenance expenses include, but are not limited to: water and
13 sewer service charges; janitorial service; refuse removal; elevator service; security system;
14 insurance for the property; routine repairs and maintenance; business registration fees; pest
15 control; debt service only as set forth in subsection (1); property taxes only as set forth in
16 subsection (2); and, management expenses only as set forth in subsection (3).

17 (1) **Debt Service.**

18 (A) For petitions filed before December 11, 2017, the Rent Board may
19 consider increased debt service; provided, however, the following rules shall apply:

20 (i) If a building is refinanced or there is a change in ownership
21 resulting in increased debt service, only the landlord who incurred such expenses may file a
22 petition under this Section, and only one rent increase per unit based upon increased debt
23 service shall be allowed for each such refinance or transfer, except in extraordinary
24 circumstances or in the interest of justice. In no event shall the petition be denied solely due to
25 the subsequent transfer of the property, unless the successor in interest declines to substitute in
26 as the petitioner.

27 (ii) When the property was purchased within two years of the date
28 of the previous purchase, consideration shall not be given to that portion of increased debt

1 service which has resulted from a selling price which exceeds the seller's purchase price by
2 more than the percentage increase in the CPI between the date of previous purchase and the
3 date of the current sale plus the cost of capital improvements, rehabilitation and/or energy
4 conservation work made or performed by the seller.

5 (iii) Generally, an increase in debt service to obtain funds in excess
6 of existing financing, will only be considered as a justification for a rent increase if the proceeds
7 of the borrowing are or have been reinvested in the building for purposes of needed repairs and
8 maintenance, or capital improvements. If any of the proceeds are, however, used for capital
9 improvements, the limitations set forth in Part 7 below shall apply to that portion.

10 (B) For petitions filed on or after December 11, 2017, where the landlord
11 purchased the property on or before April 3, 2018, the Rent Board shall only consider increased
12 debt service if the landlord demonstrates that it had reasonably relied on its ability to pass
13 through those costs to the tenants at the time of the purchase, and if demonstrated,
14 consideration of debt service shall be subject to the rules in subsections (e)(1)(A)(i)-(iii).

15 (C) For petitions filed on or after December 11, 2017, where the landlord
16 purchased the property after April 3, 2018, the Rent Board shall not consider any portion of
17 increased debt service.

18 (2) **Property Taxes.**

19 (A) For petitions filed before December 11, 2017, the Rent Board may
20 consider increased property taxes. Property taxes based upon supplemental tax bills not yet
21 received and/or due and payable by the landlord shall be taken into account. If there is a change
22 in ownership resulting in increased property taxes, only the landlord who incurred such expenses
23 may file a petition under this Section, and only one rent increase per unit based upon increases
24 in property taxes shall be allowed for each such transfer, except in extraordinary circumstances
25 or in the interest of justice. In no event shall the petition be denied solely due to the subsequent
26 transfer of the property, unless the successor in interest declines to substitute in as the
27 petitioner.

28 (B) For petitions filed on or after December 11, 2017, where the landlord

1 purchased the property on or before April 3, 2018, the Rent Board may consider that portion of
2 increased property taxes that has resulted from an increased assessment due to the completion
3 of needed repairs or capital improvements, as well as an increase in the annual tax rate, but
4 shall only consider that portion of increased property taxes resulting from an increased
5 assessment due to a change in ownership if the landlord demonstrates that it had reasonably
6 relied on its ability to pass through those costs to the tenants at the time of the purchase.

7 (C) For petitions filed on or after December 11, 2017, where the landlord
8 purchased the property after April 3, 2018, the Rent Board may consider that portion of
9 increased property taxes that has resulted from an increased assessment due to the completion
10 of needed repairs or capital improvements, as well as an increase in the annual tax rate, but
11 shall not consider that portion of increased property taxes resulting from an increased
12 assessment due to a change in ownership.

13 (3) **Management Expenses.** The Rent Board may consider increased
14 management expenses. However, for petitions filed on or after July 15, 2018, the Rent Board
15 may consider management expenses only to the extent those expenses are reasonable and
16 necessary, based on certain factors, including but not limited to:

- 17 (A) the need to provide day-to-day management of the building;
18 (B) the level of management services previously required for the building;
19 (C) the reasonable cost of the services in an arms-length transaction;
20 (D) whether any tenants have objected that the cost and quality of the
21 services are not in keeping with the socioeconomic status of the building's existing tenants;
22 (E) and, other extraordinary circumstances.

23 (4) **Evidence of Reasonable Reliance.**

24 (A) For the purpose of establishing reasonable reliance as referenced in
25 subsections 6.10(e)(1)(B) and 6.10(e)(2)(B), a landlord must demonstrate through documentary
26 evidence that it relied on the ability to file an Operating and Maintenance Expense petition based
27 on increased debt service and/or property taxes at the time of purchase, and that such reliance
28 was informed by actual knowledge and receipt of the prior owner's Operating and Maintenance

1 Expenses in Year 1. Absent such contemporaneous documentary evidence, the landlord may
2 demonstrate reasonable reliance only by showing that it intended to file an Operating and
3 Maintenance Expense petition at the time of purchase and due to extraordinary circumstances, a
4 rent increase for Operating and Maintenance Expenses based on increased debt service and/or
5 property taxes is necessary to relieve the landlord from financial hardship.

6 (B) Notwithstanding the provisions of (4)(A), the landlord's failure to file the
7 Operating and Maintenance Expense petition within three years of the date of its purchase of the
8 property shall raise a rebuttable presumption that the landlord did not reasonably rely on the
9 ability to pass through the increase in debt service and/or property taxes to the tenants at the
10 time of purchase.

11 **Section 6.11 Comparables**

12 (Amended February 28, 1984; August 9, 1989; August 29, 1989; Section 6.11(d)
13 added January 31, 1995, effective February 1, 1995; amended February 7,
14 February 14 and March 7, 1995; deleted and adopted April 25, 1995, effective
February 1, 1995; amended February 17, 2004)

15 A rent increase may be granted pursuant to this section 6.11 only one time during the life
16 of the unit, and Sections 6.11(a) and 6.11(b) are each mutually exclusive of the other; however,
17 a landlord may petition for an increase under both Sections 6.11(a) and 6.11(b) in the
18 alternative.

19 (a) Petition Based on Extraordinary Circumstances

20 (1) The provisions of this Section 6.11(a) shall apply only in the following
21 situations:

22 (A) where, because of a special relationship between the landlord and
23 tenant, or due to fraud, mental incompetency, or other extraordinary circumstances unrelated to
24 market conditions, the initial rent on a unit was set very low or the rent was not increased or was
25 increased only negligible amounts during the tenancy; or

26 (B) where the landlord became owner of record of a Proposition I
27 Affected Unit between September 1, 1993 and December 22, 1994, or where the landlord
28 entered into an agreement to purchase a Proposition I Affected Unit which agreement became

1 non-contingent on or after September 1, 1993 and before November 9, 1994, and, in becoming
2 owner of record or entering into the purchase agreement, the landlord relied on the ability to
3 increase rents without limitation from the Rent Ordinance.

4 Passage of Proposition I at the November 1994 election does not in and of itself satisfy
5 this Section 6.11(a)(1), though it may be considered.

6 (2) A rent increase during a tenancy may be considered justified, even in the
7 absence of an increase in costs of operating and maintenance expenses as limited in Section
8 6.10 above, if it is established that the rent for the unit is significantly below those of comparable
9 units in the same general area as defined in Section 6.11(a)(3) below. If a rent increase is
10 granted pursuant to this Section 6.11(a), the increase shall preclude the imposition of all annual
11 rent increases, banked increases, and operating and maintenance increases that the landlord
12 could have imposed prior to the filing of the petition. Petitions for Proposition I Affected Units
13 based upon comparable rents that are pending as of, or filed within six months of, April 25, 1995
14 may, at the request of the landlord, be treated as if filed on May 1, 1994, in which case rents for
15 comparable units as of May 1, 1994 shall be used for comparison; provided, however, that the
16 actual date of filing shall be used to determine the effective date of any rent increase pursuant to
17 Sections 5.12 and 5.13 above. For purposes of the preceding sentence, the landlord may
18 establish rents of comparable units as of May 1, 1994 by presenting evidence of current rents of
19 comparable units, in which case rent on May 1, 1994 may be presumed to equal 98.9% of
20 current rent.

21 (3) The length of occupancy of the current tenant, size and physical condition
22 of the unit and building, and services paid for by the tenant are important factors (though not the
23 exclusive ones) in determining whether or not a unit is "comparable" to another, as the term
24 "comparable" is used in the Rent Ordinance and in these Rules. Evidence of reasonably
25 comparable units is required; however, "perfect" comparability is not required. The issue of "rent
26 for comparable units" may be raised by a landlord or a tenant.

27 (4) For Proposition I Affected Units, when determining the length of
28 occupancy of the current tenant, occupancy before April 15, 1979 need not be considered if it

1 appears from both the landlord's and the tenant's evidence that it is impractical to do so under
2 the circumstances; however, occupancy before the unit most recently became subject to rent
3 regulation shall not be considered when:

4 (A) the requirements of Section 6.11(a)(1)(A) are satisfied, and the
5 rent at the time the unit most recently became subject to rent regulation was not arrived at
6 through arm's length negotiations due to a special relationship, fraud, mental incompetency, or
7 some other reason; or

8 (B) the requirements of Section 6.11(a)(1)(B) are satisfied, and an
9 additional rent increase is necessary to relieve the landlord from hardship, also taking into
10 consideration tenant hardship if raised and if not inconsistent with the constitutional rights of the
11 landlord. The landlord may not assert hardship pursuant to this Section unless the landlord has
12 completed a hardship application (which can be obtained from the Rent Board), and filed the
13 hardship application along with the landlord's petition for a rent increase. If the landlord asserts
14 hardship pursuant to this Section, then Rent Board staff shall mail to the tenant a blank hardship
15 application at least twenty days prior to the hearing on the landlord's petition. The tenant may not
16 assert hardship pursuant to this Section unless the tenant has completed the hardship
17 application and mailed it (or delivered it) to the landlord and to the Rent Board at least ten day
18 prior to the hearing on the landlord's petition. The landlord shall have the burden of proving
19 landlord hardship, and the tenant shall have the burden of proving tenant hardship. Except on
20 remand from the Rent Board or pursuant to this Section, the Administrative Law Judge may not
21 consider the hardship of either party.

22 (b) Petition Based on the Past Rent History of a Proposition I Affected Unit

23 (1) The provisions of this Section 6.11(b) shall apply only to Proposition I
24 Affected Units.

25 (2) A landlord may petition for only one of the following increases:

26 (A) A 7.2% rent increase during a tenancy may be considered justified,
27 even in the absence of an increase in costs of operating and maintenance expenses as limited in
28 Section 6.10 above, if it is established that no Rent Increases (as defined in Section 37.2(o) of

1 the Rent Ordinance) were in effect between May 2, 1991 and May 1, 1994;

2 (B) An 11.2% rent increase during a tenancy may be considered
3 justified, even in the absence of an increase in costs of operating and maintenance expenses as
4 limited in Section 6.10 above, if it is established that no Rent Increases (as defined in Section
5 37.2(o) of the Rent Ordinance) were in effect between May 2, 1990 and May 1, 1994; or

6 (C) A 15.2% rent increase during a tenancy may be considered
7 justified, even in the absence of an increase in costs of operating and maintenance expenses as
8 limited in Section 6.10 above, if it is established that no Rent Increases (as defined in Section
9 37.2(o) of the Rent Ordinance) were in effect between May 2, 1989 and May 1, 1994.

10 (3) By executing a waiver form which can be obtained from the Rent Board, a
11 tenant may waive the right to a hearing on a petition for increase brought under this Section
12 6.11(b), in which case the Administrative Law Judge shall issue a determination based on the
13 facts as alleged in the petition.

14 **Section 6.12 Defenses**

15 (a) A rental increase may be considered not justified if it is found that the tenant has
16 requested the landlord to perform ordinary repair, replacement, and maintenance in compliance
17 with applicable state and local law and the landlord has failed to perform such work.

18 (b) Where the Board or its Administrative Law Judges find that the landlord has
19 imposed a rent increase in violation of Section 37.3 of the Ordinance, the increase so imposed
20 shall be denied.

21 **Section 6.13 Prohibition Against Agreements to Pay Additional Rent**
22 **for Additional Occupants**

23 (Adopted April 8, 1986; Amended for Clarification March 24, 1998)

24 No extra rent may be charged solely for an additional occupant to an existing tenancy
25 (including a newborn child), regardless of the presence of a rental agreement or lease which
26 specifically allows for a rent increase for additional tenants. Such provisions in written or oral
27 rental agreements or leases are deemed to be contrary to public policy.

1 **Section 6.14 Establishing Rental Rates for Subsequent Occupants**

2 (Added March 7, 1989; amended August 29, 1989; Subsection (e) added
3 February 14, 1995; repealed and adopted April 25, 1995, effective
4 February 14, 1995; Subsections (a), (b), (c), (d) and (e) amended and
renumbered July 2, 1996; amended and renumbered April 25, 2000)

5 (a) Definitions. The following terms have the following meaning for purposes of this
6 Section 6.14:

7 (1) "Original occupant(s)" means one or more individuals who took
8 possession of a unit with the express consent of the landlord at the time that the base rent for
9 the unit was first established with respect to the vacant unit.

10 (2) "Subsequent occupant" means an individual who became an occupant of
11 a rental unit while the rental unit was occupied by at least one original occupant.

12 (3) "Co-occupant" for purposes of this Section 6.14 only, is a subsequent
13 occupant who has a rental agreement directly with the owner.

14 (b) Subsequent Occupants who commenced occupancy before January 1, 1996; Co-
15 occupants who commenced occupancy before, on or after January 1, 1996. When all original
16 occupant(s) no longer permanently reside in the rental unit, the landlord may raise the rent of
17 any subsequent occupant who resided in the unit prior to January 1, 1996, or of any subsequent
18 occupant who is a co-occupant and who commenced occupancy before, on or after January 1,
19 1996, without regard to the limitations set forth in Section 37.3(a) of the Rent Ordinance if the
20 landlord served on the subsequent occupant(s), within a reasonable time of actual knowledge of
21 occupancy, a written notice that when the last of the original occupant(s) vacates the premises, a
22 new tenancy is created for purposes of determining the rent under the Rent Ordinance. Failure
23 to give such a notice within 60 days of the landlord's actual knowledge of the occupancy by the
24 subsequent occupant(s) establishes a rebuttable presumption that notice was not given within a
25 reasonable period of time. If the landlord has not timely served such a notice on the subsequent
26 occupant(s), a new tenancy is not created for purposes of determining the rent under the Rent
27 Ordinance when the last of the original occupant(s) vacates the premises.

28 (c) Subsequent Occupants who are not Co-occupants and who commenced
occupancy on or after January 1, 1996, where the last Original Occupant vacated on or after

1 April 25, 2000. When all original occupant(s) no longer permanently reside in a rental unit, and
2 the last of the original occupants vacated on or after April 25, 2000, the landlord may establish a
3 new base rent of any subsequent occupant(s) who is not a co-occupant and who commenced
4 occupancy of the unit on or after January 1, 1996 without regard to the limitations set forth in
5 Section 37.3(a) of the Rent Ordinance unless the subsequent occupant proves that the landlord
6 waived his or her right to increase the rent by:

- 7 (1) Affirmatively representing to the subsequent occupant that he/she may
8 remain in possession of the unit at the same rental rate charged to the original occupant(s); or
9 (2) Failing, within 90 days of receipt of written notice that the last original
10 occupant is going to vacate the rental unit or actual knowledge that the last original occupant no
11 longer permanently resides at the unit, whichever is later, to serve written notice of a rent
12 increase or a reservation of the right to increase the rent at a later date; or
13 (3) Receiving written notice from an original occupant of the subsequent
14 occupant's occupancy and thereafter accepting rent unless, within 90 days of said acceptance of
15 rent, the landlord reserved the right to increase the rent at a later date.

16 Where the landlord has waived the right to increase the rent under subsection
17 (c)(1) or (c)(3) above, the subsequent occupant to whom the representation was made or from
18 whom the landlord accepted rent shall thereafter have the protection of an original occupant as
19 to any future rent increases under this Section 6.14. Where the landlord has waived the right to
20 increase the rent under subsection (c)(2) above, any subsequent occupant who permanently
21 resides in the rental unit with the actual knowledge and consent of the landlord (if the landlord's
22 consent is required and not unreasonably withheld) at the time of the waiver shall thereafter
23 have the protection of an original occupant as to any future rent increases under this Section
24 6.14.

25 (d) Subsequent Occupants who are not Co-occupants and who commenced
26 occupancy on or after January 1, 1996, where the last Original Occupant vacated prior to April
27 25, 2000. When all original occupants no longer permanently reside in a rental unit and the last
28 of the original occupants vacated prior to April 25, 2000, the landlord may establish a new base

1 rent for any subsequent occupants who are not co-occupants and who commenced occupancy
2 of the unit on or after January 1, 1996 without regard to the limitations set forth in Section 37.3(a)
3 of the Rent Ordinance if:

4 (1) The landlord served on the subsequent occupant(s), within a reasonable
5 time of actual knowledge of occupancy, a written notice that when the last of the original
6 occupants vacates the premises, the new tenancy is created for purposes of determining the
7 rent under the Rent Ordinance. Failure to give such a notice within 60 days of the landlord's
8 actual knowledge of the occupancy by the subsequent occupant(s) establishes a rebuttable
9 presumption that notice was not given within a reasonable period of time; or

10 (2) The landlord is entitled to establish a new base rent under the Costa
11 Hawkins Rental Housing Act, California Civil Code Section 1954.53(d), even if no notice was
12 served on the subsequent occupant(s) pursuant to subsection (d)(1) above.

13 (e) Subsequent Occupants of Proposition I Affected Units. When all original
14 occupant(s) no longer permanently reside in a Proposition I Affected Unit, the landlord may raise
15 the rent of any subsequent occupant who resided in the unit prior to February 15, 1995 without
16 regard to the limitations set forth in Section 37.3(a) of the Rent Ordinance if the landlord served
17 on the subsequent occupant(s), on or before August 15, 1995, a written notice that when the last
18 of the original occupant(s) vacates the premises, a new tenancy is created for purposes of
19 determining the rent under the Rent Ordinance. If the landlord has not timely served such a
20 notice on the pre-February 15, 1995 subsequent occupant(s) of the Proposition I Affected Unit, a
21 new tenancy is not created for purposes of determining the rent under the Rent Ordinance when
22 the last of the original occupant(s) vacates the premises. For subsequent occupants who
23 commenced occupancy in a Proposition I Affected Unit on or after February 15, 1995, the
24 provisions of subsections (a) through (d) above apply.

25 (f) This Section 6.14 is intended to comply with Civil Code Section 1954.50 et seq.
26 and shall not be construed to enlarge or diminish rights thereunder.
27
28

1 **Section 6.15 Subletting and Assignment**

2 (Effective March 24, 1998, except paragraphs (a) and (f) which are effective May
3 25, 1998; amended and renumbered December 21, 1999)

4 **Section 6.15A Subletting and Assignment—Where Rental Agreement Includes an**
5 **Absolute Prohibition Against Subletting and Assignment**

(Amended March 29, 2005; amended December 4, 2015)

6 This Section 6.15A applies only when a lease or rental agreement includes an absolute
7 prohibition against subletting and assignment.

8 (a) For agreements entered into on or after May 25, 1998, breach of an absolute
9 prohibition against subletting or assignment may constitute a ground for termination of tenancy
10 pursuant to, and subject to the requirements of, Ordinance Section 37.9(a)(2)(A) and subsection
11 (b) below, only if such prohibition was adequately disclosed to and agreed to by the tenant at the
12 commencement of the tenancy. For purposes of this subsection, adequate disclosure shall
13 include satisfaction of one of the following requirements:

14 (1) the prohibition against sublet or assignment is set forth in enlarged or
15 boldface type in the lease or rental agreement and is separately initialed by the tenant; or

16 (2) the landlord has provided the tenant with a written explanation of the
17 meaning of the absolute prohibition, either as part of the written lease or rental agreement, or in
18 a separate writing.

19 (b) If the lease or rental agreement specifies a number of tenants to reside in a unit,
20 or where the open and established behavior of the landlord and tenants has established that the
21 tenancy includes more than one tenant (exclusive of any additional occupant approved under
22 Ordinance Sections 37.9(a)(2)(B) or 37.9(a)(2)(C)), then the replacement of one or more of the
23 tenants by an equal number of tenants, subject to subsections (c) and (d) below, shall not
24 constitute a breach of the lease or rental agreement for purposes of termination of tenancy under
25 Section 37.9(a)(2) of the Ordinance.

26 (c) If the tenant makes a written request to the landlord for permission to sublease in
27 accordance with Section 37.9(a)(2)(A), and the landlord fails to deny the request in writing with a
28 description of the reasons for the denial of the request, including specific facts supporting the
reasons for the denial, within fourteen (14) days of receipt of the tenant's written request, the

1 subtenancy is deemed approved pursuant to Ordinance Section 37.9(a)(2)(A). If the tenant's
2 request is sent to the landlord by mail, the request shall be deemed received on the fifth
3 calendar day after the postmark date. If the tenant's request is sent to the landlord by email, the
4 request shall be deemed received on the second calendar day after the date the email is sent. If
5 the tenant's request is personally delivered to the landlord, the request is considered received on
6 the date of delivery. For purposes of this subsection 6.15A(c), the 14-day period begins to run on
7 the day after the tenant's written request is received by the landlord.

8 (d)(1) The tenant's inability to obtain the landlord's consent to subletting or assignment
9 to a person specified in subsection 6.15A(b) above shall not constitute a breach of the lease or
10 rental agreement for purposes of eviction under Ordinance Section 37.9(a)(2), where the
11 subletting or assignment is deemed approved pursuant to subsection (c) above or where the
12 landlord has unreasonably denied, pursuant to subsection (e) below, the tenant's request to
13 replace a departing tenant and the following requirements have been met:

14 (i) The tenant has requested in writing the permission of the landlord
15 to the sublease or assignment prior to the commencement of the proposed new tenant's or new
16 subtenant's occupancy of the unit.

17 (ii) The landlord has five calendar days after receipt of the tenant's
18 written request to request the tenant to submit a completed standard form application for the
19 proposed new tenant or subtenant or provide sufficient information to allow the landlord to
20 conduct a typical background check, including full name, date of birth and references if
21 requested. The 5-day period begins to run on the day after receipt of the tenant's written request
22 for permission to replace a departing tenant or subtenant. The landlord may request credit or
23 income information only if the new tenant or new subtenant will be legally obligated to pay some
24 or all of the rent to the landlord. Nothing in Section 6.15A shall be construed as allowing a
25 landlord to require a replacement roommate to pay some or all of the rent to the landlord.

26 (iii) The tenant has five calendar days after receipt of the landlord's
27 timely request pursuant to subsection 6.15A(d)(1)(ii) to provide the landlord with the proposed
28 new tenant's or new subtenant's application or typical background check information. The 5-day

1 period begins to run on the day after actual receipt of the landlord's request.

2 (iv) The proposed new tenant or new subtenant meets the regular
3 reasonable application standards of the landlord, except that creditworthiness may not be the
4 basis for denial of the tenant's request to replace a departing tenant if the new tenant or new
5 subtenant will not be legally obligated to pay some or all of the rent to the landlord;

6 (v) The proposed new tenant or new subtenant, if requested by the
7 landlord, has agreed in writing to be bound by the current rental agreement between the landlord
8 and the tenant;

9 (vi) The tenant has not, without good cause, requested landlord
10 consent to replacement of a departing tenant pursuant to this section 6.15A more than one time
11 per existing tenant residing in the unit during the previous 12 months;

12 (vii) The tenant is requesting replacement of a departing tenant or
13 tenants with an equal number of new tenants.

14 (2) This subsection (d) shall not apply to assignment of the entire tenancy or
15 subletting of the entire unit.

16 (e) Denial by the landlord of the tenant's written request to replace a departing tenant
17 shall not be considered unreasonable in some circumstances, including but not limited to the
18 following:

19 (1) where the proposed new tenant or subtenant will be legally obligated to pay
20 some or all of the rent to the landlord and the landlord can establish the proposed new tenant's
21 or new subtenant's lack of creditworthiness;

22 (2) where the landlord has made a timely request for the proposed new tenant or
23 subtenant to complete the landlord's standard form application or provide sufficient information
24 to allow the landlord to conduct a typical background check and the proposed new tenant or
25 subtenant does not comply within five calendar days of actual receipt by the tenant of the
26 landlord's request;

27 (3) where the landlord can establish that the proposed new tenant or subtenant
28 has intentionally misrepresented significant facts on the landlord's standard form application or

1 provided significant misinformation to the landlord that interferes with the landlord's ability to
2 conduct a typical background check;

3 (4) where the landlord can establish that the proposed new tenant or subtenant
4 presents a direct threat to the health, safety or security of other residents of the property; and,

5 (5) where the landlord can establish that the proposed new tenant or subtenant
6 presents a direct threat to the safety, security or physical structure of the property.

7 (f) Nothing in this Section shall prevent the landlord from providing a replacement
8 new tenant or new subtenant with written notice as provided under Section 6.14 that the tenant
9 is not an original occupant as defined in Section 6.14(a)(1) and that when the last original
10 occupant vacates the premises, a new tenancy is created for purposes of determining the rent
11 under the Rent Ordinance. Furthermore, nothing in this Section 6.15A shall serve to waive, alter
12 or modify the landlord's rights under the Costa-Hawkins Rental Housing Act (California Civil
13 Code §§1954.50 *et seq.*) to impose an unlimited rent increase once the last original occupant(s)
14 no longer permanently resides in the unit.

15 (g) Where a lease or rental agreement specifies the number of tenants to reside in a
16 unit, or where the open and established behavior of the landlord and tenants has established
17 that the tenancy includes more than one tenant, a landlord's unreasonable denial of a tenant's
18 written request to replace one or more of the tenants by an equal number of tenants, subject to
19 subsections 6.15A(d)(1)(i)-(vii) above, may constitute a decrease in housing services pursuant to
20 Section 10.10 of these Regulations. For purposes of subsection 6.15A(g), a landlord's non-
21 response to a tenant's written request within 14 calendar days shall be deemed an approval
22 pursuant to subsection 6.15A(c) and shall not be deemed an unreasonable denial of a tenant's
23 request to replace a departing tenant.

24 (h) In the event the landlord denies a tenant's request to replace a departing tenant
25 under Section 6.15A, either the landlord or the tenant may file a petition with the Board to
26 determine if the landlord's denial of the request was reasonable.

27 (i) Any petition filed under subsection 6.15A(g) or (h) shall be expedited.
28

1 **Section 6.15B Subletting and Assignment—Where Rental Agreement Contains a Clause**
2 **Requiring Landlord Consent to Subletting and Assignment**
3 (Amended March 29, 2005; amended December 4, 2015)

4 This Section 6.15B applies only when a lease or rental agreement includes a clause
5 requiring landlord consent to assignment or subletting.

6 (a) If the lease or rental agreement specifies a number of tenants to reside in a unit,
7 or where the open and established behavior of the landlord and tenants has established that the
8 tenancy includes more than one tenant (exclusive of any additional occupant approved under
9 Ordinance Sections 37.9(a)(2)(B) or 37.9(a)(2)(C)), then the replacement of one or more of the
10 tenants by an equal number of tenants, subject to subsections (b) and (c) below, shall not
11 constitute a breach of the lease or rental agreement for purposes of termination of tenancy under
12 Section 37.9(a)(2) of the Ordinance.

13 (b) If the tenant makes a written request to the landlord for permission to sublease in
14 accordance with Section 37.9(a)(2)(A), and the landlord fails to deny the request in writing with a
15 description of the reasons for the denial, including specific facts supporting the reasons for the
16 denial, of the request within fourteen (14) days of receipt of the tenant's written request, the
17 subtenancy is deemed approved pursuant to Ordinance Section 37.9(a)(2)(A). If the tenant's
18 request is sent to the landlord by mail, the request shall be deemed received on the fifth
19 calendar day after the postmark date. If the tenant's request is sent to the landlord by email, the
20 request shall be deemed received on the second calendar day after the date the email is sent. If
21 the tenant's request is personally delivered to the landlord, the request is considered received on
22 the date of delivery. For purposes of this subsection 6.15B(b), the 14-day period begins to run on
23 the day after the tenant's written request is received by the landlord.

24 (c)(1) The tenant's inability to obtain the landlord's consent to subletting or assignment
25 to a person specified in subsection 6.15B(a) above shall not constitute a breach of the lease or
26 rental agreement for purposes of eviction under Ordinance Section 37.9(a)(2), where the
27 subletting or assignment is deemed approved pursuant to subsection (b) above or where the
28 landlord has unreasonably denied, pursuant to subsection (d) below, the tenant's request to
replace a departing tenant and the following requirements have been met:

1 (i) The tenant has requested in writing the permission of the landlord
2 to the sublease or assignment prior to the commencement of the proposed new tenant's or new
3 subtenant's occupancy of the unit;

4 (ii) The landlord has five calendar days after receipt of the tenant's
5 written request to request the tenant to submit a completed standard form application for the
6 proposed new tenant or subtenant or provide sufficient information to allow the landlord to
7 conduct a typical background check, including full name, date of birth and references if
8 requested. The 5-day period begins to run on the day after receipt of the tenant's written request
9 for permission to replace a departing tenant or subtenant. The landlord may request credit or
10 income information only if the new tenant or new subtenant will be legally obligated to pay some
11 or all of the rent to the landlord. Nothing in Section 6.15B shall be construed as allowing a
12 landlord to require a replacement roommate to pay some or all of the rent to the landlord.

13 (iii) The tenant has five calendar days after receipt of the landlord's
14 timely request pursuant to subsection 6.15B(c)(1)(ii) to provide the landlord with the proposed
15 new tenant's or new subtenant's application or typical background check information. The 5-day
16 period begins to run on the day after actual receipt of the landlord's request.

17 (iv) The proposed new tenant or new subtenant meets the regular
18 reasonable application standards of the landlord, except that creditworthiness may not be the
19 basis for denial of the tenant's request to replace a departing tenant if the new tenant or new
20 subtenant will not be legally obligated to pay some or all of the rent to the landlord;

21 (v) The proposed new tenant or new subtenant, if requested by the
22 landlord, has agreed in writing to be bound by the current rental agreement between the landlord
23 and the tenant;

24 (vi) The tenant has not, without good cause, requested landlord
25 consent to replacement of a departing tenant pursuant to this section 6.15B more than one time
26 per existing tenant residing in the unit during the previous 12 months;

27 (vii) The tenant is requesting replacement of a departing tenant or
28 tenants with an equal number of new tenants.

1 (2) This subsection (c) shall not apply to assignment of the entire tenancy or
2 subletting of the entire unit.

3 (d) Denial by the landlord of the tenant's written request to replace a departing tenant
4 shall not be considered unreasonable in some circumstances, including but not limited to the
5 following:

6 (1) where the proposed new tenant or subtenant will be legally obligated to pay
7 some or all of the rent to the landlord and the landlord can establish the proposed new tenant's
8 or new subtenant's lack of creditworthiness;

9 (2) where the landlord has made a timely request for the proposed new tenant or
10 subtenant to complete the landlord's standard form application or provide sufficient information
11 to allow the landlord to conduct a typical background check and the proposed new tenant or
12 subtenant does not comply within five calendar days of actual receipt by the tenant of the
13 landlord's request;

14 (3) where the landlord can establish that the proposed new tenant or subtenant
15 has intentionally misrepresented significant facts on the landlord's standard form application or
16 provided significant misinformation to the landlord that interferes with the landlord's ability to
17 conduct a typical background check;

18 (4) where the landlord can establish that the proposed new tenant or subtenant
19 presents a direct threat to the health, safety or security of other residents of the property; and,

20 (5) where the landlord can establish that the proposed new tenant or subtenant
21 presents a direct threat to the safety, security or physical structure of the property.

22 (e) Nothing in this Section shall prevent the landlord from providing a replacement
23 new tenant or new subtenant with written notice as provided under Section 6.14 that the tenant
24 is not an original occupant as defined in Section 6.14(a)(1) and that when the last original
25 occupant vacates the premises, a new tenancy is created for purposes of determining the rent
26 under the Rent Ordinance. Furthermore, nothing in this Section 6.15B shall serve to waive, alter
27 or modify the landlord's rights under the Costa-Hawkins Rental Housing Act (California Civil
28 Code §§1954.50 *et seq.*) to impose an unlimited rent increase once the last original occupant(s)

1 no longer permanently resides in the unit.

2 (f) Where a lease or rental agreement specifies the number of tenants to reside in a
3 unit, or where the open and established behavior of the landlord and tenants has established
4 that the tenancy includes more than one tenant, a landlord's unreasonable denial of a tenant's
5 written request to replace one or more of the tenants by an equal number of tenants, subject to
6 subsections 6.15B(c)(1)(i)-(vii) above, may constitute a decrease in housing services pursuant to
7 Section 10.10 of these Regulations. For purposes of subsection 6.15B(f), a landlord's non-
8 response to a tenant's written request within 14 calendar days shall be deemed an approval
9 pursuant to subsection 6.15B(b) and shall not be deemed an unreasonable denial of a tenant's
10 request to replace a departing tenant.

11 (g) In the event the landlord denies a tenant's request to replace a departing tenant
12 under Section 6.15B, either the landlord or the tenant may file a petition with the Board to
13 determine if the landlord's denial of the request was reasonable.

14 (h) Any petition filed under subsection 6.15B(f) or (g) shall be expedited.

15 **Section 6.15C Master Tenants**

16 (Subsections (3)(a) through (f) added August 21, 2001; Subsection (3) amended
17 April 16, 2002)

18 (1) For any tenancy commencing on or after May 25, 1998, a landlord who is not an
19 owner of record of the property and who resides in the same rental unit with his or her tenant (a
20 "Master Tenant") may evict said tenant without just cause as required under Section 37.9(a) only
21 if, prior to commencement of the tenancy, the Master Tenant informs the tenant in writing that
22 the tenancy is not subject to the just cause provisions of Section 37.9. A landlord who is an
23 owner of record of the property and who resides in the same rental unit with his or her tenant is
24 not subject to this additional disclosure requirement.

25 (2) In addition, for any tenancy commencing on or after May 25, 1998, a Master
26 Tenant shall disclose in writing to a tenant prior to commencement of the tenancy the amount of
27 rent the Master Tenant is obligated to pay to the owner of the property.

28 (3) Partial Sublets. In the event a Master Tenant does not sublease the entire rental
unit, as anticipated in Section 37.3 (c), then the Master Tenant may charge the subtenant(s) no

1 more than the subtenant(s) proportional share of the total current rent paid to the landlord by the
2 Master Tenant for the housing and housing services to which the subtenant is entitled under the
3 sub-lease. A master tenant's violation of this section shall not constitute a basis for eviction
4 under Section 37.9.

5 (a) The allowable proportional share of total rent may be calculated based
6 upon the square footage shared with and/or occupied exclusively by the subtenant; or an
7 amount substantially proportional to the space occupied by and/or shared with the subtenant
8 (e.g. three persons splitting the entire rent in thirds) or any other method that allocates the rent
9 such that the subtenant pays no more to the Master Tenant than the Master Tenant pays to the
10 landlord for the housing and housing services to which the subtenant is entitled under the
11 sublease. In establishing the proper initial base rent, additional housing services (such as
12 utilities) provided by, or any special obligations of, the Master Tenant, or evidence of the relative
13 amenities or value of rooms, may be considered by the parties or the Rent Board when deemed
14 appropriate. Any methodology that shifts the rental burden such that the subtenant(s) pays
15 substantially more than their square footage portion, or substantially more than the proportional
16 share of the total rent paid to the landlord, shall be rebuttably presumed to be in excess of the
17 lawful limitation.

18 (b) The Master Tenant or subtenant(s) may petition the Board for an
19 adjustment of the initial rent of the subtenant.

20 (c) If a portion of a capital improvement passthrough or a utility increase is
21 allocated to a subtenant, it must be separately identified and not included in the subtenant's
22 base rent. Such amounts are subject to the rules herein and must be discontinued or
23 recalculated pursuant to the applicable rules. Any amount that is improperly calculated or not
24 properly discontinued shall be disallowed.

25 (d) In the event of any dispute regarding any allowable increase, or allocation,
26 or any rental amount paid that is not rent, the subtenant may file a claim of unlawful rent
27 increase to have the matter resolved between the subtenant and Master Tenant, as if the Master
28 Tenant were the owner of the building. Disallowed or improper increases shall be null and void.

1 (e) For any sublease entered into on or before August 22, 2001, where the
2 sublease rent was not calculated as provided for herein, the Master Tenant shall have six
3 months from the effective date of this regulation to notice an adjusted proper rent and refund any
4 overpayments paid after the effective date of this section. No petitions alleging overpayments
5 may be filed during this time.

6 (f) For any sublease entered into after August 22, 2001, where the sublease
7 rent was not calculated as provided for herein, the portion of the subtenant's rent that is in
8 excess of the amount allowed pursuant to this Section 6.15C(3) shall be null and void.

9
10 **Section 6.15D Additional Family Members—Where Rental Agreement Limits the**
11 **Number of Occupants or Limits or Prohibits Subletting**

(Added March 29, 2005; amended December 4, 2015)

12 (a) This Section 6.15D applies when a lease or rental agreement includes a clause
13 limiting the number of occupants or limiting or prohibiting subletting or assignment, and a tenant
14 who resides in the unit requests the addition of the tenant's child, parent, grandchild,
15 grandparent, brother or sister, or the spouse or the domestic partner (as defined in
16 Administrative Code Sections 62.1 through 62.8) of such relatives, or the spouse or domestic
17 partner of the tenant. This Section 6.15D does not apply when a lease or rental agreement
18 includes neither a limit on the number of occupants nor any restriction on subletting or
19 assignment.

20 (b) If the tenant makes a written request to the landlord for permission to add a
21 person specified in subsection 6.15D(a) above, and the landlord fails to deny the request in
22 writing with a description of the reasons for the denial of the request, including specific facts
23 supporting the reasons for the denial, within fourteen (14) days of receipt of the tenant's written
24 request, the tenant's request for the additional person is deemed approved pursuant to
25 Ordinance Section 37.9(a)(2)(B). If the tenant's request is sent to the landlord by mail, the
26 request shall be deemed received on the fifth calendar day after the postmark date. If the
27 tenant's request is sent to the landlord by email, the request shall be deemed received on the
28 second calendar day after the date the email is sent. If the tenant's request is personally
delivered to the landlord, the request is considered received on the date of delivery. For

1 purposes of this subsection 6.15D(b), the 14-day period begins to run on the day after the
2 tenant's written request is received by the landlord.

3 (c) The tenant's inability to obtain the landlord's consent to the addition of a family
4 member specified in subsection 6.15D(a) above shall not constitute a breach of the lease or
5 rental agreement for purposes of eviction under Ordinance Section 37.9(a)(2), where the
6 additional family member is deemed approved pursuant to subsection (b) above, or where the
7 additional family member is a minor child allowed under subsection 6.15D(a) above, or where
8 the landlord has unreasonably denied, pursuant to subsection (d) below, the tenant's request to
9 add an additional family member allowed under subsection 6.15D(a) above who is not a minor
10 child and the following requirements have been met:

11 (1) The tenant has requested in writing the permission of the landlord to add
12 an additional family member to the unit, and stated the relationship of the person to the tenant.

13 (2) The landlord has five calendar days after receipt of the tenant's written
14 request to request the tenant to submit a completed standard form application for the proposed
15 additional family member or provide sufficient information to allow the landlord to confirm the
16 relationship of the person to the tenant and to conduct a typical background check, including full
17 name, date of birth and references if requested. The 5-day period begins to run on the day after
18 receipt of the tenant's written request for permission to add an additional family member to the
19 unit. The landlord may request credit or income information only if the additional family member
20 will be legally obligated to pay some or all of the rent to the landlord. Nothing in Section 6.15D
21 shall be construed as allowing a landlord to require an additional family member to pay some or
22 all of the rent to the landlord.

23 (3) The tenant has five calendar days after receipt of the landlord's timely
24 request pursuant to subsection 6.15D(c)(2) to provided the landlord with the additional family
25 member's application or typical background check information. The 5-day period begins to run
26 on the day after actual receipt of the landlord's request.

27 (4) The additional family member meets the regular reasonable application
28 standards of the landlord, except that creditworthiness may not be the basis for denial of the

1 tenant's request for an additional family member if the additional family member will not be
2 legally obligated to pay some or all of the rent to the landlord;

3 (5) The additional family member, if requested by the landlord, has agreed in
4 writing to be bound by the current rental agreement between the landlord and the tenant.

5 (6) With the additional family member, the total number of occupants does not
6 exceed the lesser of (a) two persons in a studio rental unit, three persons in a one-bedroom unit,
7 four persons in a two-bedroom unit, six persons in a three-bedroom unit or eight persons in a
8 four-bedroom unit, or (b) the number of occupants permitted under state law and/or other local
9 codes (e.g., Planning, Housing, Fire and Building Codes).

10 (d) Denial by the landlord of the tenant's written request to add an additional family
11 member allowed under subsection 6.15D(a) above shall not be considered unreasonable in
12 some circumstances, including but not limited to the following:

13 (1) where the total number of occupants in the unit exceeds (or with the proposed
14 additional occupant(s) would exceed) the lesser of:

15 (i) two persons in a studio unit, three persons in a one-bedroom unit, four
16 persons in a two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four-
17 bedroom unit; or

18 (ii) the maximum number permitted in the unit under San Francisco
19 Housing Code Section 503;

20 (2) where the proposed additional family member will be legally obligated to pay
21 some or all of the rent to the landlord and the landlord can establish the proposed additional
22 family member's lack of creditworthiness;

23 (3) where the landlord has made a timely request for the proposed additional
24 family member to complete the landlord's standard form application or provide sufficient
25 information to allow the landlord to conduct a typical background check and the proposed
26 additional family member does not comply within five calendar days of actual receipt by the
27 tenant of the landlord's request;

28 (4) where the landlord can establish that the proposed additional family member

1 has intentionally misrepresented significant facts on the landlord's standard form application or
2 provided significant misinformation to the landlord that interferes with the landlord's ability to
3 conduct a typical background check;

4 (5) where the landlord can establish that the proposed additional family member
5 presents a direct threat to the health, safety or security of other residents of the property; and,

6 (6) where the landlord can establish that the proposed additional family member
7 presents a direct threat to the safety, security or physical structure of the property.

8 (e) Nothing in this Section shall prevent the landlord from providing an additional
9 family member occupant with written notice as provided under Section 6.14 that the occupant is
10 not an original occupant as defined in Section 6.14(a)(1) and that when the last original occupant
11 vacates the premises, a new tenancy is created for purposes of determining the rent under the
12 Rent Ordinance. Furthermore, nothing in this Section 6.15D shall serve to waive, alter or modify
13 the landlord's rights under the Costa-Hawkins Rental Housing Act (California Civil Code
14 §§1954.50 et seq.) to impose an unlimited rent increase once the last original occupant(s) no
15 longer permanently resides in the unit.

16 (f) A landlord's unreasonable denial of a tenant's written request for the addition to
17 the unit of a tenant's child, parent, grandchild, grandparent, brother or sister, or the spouse or
18 domestic partner (as defined in Administrative Code Sections 62.1 through 62.8) of such
19 relatives, or the spouse or domestic partner of a tenant, subject to subsections 6.15D(c)(1)-(6)
20 above, may constitute a decrease in housing services pursuant to Section 10.10 of these
21 Regulations. For purposes of subsection 6.15D(f), a landlord's non-response to a tenant's written
22 request within 14 calendar days shall be deemed an approval pursuant to subsection 6.15D(b)
23 and shall not be deemed an unreasonable denial of a tenant's request for the addition to the unit
24 of a family member specified in subsection 6.15D(a) above.

25 (g) In the event the landlord denies a tenant's request for an additional family
26 member under Section 6.15D, either the landlord or the tenant may file a petition with the Board
27 to determine if the landlord's denial of the request was reasonable.

28 (h) Any petition filed under subsection 6.15D or (g) shall be expedited.

1 **Section 6.15E Additional Occupants Who Are Not Family Members—Where Rental**
2 **Agreement Limits the Number of Occupants or Limits or Prohibits**
3 **Subletting**

(Added December 4, 2015)

4 (a) This Section 6.15E applies when a lease or rental agreement includes a clause
5 limiting the number of occupants or limiting or prohibiting subletting or assignment, and a tenant
6 who resides in the unit requests the landlord's permission to add an additional occupant to the
7 rental unit that will exceed the number of people allowed by the lease or rental agreement or by
8 the open and established behavior of the parties. This Section 6.15E does not apply when a
9 lease or rental agreement includes neither a limit on the number of occupants nor any restriction
10 on subletting or assignment. For purposes of this Section 6.15E, the term "additional occupant"
11 shall not include persons who occupy the unit as a Tourist or Transient Use, as defined in
12 Administrative Code Section 41A.5 or persons who are considered family members under
13 Section 6.15D(a).

14 (b) If the tenant makes a written request to the landlord for permission to add an
15 additional occupant to the rental unit, and the landlord fails to deny the request in writing with a
16 description of the reasons for the denial of the request, including specific facts supporting the
17 reasons for the denial, within fourteen (14) days of receipt of the tenant's written request, the
18 tenant's request for the additional occupant is deemed approved pursuant to Ordinance Section
19 37.9(a)(2)(C). If the tenant's request is sent to the landlord by mail, the request shall be deemed
20 received on the fifth calendar day after the postmark date. If the tenant's request is sent to the
21 landlord by email, the request shall be deemed received on the second calendar day after the
22 date the email is sent. If the tenant's request is personally delivered to the landlord, the request
23 is considered received on the date of delivery. For purposes of this subsection 6.15E(b), the 14-
24 day period begins to run on the day after the tenant's written request is received by the landlord.

25 (c) The tenant's inability to obtain the landlord's consent to the addition of a person
26 specified in subsection 6.15E(a) above shall not constitute a breach of the lease or rental
27 agreement for purposes of eviction under Ordinance Section 37.9(a)(2), where the additional
28 person is deemed approved pursuant to subsection (b) above or where the landlord has

1 unreasonably denied, pursuant to subsection (d) below, the tenant's request to add an additional
2 person allowed under subsection 6.15E(a) above and the following requirements have been met:

3 (1) The tenant has requested in writing the permission of the landlord to add
4 an additional occupant to the unit.

5 (2) The landlord has five calendar days after receipt of the tenant's written
6 request to request the tenant to submit a completed standard form application for the proposed
7 additional occupant or provide sufficient information to allow the landlord to conduct a typical
8 background check, including full name, date of birth and references if requested. The 5-day
9 period begins to run on the day after receipt of the tenant's written request for permission to add
10 an additional occupant to the unit. The landlord may request credit or income information only if
11 the additional occupant will be legally obligated to pay some or all of the rent to the landlord.
12 Nothing in Section 6.15E shall be construed as allowing a landlord to require an additional
13 occupant to pay some or all of the rent to the landlord.

14 (3) The tenant has five calendar days after receipt of the landlord's timely
15 request pursuant to subsection 6.15E(c)(2) to provide the landlord with the additional occupant's
16 application or typical background check information. The 5-day period begins to run on the day
17 after actual receipt of the landlord's request.

18 (4) The additional occupant meets the regular reasonable application
19 standards of the landlord, except that creditworthiness may not be the basis for denial of the
20 tenant's request for an additional occupant if the additional occupant will not be legally obligated
21 to pay some or all of the rent to the landlord.

22 (5) The additional occupant, if requested by the landlord, has agreed in
23 writing to be bound by the current rental agreement between the landlord and the tenant.

24 (6) With the additional occupant, the total number of occupants does not
25 exceed the lesser of (a) two persons in a studio unit, three persons in a one-bedroom unit, four
26 persons in a two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four-
27 bedroom unit, or (b) the number of occupants permitted under state law and/or other local codes.

28 (d) Denial by the landlord of the tenant's written request to add an additional person

1 allowed under subsection 6.15E(a) above shall not be considered unreasonable in some
2 circumstances, including but not limited to the following:

3 (1) where the landlord resides in the same rental unit as the tenant;

4 (2) where the total number of occupants in the unit exceeds (or with the proposed
5 additional occupant(s) would exceed) the lesser of:

6 (i) two persons in a studio unit, three persons in a one-bedroom unit, four
7 persons in a two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four-
8 bedroom unit; or

9 (ii) the maximum number permitted in the unit under San Francisco
10 Housing Code Section 503;

11 (3) where the proposed additional occupant will be legally obligated to pay some
12 or all of the rent to the landlord and the landlord can establish the proposed additional
13 occupant's lack of creditworthiness;

14 (4) where the landlord has made a timely request for the proposed additional
15 occupant to complete the landlord's standard form application or provide sufficient information to
16 allow the landlord to conduct a typical background check and the proposed additional occupant
17 does not comply within five calendar days of actual receipt by the tenant of the landlord's
18 request;

19 (5) where the landlord can establish that the proposed additional occupant has
20 intentionally misrepresented significant facts on the landlord's standard form application or
21 provided significant misinformation to the landlord that interferes with the landlord's ability to
22 conduct a typical background check;

23 (6) where the landlord can establish that the proposed additional occupant
24 presents a direct threat to the health, safety or security of other residents of the property;

25 (7) where the landlord can establish that the proposed additional occupant
26 presents a direct threat to the safety, security or physical structure of the property; and,

27 (8) where an additional occupant would require the landlord to increase the
28 electrical or hot water capacity in the building, or adapt other building systems or existing

1 amenities, and payment for such enhancements presents a financial hardship to the landlord, as
2 determined by a Rent Board Administrative Law Judge.

3 (e) Nothing in this Section shall prevent the landlord from providing an additional
4 occupant with written notice as provided under Section 6.14 that the occupant is not an original
5 occupant as defined in Section 6.14(a)(1) and that when the last original occupant vacates the
6 premises, a new tenancy is created for purposes of determining the rent under the Rent
7 Ordinance. Furthermore, nothing in this Section 6.15E shall serve to waive, alter or modify the
8 landlord's rights under the Costa-Hawkins Rental Housing Act (California Civil Code §§1954.50
9 et seq.) to impose an unlimited rent increase once the last original occupant(s) no longer
10 permanently resides in the unit.

11 (f) A landlord's unreasonable denial of a tenant's written request for the addition to
12 the unit of a person specified in subsection 6.15E(a) above, subject to subsections 6.15E(c)(1)-
13 (6) above, may constitute a decrease in housing services pursuant to Section 10.10 of these
14 Regulations. For purposes of subsection 6.15E(f), a landlord's non-response to a tenant's written
15 request within 14 calendar days shall be deemed an approval pursuant to subsection 6.15E(b)
16 and shall not be deemed an unreasonable denial of a tenant's request for the addition to the unit
17 of a person specified in subsection 6.15E(a) above.

18 (g) In the event the landlord denies a tenant's request for an additional person under
19 Sections 6.15E, either the landlord or the tenant may file a petition with the Board to determine if
20 the landlord's denial of the request was reasonable.

21 (h) Any petition filed under subsection 6.15E(f) or (g) shall be expedited.

22
23 **Section 6.16 Utility Passthrough**

(Added August 24, 2004; Subsection (i) amended September 21, 2004; Amended
24 December 16, 2008, effective January 1, 2009; Subsection (g)(iii) amended
25 August 4, 2009; Subsection (g)(iii) amended July 12, 2016, effective
August 13, 2016)

26 The following provisions shall apply to utility passthroughs where the notice of rent
27 increase for the utility passthrough was served after November 1, 2004:

28 (a) Where a landlord pays for gas, electricity and/or steam provided directly to the

1 unit occupied by the tenant and/or to the common areas of the property in which the unit is
2 located, and seeks to recover the increase in the cost of these utilities from the tenant, the
3 landlord may pass through the increased costs of the utilities between the “base year” and the
4 comparison year, as set forth below.

5 (b) Determination of Initial “Base Year”

6 (i) For all tenancies existing on December 31, 2003, the initial “base year” for
7 purposes of this section shall be calendar year 2002 with the following exception:

8 (A) For utility passthrough petitions filed prior to January 1, 2009,
9 where a utility passthrough was in effect for a tenancy on November 1, 2004, the landlord could
10 elect to use calendar year 2002 as the initial “base year” or elect to continue to use the earlier
11 “base year”, provided that the landlord petitioned the Board for approval of the earlier “base
12 year” and the Board determined that the earlier “base year” was proper under Section 4.11 of
13 these Rules.

14 (B) For utility passthrough petitions and Utility Passthrough Calculation
15 Worksheets filed on or after January 1, 2009, the initial “base year” for all tenancies with an
16 approved earlier “base year” shall be calendar year 2003.

17 (ii) For all new tenancies commencing after December 31, 2003, the initial
18 “base year” shall be the calendar year immediately preceding the year of the inception of the
19 tenancy.

20 (iii) A landlord may petition the Board for approval of an alternate “base year”
21 if the landlord became an owner of record after December 31, 2002 and demonstrates a good
22 faith, but unsuccessful, effort to obtain the utility bills from the former landlord and/or the utility
23 company that are necessary to establish the “base-year” utility costs required by subsections
24 (b)(i) or (b)(ii). The Board will not approve an alternate “base year” that creates exaggerated
25 results unless the proposed alternate “base year” coincides with the landlord’s first full calendar
26 year of ownership.

27 (c) Subsequent Adjustments to Initial “Base Year”

28 Different tenants in the same property may have different initial “base years” depending

1 on when they moved into the property or whether the Board has approved use of an earlier
2 “base year” pursuant to subsection (b)(i) above or use of an alternate “base year” pursuant to
3 subsection (b)(iii) above. The initial “base year” utility costs shall be adjusted every five years as
4 follows:

5 A new “base year” is established at the end of every fifth calendar year after the initial
6 “base year”. For example, where the initial “base year” is 2002, the new “base year” shall be
7 2007 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2009
8 and December 31, 2013. If the tenancy continues for an additional five years, the “base year” will
9 become 2012 for petitions and Utility Passthrough Calculation Worksheets filed between
10 January 1, 2014 and December 31, 2018, and so on. For another example, where the initial
11 “base year” is 2003, including those tenancies that had an earlier “base year” prior to January 1,
12 2009, the new “base year” shall be 2008 for petitions and Utility Passthrough Calculation
13 Worksheets filed between January 1, 2010 and December 31, 2010. If the tenancy continues for
14 an additional five years, the “base year” will become 2013 for petitions and Utility Passthrough
15 Calculation Worksheets filed between January 1, 2015 and December 31, 2019, and so on. For
16 another example, where the initial “base year” is 2004, the new “base year” shall be 2009 for
17 petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2011 and
18 December 31, 2015. If the tenancy continues for an additional five years, the “base year” will
19 become 2014 for petitions and Utility Passthrough Calculation Worksheets filed between
20 January 1, 2016 and December 31, 2020.

21 (d) Determination of “Comparison Year”

22 For purposes of this section, the “comparison year” in all cases shall be the calendar year
23 immediately preceding the filing of the landlord’s Utility Passthrough Calculation Worksheet or
24 Petition for Approval of Utility Passthrough.

25 (e) Petition Required for Certain Utility Passthroughs

26 Effective January 1, 2009, the landlord is required to file a Petition for Approval of Utility
27 Passthrough when using a comparison of utility costs for the prior two calendar years (e.g.
28 2007/2008 in 2009, 2008/2009 in 2010, 2009/2010 in 2011, etc.). The petition shall be on a form

1 prescribed by the Board. The petition shall specify the units on the property that are subject to
2 the petition. The petition will be decided without a hearing unless the Administrative Law Judge
3 determines that a hearing is required.

4 (f) Where the landlord is required to file a Petition for Approval of Utility Passthrough,
5 the landlord must file the petition before giving legal notice of a rent increase for a utility
6 passthrough. The petition must be filed no more than twelve months after the “comparison year”
7 listed in the petition. The notice of rent increase shall be in conformance with the requirements
8 set forth in Section 4.10 above and shall further include the dollar amount requested for the utility
9 passthrough. This increase for the utility passthrough shall be inoperative unless and until the
10 petition is approved by the Administrative Law Judge. Any amounts approved by the
11 Administrative Law Judge shall relate back to the effective date of the legal notice, if given. A
12 landlord may choose instead not to serve legal notice of a proposed utility passthrough until after
13 the decision of the Administrative Law Judge is rendered. In any event, no rent increase
14 approved by the Administrative Law for a utility passthrough shall become effective until the
15 tenant’s anniversary date.

16 (g) Petition Not Required for Certain Utility Passthroughs

17 Effective January 1, 2009, the landlord is not required to file a Petition for Approval of
18 Utility Passthrough using a comparison of costs for years other than the prior two calendar
19 years. For example, in 2009, pursuant to subsection (e) above, the landlord must file a petition
20 for “base year” 2007 and “comparison year” 2008 in order to impose a utility passthrough, but
21 need not file a petition for “base years” 2003, 2004, 2005 or 2006 and “comparison year” 2008.
22 However, in order to impose a utility passthrough where a petition is not required under
23 subsection (e), the landlord must comply with the following requirements:

24 (i) For each year that the landlord seeks to impose a utility passthrough
25 where a petition is not required under subsection (e), the landlord shall file one Utility
26 Passthrough Calculation Worksheet with the Rent Board for each “base year” used, on a form
27 prescribed by the Board, that shows how the passthrough was calculated. The Worksheet shall
28 be filed within twelve months of the “comparison year” used in calculating the amount of the

1 passthrough. The Rent Board shall review ten percent (10%) of all Worksheets filed with the
2 Board. In addition, if there is no prior utility passthrough petition on file for a property for which a
3 Worksheet is filed, the Rent Board shall review at least one Worksheet for that property. In
4 conducting a Worksheet review, the Board may take whatever action the Board deems
5 necessary including, but not limited to, requiring the landlord to file evidence to support the
6 calculations in the Worksheet, requiring the landlord to file a Petition for Approval of Utility
7 Passthrough, scheduling a hearing, or reviewing additional Utility Passthrough Calculation
8 Worksheets.

9 (ii) The landlord must file the Worksheet with the Board before giving legal
10 notice of a rent increase for a utility passthrough. The notice of rent increase shall be in
11 conformance with the requirements set forth in Section 4.10 above and shall further include the
12 dollar amount requested for the utility passthrough. The landlord must provide the tenant with a
13 file-stamped copy of the Utility Passthrough Calculation Worksheet at the time of service of the
14 notice of rent increase.

15 (iii) A tenant who receives a utility passthrough under this subsection (g) may
16 file a hardship application with the Board pursuant to Section 10.15 within one year of the
17 effective date of the passthrough, and may be granted relief from all or part of such passthrough
18 based on hardship. Payment of the utility passthrough set forth in the hardship application shall
19 be stayed until a decision is made by the Administrative Law Judge on the tenant's hardship
20 application. Appeals of decisions on a tenant's hardship application shall be governed by
21 Ordinance Section 37.8(f).

22 (h) Laundry Facilities

23 Where the utility bills include the cost of gas and/or electricity for laundry facilities and the
24 landlord charges a user fee for the laundry facilities, the landlord may not pass through any
25 increase in the building's cost of utilities unless the landlord complies with one of the following
26 subsections:

27 (i) where the laundry facilities are separately metered in both the "base year"
28 and "comparison year", the landlord shall not include the utility costs for the laundry facilities in

1 the utility passthrough calculation; or

2 (ii) where the laundry facilities are not separately metered in both the “base
3 year” and the “comparison year” and there is a third party vendor that collects the user fees from
4 the laundry facilities, the landlord shall deduct the income actually received by the landlord from
5 the third party vendor from the total utility costs for the building; or

6 (iii) where the laundry facilities are not separately metered in both the “base
7 year” and the “comparison year” and there is not a third party vendor that collects the user fees
8 from the laundry facilities, the landlord shall deduct 50% of the user fees actually collected by the
9 landlord from the total utility costs for the building; or

10 (iv) where the laundry facilities are not separately metered in both the “base
11 year” and “comparison year”, the landlord shall deduct the actual costs of utilities that serve such
12 laundry facilities, using a methodology that has been approved by the Rent Board.

13 (i) Where the utility bills include the cost of gas and/or electricity for laundry facilities
14 and the laundry facilities are not available to or operated for the benefit of the tenant, and the
15 laundry facilities are not separately metered in both the “base year” and “comparison year”, the
16 landlord may not pass through to that tenant any increase in the building’s cost of utilities.

17 (j) Calculation of the Utility Passthrough

18 The landlord shall calculate the amount of the utility passthrough as follows:

19 (i) Compile the utility bills for the “base year” and the “comparison year” as
20 defined in subsections (b), (c) and (d) above. The utility passthrough shall be based on actual
21 costs incurred by the landlord during the relevant calendar years, regardless of when the utility
22 bill was received or paid.

23 (ii) Calculate the total utility cost for the “base year” and the total utility cost
24 for the “comparison year”.

25 (iii) Where the laundry facilities are not separately metered in both the “base
26 year” and the “comparison year”, compile evidence of and calculate the actual cost of utilities
27 that serve the laundry facilities in the “base year” and the “comparison year”.

28 (A) Where the landlord cannot prove the actual cost of utilities that

1 serve the laundry facilities and a third party vendor collects the user fees from the laundry
2 facilities, compile evidence of and calculate the income actually received by the landlord from the
3 third party vendor for the use of the laundry facilities in the “base year” and the “comparison
4 year”.

5 (B) Where the landlord cannot prove the actual cost of utilities that
6 serve the laundry facilities and the landlord collects the user fees from the laundry facilities,
7 compile evidence of the user fees actually collected by the landlord for the use of the laundry
8 facilities in the “base year” and the “comparison year” and calculate 50% of the amount
9 collected.

10 (iv) Where the laundry facilities are not separately metered in both the “base
11 year” and the “comparison year”, subtract the utility costs for the laundry facilities, as calculated
12 in subsection (iii) above, from the total utility cost for the “base year” and the total utility cost for
13 the “comparison year”.

14 (v) Subtract the total “base year” utility cost (excluding utility costs for the
15 laundry facilities) from the total “comparison year” utility cost (excluding utility costs for the
16 laundry facilities) to get the utility cost increase. If there is no increase or if there has been a
17 decrease, no passthrough is allowed.

18 (vi) Divide the resulting figure, if greater than zero, by twelve (12) to determine
19 the average monthly utility increase for the entire property.

20 (vii) Divide the average monthly utility increase by the number of rooms in the
21 property to get the amount of the utility passthrough that may be imposed for each room. For
22 purposes of this section, the number of rooms in a property shall be calculated by presuming
23 that single rooms without kitchens are one room units, studios are two room units, one bedroom
24 units without a separate dining room are three room units, and so on. Each parking space and
25 garage space in the building which is included in a tenant’s rental or for which a user fee is
26 charged shall be counted as one room. Areas used for commercial purposes but for which no
27 user fee is charged to the tenants, including but not limited to management offices and retail
28 space, shall be included in the room count in a manner that most reasonably takes into account

1 the size of the space and its utility usage.

2 (viii) To get the monthly utility passthrough for a unit, add the number of rooms
3 in the unit to the number of rooms for parking and/or garage spaces included in the tenant's
4 rental or for which a user fee is paid by the tenant, and multiply that total number of rooms by the
5 monthly utility increase per room.

6 (k) No landlord may pass through any increase in the cost of utilities to a tenant until
7 the tenant has occupied the unit in the subject property for one continuous year.

8 (l) Each utility passthrough shall apply only for the twelve-month period after it is
9 imposed.

10 (m) Nothing in this section or in these Rules and Regulations shall be interpreted as
11 requiring any landlord to pass through any utility increase or to increase any tenant's rent.

12 (n) The amount of rent due from the tenant for any utility passthrough shall be due on
13 the same date as a rent payment normally would be due.

14 (o) A utility passthrough may be imposed only at the time of an annual rent increase.
15 However, no amount passed through to the tenant as a utility increase shall be included in the
16 tenant's base rent for purposes of calculation of the amount of rent increases allowable under
17 the Ordinance and these Rules and Regulations.

18 (p) The provisions of this Section shall be deemed a part of every rental agreement
19 or lease, written or oral, for the possession of a rental unit subject to the Ordinance unless the
20 landlord and the tenant agree that the landlord will not pass through any utility increases, in
21 which case such agreement will be binding on the landlord and on any successor owner of the
22 property.

23 (q) Where a utility increase has been lawfully passed through to the tenant, a change
24 in the ownership of the property in which the tenant's unit is located will not affect the tenant's
25 liability to pay the amount passed through.
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1 **PART VII LANDLORD PETITIONS FOR CERTIFICATION OF**
2 **CAPITAL IMPROVEMENTS, REHABILITATION, AND/OR**
3 **ENERGY CONSERVATION WORK**

4 **Section 7.10 Filing**

(Amended August 29, 1989 by correction May 1, 1990; June 18, 1991; subsection (d) added on January 31, 1995; amended March 7, 1995; repealed and adopted April 25, 1995; effective February 1, 1995; amended April 1, 2003)

6 (a) Those landlords who seek to pass through the cost of capital improvements,
7 rehabilitation and/or energy conservation work must file a petition for certification on a form
8 prescribed by the Board. If at any time prior to filing a petition the landlord determines that the
9 total cost of a project for a parcel or a building containing six or more residential units is
10 reasonably expected to exceed \$25,000 multiplied by the number of units on the parcel or in the
11 building, the landlord shall immediately inform each tenant and the Rent Board in writing of the
12 anticipated costs of the work. The landlord's notice must occur within 30 days after such
13 determination by the landlord.

14 (b) Information to Accompany Landlord's Petition

15 The petition shall be accompanied by: (1) copies of the petition in sufficient number to
16 distribute to each of the tenants named in the petition, plus one additional copy for the estimator;
17 (2) two copies of all claimed invoices, signed contracts, and cancelled checks substantiating the
18 costs for which the landlord has not been compensated by insurance proceeds; (3) if claim is
19 made for uncompensated labor, the petition shall include a copy of a log of dates on which the
20 work was performed; and (4) copies of proof of compliance with the Bureau of Building
21 Inspection for any work claimed for energy conservation measures or other work for which proof
22 of compliance is required by State or local law. For each petition totaling more than \$25,000, in
23 addition to the supporting material prescribed by the Board for all petitions, the applicant must
24 either: (1) Provide copies of competitive bids received for work and materials; or, (2) Provide
25 copies of time and materials billing for work performed by all contractors and subcontractors; or
26 (3) The applicant must pay the cost of an estimator hired by the Board.

27 (c) Time of Filing Petition and Notice

28 The landlord must file a petition before giving legal notice of a rent increase. The notice

1 shall be in conformance with the requirements set forth in Section 4.10 above and shall further
2 include the dollar amount requested based on the amortization of the work performed. This
3 increase shall be inoperative unless and until the petition is approved by the Administrative Law
4 Judge. Any amounts approved by the Administrative Law Judge shall relate back to the effective
5 date of the legal notice, if given.

6 If the landlord sends a notice of rent increase based on capital improvements without first
7 filing a petition for certification, the increase shall be null and void. In order to be able to pass
8 through these amounts, a petition must first be filed and then a new notice sent.

9 (d) Special Provision for Owners of Proposition I Affected Units

10 Landlords of Proposition I Affected Units may petition the Board to certify the cost of
11 capital improvements, rehabilitation and/or energy conservation work in accordance with, and
12 subject to, the rules and procedures set forth in Part 7 of these Rules and Regulations and
13 Section 37.7 of the Rent Ordinance. Events before the unit was subject to the Rent Ordinance
14 may be considered. Petitions for Proposition I Affected Units based upon capital improvements
15 that are pending as of, or filed within six months of, April 25, 1995 may, at the request of the
16 landlord, be treated as if filed on May 1, 1994; provided, however, that the actual date of filing
17 shall be used to determine the effective date of any rent increase pursuant to Section 7.10(c)
18 above.

19 (e) Requirements for Certification

20 The Board and designated Administrative Law Judges may only certify the costs of
21 capital improvements, rehabilitation, energy conservation improvements, and renewable energy
22 improvements, where the following criteria are met:

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

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

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

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

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

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

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14 **Section 7.11 Inspection of the Building**

(Amended April 1, 2003)

15 If the Board or its Executive Director determines that inspection by a qualified estimator
16 of the building is necessary to determine whether the petition shall be approved, the landlord and
17 tenants shall provide entry to the Rent Board's representative at a convenient time during normal
18 business hours.

19 (a) The necessity for use of an estimator in a particular case may be determined after
20 consideration of the following factors, among others:

21 (1) the cost of the work;

22 (2) the number of units;

23 (3) complexity of the work performed;

24 (4) objections made pursuant to Section 7.15 below.

25 (5) whether the landlord provided copies of competitive bids or time and
26 materials billings for work performed by all contractors and subcontractors for a petition totaling
27 more than \$25,000.

28 (b) A qualified estimator is a person:

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(1) who is not a San Francisco city employee; but

(2) who is selected by the Rent Board or the Executive Director because he or she is qualified and experienced in the area of residential rehabilitation, such as a member of the American Society of Estimators, subscribing to its Code of Professional Ethics and Standards of Professional Conduct. The estimator shall operate under the direction of the Board or its Executive Director.

Section 7.12 Allocation of Cost of Improvements or Work to Individual Units

(Amended March 14, 1989; August 29, 1989; June 18, 1991; Subsection (b) amended October 20, 1998; Amended April 1, 2003)

(a) The cost of capital improvements, rehabilitation, and/or energy conservation work for which the landlord has not been compensated by insurance proceeds shall be allocated to each unit in the building. The method used for cost allocation shall be that which most reasonably takes into account the extent to which each unit benefits from the improvements or work. Methods which may be appropriate, depending on the circumstances, include allocation based on the square footage in each unit, allocation based on the rent paid for each unit, and equal division among all units. Where the improvements do not benefit all units, only those benefitted may be charged the additional rent. For example, if a new roof were installed, the rents of all units in the building may be raised to cover the cost. But if, in addition, a new floor had been installed in one unit, that unit would be charged its proportionate share of the roof cost plus the cost of the new floor. Costs attributable to units where the rent cannot be raised (because of a lease restriction, owner occupancy, or other reason) may not be allocated to the other units. Costs attributable to routine repair and maintenance shall not be certified but shall be considered part of the costs of operating and maintenance.

(b) Effect of Vacancy on Rent Increases Requested for Capital Improvements

If a unit becomes vacant and is rerented after completion of capital improvements, rehabilitation, and/or energy conservation work listed in a petition for certification, no additional rent will be allowed on the unit based on the improvements or work since the landlord has the opportunity to bring the unit up to market rent at the time the unit is rerented. This section also

1 applies to those units rented during the construction period for the project of which the work is a
2 part, as stated in the permit(s), contract document(s), and/or as shown by other relevant
3 evidence, or rented within six months of the commencement of work for which a petition for
4 certification is filed, provided that ownership has not changed in that period.

5 (c) Amortization Periods and Cost Allocation

6 The Board shall apply the amortization periods and cost allocation formulas as set forth
7 below.

8 (1) Petitions Filed Before November 14, 2002. The following provisions shall
9 apply to all petitions filed before November 14, 2002:

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

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

23 (ii) Schedule II - Ten-Year Amortization. The following shall be
24 amortized over a ten-year period: New foundation, new floor structure, new ceiling or walls - new
25 sheetrock, new plumbing (new fixtures, or piping,) weather stripping, ceiling insulation, seals and
26 caulking, new furnaces and heaters, refrigerators, new electrical wiring, new stairs, new roof
27 structure, new roof cover, new window, fire escapes, central smoke detection system, new wood
28 or tile floor cover, new sprinkler system, boiler replacement, air conditioning-central system,

1 exterior siding or stucco, elevator rebuild, elevator cables, additions such as patios or decks,
2 central security system, new doors, new mail boxes, new kitchen or bathroom cabinets, and
3 sinks.

4 (B) Allowable Increase. One hundred percent (100%) of the certified
5 costs of capital improvements, rehabilitation, and energy conservation improvements may be
6 passed through to the tenants who benefit from such work and improvements. However no
7 increase under this Subsection 7.12(c)(1) shall exceed, in a twelve-month period, ten percent
8 (10%) of the tenant's base rent at the time the petition was filed or \$30.00, whichever is greater.
9 A landlord may accumulate any certified increase which exceeds this amount and impose the
10 increase in subsequent years, subject to this 10% or \$30.00 limitation.

11 (2) Petitions Filed On or After November 14, 2002 For Qualified Energy
12 Conservation Improvements and Renewable Energy Improvements. For Petitions filed on or
13 after November 14, 2002, the following provisions shall apply to certification of costs for qualified
14 energy conservation improvements and renewable energy improvements:

15 (A) Amortization Periods and Allowable Costs. For purposes of this
16 Subsection, qualified energy conservation improvements and renewable energy improvements
17 are:

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

21 (ii) Other improvements as may be approved by the Board of
22 Supervisors upon recommendation of the Rent Board, following hearings and development of an
23 Energy Conservation Improvements and Renewable Energy Improvements List of energy
24 conservation improvements and renewable energy improvements that demonstrably benefit
25 tenants in units that have separate electrical and/or natural gas metering by the Commission on
26 the Environment.

27 (3) Petitions Filed On or After November 14, 2002 For Seismic Work and
28 Improvements Required by Law, and for Work and Improvements Required by Laws Enacted

1 After November 14, 2002. For petitions filed on or after November 14, 2002, the following
2 provisions shall apply to certification of costs for seismic work and improvements required by law
3 and to costs for capital improvement, rehabilitation, energy conservation, and renewable energy
4 work and improvements required by federal, state, or local laws enacted on or after November
5 14, 2002:

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

8 (B) Allowable Increase. One hundred percent (100%) of the certified
9 costs of capital improvement, rehabilitation, energy conservation, and renewable energy work
10 and improvements required by law may be passed through to the tenants who benefit from such
11 work and improvements. Any rent increases under this Subsection 7.12(c)(3) shall not exceed, in
12 a twelve-month period, a total of ten percent (10%) of the tenant's base rent at the time the
13 petition was filed or \$30.00, whichever is greater. A landlord may accumulate any certified
14 increase which exceeds this amount and impose the increase in subsequent years, subject to
15 this 10% or \$30.00 limitation.

16 (4) Petitions Filed On or After November 14, 2002 for Other Work and
17 Improvements On Properties With Five Residential Units or Less. For petitions filed on or after
18 November 14, 2002, the following provisions shall apply to certification of all work and
19 improvements for properties containing five residential units or less, with the exception of work
20 and improvements costs certified for passthrough under Subsections 7.12(c)(2) or 7.12(c)(3):

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

24 (i) Schedule I - Ten-Year Amortization. The following shall be
25 amortized over a ten-year period: New roof structure, new roof cover, electrical heaters, central
26 security system, telephone entry systems, new wood frame windows, new mailboxes, weather-
27 stripping, ceiling insulation, seals and caulking, central smoke detection system, new doors and
28 skylights; appliances, such as new stoves, disposals, refrigerators, washers, dryers and

1 dishwashers; fixtures, such as garage door openers, locks, light fixtures, water heaters and
2 blankets, shower heads, time clocks and hot water pumps; and other improvements, such as
3 carpeting, linoleum, and exterior and interior painting of common areas. If the appliance is a
4 replacement for which the tenant has already had the benefit, the cost will not be amortized as a
5 capital improvement but will be considered part of operating and maintenance expenses.

6 Appliances may be amortized as capital improvements when: (1) part of a remodeled kitchen; (2)
7 based upon an agreement between the tenant and landlord; (3) it is a new service or appliance
8 the tenant did not previously have; and/or (4) it is an appliance certified as a qualified energy
9 conservation improvement or renewable energy improvement pursuant to Subsection 7.12(c)(2).

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

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

19 (B) Allowable Increase. One hundred percent (100%) of the certified
20 costs of capital improvement, rehabilitation, and energy conservation work and improvements
21 may be passed through to the tenants who benefit from such work and improvements. However,
22 no increase under this Subsection 7.12(c)(4) shall exceed, in a twelve-month period, five percent
23 (5%) of the tenant's base rent at the time the petition was filed or \$30.00, whichever is greater. A
24 landlord may accumulate any certified increase which exceeds this amount and impose the
25 increase in subsequent years subject to this 5% or \$30.00 limitation.

26 (5) For Petitions Filed On or After November 14, 2002 for Other Work and
27 Improvements for Properties with Six or more Residential Units. For petitions filed on or after
28 November 14, 2002, the following provisions shall apply to certification of all work and

1 improvements for properties containing six residential units or more, with the exception of work
2 and improvements certified under Subsections 7.12(c)(2) or 7.12(c)(3):

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

6 (i) Schedule I - Seven-Year Amortization. The following shall
7 be amortized over a seven-year period: Appliances, such as new stoves, disposals, washers,
8 dryers and dishwashers; fixtures, such as garage door openers, locks, light fixtures, water
9 heaters and blankets, shower heads, time clocks and hot water pumps; and other improvements,
10 such as carpeting, linoleum, and exterior and interior painting of common areas. If the appliance
11 is a replacement for which the tenant has already had the benefit, the cost will not be amortized
12 as a capital improvement, but will be considered part of operating and maintenance expenses.
13 Appliances may be amortized as capital improvements when: (1) part of a remodeled kitchen; (2)
14 based upon an agreement between the tenant and landlord; (3) it is a new service or appliance
15 the tenant did not previously have; and/or (4) it is an appliance certified as a qualified energy
16 conservation improvement or renewable energy improvement pursuant to Subsection 7.12(c)(2).

17 (ii) Schedule II - Ten-Year Amortization. The following shall be
18 amortized over a ten year period: New foundation, new floor structure, new ceiling or walls - new
19 sheetrock, new plumbing (new fixtures, or piping) weather stripping, ceiling insulation, seals and
20 caulking, new furnaces and heaters, refrigerators, new electrical wiring, new stairs, new roof
21 structure, new roof cover, new window, fire escapes, central smoke detection system, new wood
22 or tile floor cover, new sprinkler system, boiler replacement, air conditioning-central system,
23 exterior siding or stucco, elevator rebuild, elevator cables, additions such as patios or decks,
24 central security system, new doors, new mail boxes, new kitchen or bathroom cabinets, sinks,
25 telephone entry system, skylights, iron gates, sidewalk replacement and chimneys. If the
26 refrigerator is a replacement for which the tenant has already had the benefit, the cost will not be
27 amortized as a capital improvement, but will be considered part of operating and maintenance
28 expenses. Refrigerators may be amortized as capital improvements when: (1) part of a

1 remodeled kitchen; (2) based upon an agreement between the tenant and landlord; (3) it is a
2 new service or appliance the tenant did not previously have; and/or (4) it is an EPA Energy-Star-
3 compliant refrigerator where the refrigerator replaced is more than five years old and where the
4 unit has separate metering.

5 (B) Allowable Increase.

6 (i) Only fifty percent (50%) of the costs certified under this
7 Subsection 7.12(c)(5) may be passed through to the tenants who benefit from such work and
8 improvements. However, no increase under this Subsection 7.12(c)(5) shall exceed, in a twelve-
9 month period, ten percent (10%) of the tenant's base rent at the time the petition was filed or
10 \$30.00, whichever is greater. A landlord may accumulate any certified increase which exceeds
11 this amount and impose the increase in subsequent years, subject to this 10% or \$30.00
12 limitation.

13 (ii) In the alternative, a tenant may elect to have one hundred
14 percent (100%) of the costs certified under this Subsection 7.12(c)(5) passed through to the
15 tenant. In that event no increase under this Subsection shall exceed, in a twelve-month period,
16 five percent (5%) of the tenant's base rent at the time the petition was filed, and the total
17 increase for capital improvements elected under this Subsection shall never exceed fifteen
18 percent (15%) of the tenant's base rent. If the total increase for capital improvements elected
19 under this Subsection is less than fifteen percent (15%) of the tenant's base rent at the time the
20 petition was filed, the landlord may impose the remaining percentage in a subsequent petition
21 where the tenant makes an election under this Subsection and the remaining percentage shall
22 be calculated on the tenant's base rent in effect at the time the new petition is filed. A tenant
23 must elect this alternative by filing such an election with the Board on a form prescribed by the
24 Board. An election may be filed at any time after the petition is filed but no later than fifteen (15)
25 calendar days after the Administrative Law Judge's decision on the petition is mailed to the
26 tenant. After a tenant files an election form, the tenant cannot rescind the election unless either
27 party files an appeal and a new decision is subsequently issued that changes the amount
28 certified for passthrough to the tenant. In that case the tenant will have fifteen (15) calendar days

1 after the new decision is mailed to the tenant to rescind the previous election or to make a new
2 election under this Subsection even if one had not been made after the first decision was issued.
3 In a unit with multiple tenants, the election form must be signed by a majority (more than 50%) in
4 order for the election to be accepted. If a timely election is made after a decision has been
5 issued, an addendum to the decision will be issued reflecting the tenant's election. The
6 addendum is not subject to appeal.

7
8 **Section 7.13 Valuation of Uncompensated Labor**

9 Any uncompensated labor (i.e., labor performed for no remuneration of any kind)
10 performed on capital improvements, rehabilitation, or energy conservation work shall be valued
11 at prevailing labor rates. The craft classification to be employed shall be that of laborer unless
12 the uncompensated worker is licensed in the particular craft for which credit is being claimed.

13 **Section 7.14 Allowance of Interest**

14 (Amended October 4, 1994; amended Subsection (b)(2) and adding
Subsection (b)(3), January 19, 1999; Amended April 1, 2003)

15 A landlord who expends funds for capital improvements or rehabilitation work shall be
16 entitled to a reasonable rate of interest. Any allowance of interest, whether imputed or real, in
17 favor of a landlord pursuant to this section shall be limited to no more than ten (10) percent and
18 shall be amortized over a period equal to the amortization period of the improvement. The
19 following rules shall apply to any request for the allowance of interest.

20 (a) Allowance of Actual Interest Incurred. The landlord has the burden of proof to
21 establish the actual rate of interest. To meet this burden, the landlord must submit, at a
22 minimum, either the applicable loan agreement, promissory note or other admissible
23 documentary evidence substantiating the rate of interest. In addition, the landlord has the burden
24 to show that the actual rate of interest for which an allowance is sought is reasonable under the
25 circumstances.

26 (b) Allowance of Imputed Interest. In cases where the landlord does not incur or
27 prove in accordance with subsection (a) any actual interest expense on funds used for capital
28 improvements or rehabilitation work, the landlord shall be entitled to an allowance of imputed

1 interest. The rate of imputed interest shall be determined in accordance with the following rules:

2 (1) On March 1 of each year, in accordance with subparagraph (b)(2), the
3 Board shall publish four rates of imputed interest. Subject to the ten (10) percent limitation
4 contained in the first paragraph of this rule, the published rates shall constitute the rates of
5 imputed interest to be allowed on petitions filed on or after March 1 through February 28 (or
6 February 29, as the case may be) of the following year.

7 (2) The first rate shall be the average of the twelve most recent monthly rates
8 (rounded to the nearest tenth) as posted by the Federal Reserve on their Federal Reserve
9 Statistical Release Internet site for seven-year Treasury Securities and shall apply to certified
10 capital improvement costs amortized over a seven-year period in accordance with Section
11 7.12(c).

12 The second rate shall be the average of the twelve most recent monthly rates
13 (rounded to the nearest tenth) as posted by the Federal Reserve on their Federal Reserve
14 Statistical Release Internet site for ten-year Treasury Securities and shall apply to certified
15 capital improvement costs amortized over a ten-year period in accordance with Section 7.12(c).

16 The third rate shall be the average of the twelve most recent monthly rates
17 (rounded to the nearest tenth) as posted by the Federal Reserve on their Federal Reserve
18 Statistical Release Internet site for twenty-year Treasury Securities and shall apply to certified
19 capital improvement costs amortized over a twenty-year period in accordance with Section
20 7.12(c).

21 The fourth rate shall be the average of the ten-year and twenty-year rates
22 (rounded to the nearest tenth) and shall apply to certified capital improvement costs amortized
23 over a fifteen-year period in accordance with Section 7.12(c).

24 (3) These rates shall be calculated by December 15th of each year using the
25 average of the twelve most recent monthly rates posted by the Federal Reserve for seven and
26 ten-year maturity Treasury Securities as of this date.

27 (c) Government Subsidies or Guarantees. Notwithstanding subparagraphs (a) and
28 (b) of this Section, if the interest is less than 10 percent due to governmental or any other

1 subsidy or guarantee, the landlord shall only be entitled to the actual rate of interest incurred.

2 (d) This Section was amended on March 18, 2003 and is effective for petitions filed
3 on or after November 14, 2002. The Board shall publish the applicable rate of interest for
4 petitions filed between November 14, 2002 and February 28, 2003 before February 21, 2003.

5
6 **Section 7.15 Tenant Objections**

(Amended March 21, 1989)

7 (a) Tenant objections may be on the basis that the work claimed to be performed was
8 not performed, that the work performed was necessitated by the current landlord's deferred
9 maintenance resulting in a code violation, that the costs claimed are not true or reasonable
10 costs, or some other reasons. The tenant shall include as much documentation to support the
11 objection as the tenant has reasonably available.

12 (b) Allowance for the cost of equipment, fixtures, and improvements in an individual
13 unit shall not be made if the tenant has objected to the installation unless the landlord can
14 establish that the existing equipment, fixtures, or improvements need replacement for reasons of
15 health or safety or because of excessive maintenance cost. The tenant shall have the right to
16 raise these objections at the hearing when the landlord seeks to have the capital improvements
17 certified.

18 (c) The cost of "luxury" items in common areas of a building shall not be certified
19 where a tenant has objected at the hearing to the installation unless the landlord can establish
20 that the items were required for reasons of health and safety or excessive maintenance costs,
21 that the items needed to be replaced and the replacement items were of equivalent quality to the
22 items being replaced, that the building is and has been a "luxury" market building, or other
23 extraordinary circumstances.

24 The type of "luxury" items disfavored would be those that are not in keeping with the
25 socioeconomic status of the building's existing tenants and the quality and condition of the
26 building at the time the existing tenants rented their units. Disfavored luxury items would be
27 those that are intended to change the building's style to appeal to a wealthier class of tenants.

28 Where the Board finds that an item's cost is substantially excessive, but that the item

1 itself is a reasonable improvement, then the Board shall approve a reduced cost that it finds to
2 be reasonable. The tenant shall have the right to raise these objections at the hearing when the
3 landlord seeks to have the capital improvements certified.
4

5 **Section 7.16 Base Rent**

6 For purposes of calculating future rent increases, base rent shall not include any costs for
7 capital improvements, rehabilitation, or energy conservation measures which have been
8 certified.

9 **Section 7.17 Administrative Dismissal**

10 (Added March 14, 1989; amended July 15, 1997)

11 Notwithstanding the acceptance of a petition, if any of the following conditions exist, the
12 Board shall dismiss the petition without prejudice and shall not schedule a hearing. Prior to
13 dismissal of a petition, the Board shall mail to the petitioner a written notice of intention to
14 dismiss stating the specific applicable reason(s) for such dismissal. The petitioner shall have
15 thirty (30) days from the date of mailing of the notice to cure the defects in the petition prior to
16 dismissal.

17 If the petitioner fails to cure the defects in a timely and proper manner, and the petition is
18 administratively dismissed, the petitioner may file an appeal to the Board or file a new petition for
19 certification of capital improvement costs. Appeals shall be governed by the applicable
20 provisions of Ordinance Section 37.8(f).

21 The filing of a new petition shall be in accordance with the procedures set forth in
22 Ordinance Section 37.7(f), and shall be subject to the five-year limitation in subsection (2) and
23 the requirement that a new notice of rent increase must be mailed or delivered to the tenants
24 after the new petition is filed. Any previous notice of rent increase, or portion thereof, based on a
25 landlord's petition that was administratively dismissed, shall be null and void as to that portion of
26 the rent increase notice only; other lawful portions of the rent increase notice which were not
27 related to the landlord's dismissed petition shall remain valid.

28 A petition for certification of capital improvement costs may be administratively dismissed
in the following circumstances:

1 (a) Where the petition submitted fails to clearly itemize costs according to specific
2 improvements categorized by type of improvement; e.g., foundation work, new roof, electrical
3 service, electrical wiring, fire sprinkler system, etc.;

4 (b) Where the petition submitted for improvements to more than one building does
5 not clearly allocate costs to each building;

6 (c) Where the petition submitted for improvements to a building with more than one
7 unit fails to clearly distinguish costs of common area improvements from costs of improvements
8 to specific units;

9 (d) Where the documentation submitted in support of the petition (i.e., bills, canceled
10 checks, etc.) is not clearly marked so as to identify the specific improvement to which it relates;

11 (e) Where insufficient copies of the petition or supporting documentation have been
12 submitted pursuant to 7.10(b)(1) and 7.10(b)(2) above.

13
14 **Section 7.18 Repair and Rehabilitation Work Due to Natural Disaster**

(Adopted April 17, 1990; amended May 1, 1990, effective for work
15 completed by April 17, 1991)

16 The cost of natural disaster repair work of a non-structural nature which, in the absence
17 of any accompanying structural work, ordinarily would be considered routine maintenance and
18 repairs, such as plaster patching and painting, may be passed through to the tenants, subject to
19 the following provisions:

20 (a) Filing: A landlord who seeks to pass through the costs of non-structural disaster
21 repair work must file a petition for certification on a form prescribed by the Board and
22 accompanied by the documentation listed in Sections 7.10(b)(1)(2) and (3) above. A petition for
23 such a passthrough must be filed before giving notice of a rent increase, and any such notices
24 shall be in conformity with the provisions of Section 4.10 and Section 7.10(c) above.

25 (b) Allowable Costs: Passthroughs of costs for non-structural disaster-related repair
26 work that has not been reimbursed by insurance proceeds shall be limited to seventy-five
27 percent (75%) of all such costs (including interest).

28 (c) Allocation of Costs: The cost of such repair work shall be allocated to all units in
the building, regardless of the extent to which each was damaged. Methods which may be

1 appropriate – depending on the circumstances – include, but are not limited to, allocation based
2 on the square footage in each unit or equal division among all units. Each unit may only be
3 charged its pro rata share of the costs. Costs attributable to units where the rent cannot be
4 raised may not be allocated to the other remaining units.

5 (d) Amortization Period: The cost of all such disaster-related repairs shall be
6 amortized over a period of ten years.

7 (e) Allowance of Interest: Interest on money spent to perform such disaster-related
8 repairs shall be limited to the actual interest paid for such money or to ten percent (10%),
9 whichever is lower, and to 10% if interest is not paid, and shall be amortized over ten years.

10 (f) Passthrough: The limitation described in Section 7.12(d) above shall apply to
11 passthroughs based on repairs made necessary by natural disaster except under extraordinary
12 circumstances such as:

13 (1) When the landlord's financial position can not sustain the extended period
14 of recovery resulting from such a limitation without threatening loss of the building, or forcing the
15 landlord to spread performance of the repairs over an extraordinarily long period of time such
16 that tenants could reasonably claim that a "decrease in services" has resulted; or other hardship
17 to the landlord.

18 (2) When the maximum allowable capital improvement passthrough for a
19 given tenant is already in place at the time repair costs are certified. Under such circumstances,
20 any rent increase based on passthrough of repairs caused by natural disaster shall be limited to
21 an additional 5% or \$15.00, whichever is greater, in any twelve-month period. Any certified
22 passthroughs exceeding this amount may be accumulated and imposed in subsequent years
23 subject to this limitation.

24 (g) Work eligible for passthrough under this Section shall not be considered as an
25 operating and maintenance expense under Section 6.10.
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1 **PART VIII LANDLORD APPLICATION FOR CERTIFICATION OF**
2 **SUBSTANTIAL REHABILITATION**

3 **Section 8.10 Who Must File**

4 Landlords who seek to obtain certification of substantial rehabilitation for exemption from
5 Chapter 37 of the San Francisco Administration Code must apply for a certification hearing with
6 the Rent Board.

7 **Section 8.11 Time of Filing Application**

8 After receipt of a final notice of completion from the Department of Public Works, the
9 landlord seeking exemption must file an application for certification.

10 **Section 8.12 Application for Certification**

11 (Corrected August 20, 1996)

12 Application for certification shall be filed on a form provided by the Rent Board. The
13 application shall include:

14 (1) A tenant history, including the names of all tenants in possession at the time
15 substantial rehabilitation was noticed, their last known address, their rent at the time they left
16 voluntarily or were evicted, which tenants were evicted, the names and unit number of any
17 current tenants and their current rents;

18 (2) A detailed description of the substantial rehabilitation work itemizing all costs,
19 including but not limited to site improvements, paving and surfacing, concrete, masonry, metals,
20 wood and plastic, thermal and moisture protection, doors and windows, finishes, specialties,
21 equipment, furnishings, conveying systems, mechanical and electrical work;

22 (3) Evidence that the building is over 50 years old;

23 (4) A determination of condemnation, and/or

24 (5) A determination by the Department of Building Inspection that the premises were
25 ineligible for a permit of occupancy;

26 (6) A current abstract of title;

27 (7) A complete inspection report issued by the Department of Building Inspection
28 made prior to the commencement of rehabilitation work;

- 1 (8) Proof of purchase price;
- 2 (9) Final notice of completion from the Department of Building Inspection;
- 3 (10) Copies of eviction notices to prior tenants;
- 4 (11) Copies of invoices, bids and cancelled checks substantiating the costs for which
- 5 the landlord has not been compensated by insurance proceeds;
- 6 (12) Sufficient copies of the petition for distribution to each tenant;
- 7 (13) Copy of the current assessment;
- 8 (14) If claim is made for uncompensated labor, the application shall include a log of
- 9 dates on which the work was performed, number of hours of work and description of the work
- 10 performed, and, if claim is made for electrical or plumbing work, a copy of the worker's
- 11 contractor's license.

12 **Section 8.13 Fees**

13 (Corrected/Amended August 27, 1991)

14 See Sections 3.10 and 3.12 above.

15 **Section 8.14 Notification of Tenants**

16 Upon receipt of a completed application, the Rent Board shall notify the tenant or tenants

17 of the subject unit or units by mail, of the receipt of such application. The notice shall also state

18 that the tenant has a right to attend a hearing regarding the application. The Board shall

19 calendar the petition for hearing before a designated Administrative Law Judge and shall give

20 written notice of the date to the parties at least ten (10) days prior to the hearing.

21 **Section 8.15 Valuation of Uncompensated Labor**

22 See Section 7.13 above.

23 **Section 8.16 Inspection of Building**

24 See Section 7.11 above.

25 **Section 8.17 Tenant Objections**

26 Tenant objections may be on the basis that the work claimed to be performed was not

27 performed, that the work performed was necessitated by the current landlord's deferred

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1 maintenance resulting in a code violation, that the costs claimed are not true or reasonable
2 costs, or that the work done was not principally directed to code compliance. The tenant shall
3 include as much documentation to support the objection as the tenant has reasonably available.
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1 **PART IX TENANT SUMMARY PETITIONS**

2 **Section 9.10 Grounds for Summary Petitions**

3 (a) A tenant may file a summary petition if the landlord gives a rent increase which
4 fails to comply with the provisions set forth in Section 37.3 of the Ordinance.

5 (b) Summary petitions shall be filed on a form to be supplied by the Board. The
6 petitions shall be accompanied by:

7 (1) A copy of the landlord's notice of rent increase;

8 (2) a copy of any notification from the Department of Real Estate or the Rent
9 Board which certified a rent increase based on capital improvements, rehabilitation, and/or
10 energy conservation work; and

11 (3) a statement as to why the tenant believes the rent increase should not be
12 allowed, together with any supporting documentation.

13 (c) Any rent increase which does not conform with the provisions of Section 37.3 of
14 the Rent Ordinance shall be null and void.

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PART X TENANT PETITION FOR ARBITRATION

Section 10.10 Decrease in Services

(Amended March 7, 1989; Subsection (e) adopted February 7, 1995; amended April 25, 1995; effective February 1, 1995; amended August 20, 1996)

(a) A tenant may petition for a reduction of base rent where a landlord, without a corresponding reduction in rent, has (1) substantially decreased housing services, including any service added after commencement of the tenancy and for which additional consideration was paid when it was provided, or (2) failed to provide housing services reasonably expected under the circumstances, or (3) failed to provide a housing service verifiably promised by the landlord prior to commencement of the tenancy.

(b) A petition for arbitration based on decreased services shall be filed on a form supplied by the Board. The petition shall be accompanied by a statement setting forth the nature and value of the service for which the decrease is being sought, and the date the decrease began and ended, if applicable.

(c) No rent decrease as requested in the tenant's petition will be allowed prior to one year preceding the filing of the petition except where one or more of the following is found:

(1) extraordinary circumstances;

(2) where the tenant establishes by a preponderance of the evidence that there has been long term notice, oral or written, from the tenant or other reliable source, regarding such decrease occurring in the interior of the tenant's unit, or where such condition existed in the interior of the unit at the commencement of the tenancy and the landlord had constructive notice of same; or

(3) where the tenant establishes by a preponderance of the evidence that there has been actual long term notice, oral or written, from the tenant or other reliable source, and/or constructive notice regarding such decrease occurring in any common area.

(d) For the purposes of this section, notice is defined as follows:

(1) Actual Notice: Actual notice occurs when the tenant or any reliable person or entity informs the landlord, or the landlord's agents, orally or in writing, of a decrease in housing services as defined in the Rent Ordinance at Section 37.2(g).

1 (2) Constructive Notice: Constructive notice occurs when a decrease in
2 housing services exists and the landlord should have known about the condition. (For example,
3 constructive notice may be found when a reasonable inspection would have revealed the
4 condition in the common area at any time or in the unit prior to the commencement of the
5 tenancy.)

6 (e) With respect to Newly Covered Units, the earliest permissible effective date for
7 any rent decrease allowed under this Section 10.10 shall be December 22, 1994; provided,
8 however, that the initial base rent, as defined by Section 37.12(a) of the Rent Ordinance shall
9 include all housing services provided or reasonably expected on May 1, 1994, or as of the
10 commencement of the tenancy, whichever is later.

11 (f) Except where a failure to repair and maintain results in a substantial decrease in
12 housing services, any relief granted by the Board under this section shall preclude relief under
13 Section 10.11 below. This provision shall not limit any civil remedies that would otherwise be
14 available to a tenant or landlord.

15 **Section 10.11 Failure to Perform Ordinary Repair and Maintenance**

16 (Amended March 7, 1989)

17 (a) Up to 60 days following receipt by the tenant of a notice of rent increase, a tenant
18 may petition for a denial of any increase (except certified capital improvements, rehabilitation,
19 and/or energy conservation work) if the landlord has failed to perform requested repair,
20 replacement or maintenance, as required by state and local law.

21 (b) Petitions based on the above grounds must be accompanied by a copy of the
22 notice of rent increase, a statement of the nature, and extent of the necessary repairs and/or
23 maintenance together with supporting documentation.

24 **Section 10.12 Documentation of Gas and Electrical Increases**

25 (Amended August 24, 2004)

26 The following provisions shall apply to utility passthroughs where the notice of rent
27 increase for the utility passthrough was served prior to or on November 1, 2004:

28 (a) A tenant may petition for an arbitration hearing if the landlord has failed to provide

1 the tenant with a clear explanation of the charges for gas and electricity on which an increase is
2 being based.

3 (b) The landlord shall have the burden of proving the calculations upon which this
4 increase is based.

5 (c) A petition based on this section shall be accompanied by the notice of increase.

6 **Section 10.13 Improper Utility Passthrough**

7 (Added August 24, 2004; Amended December 16, 2008, effective January 1,
8 2009)

8 (a) The following provisions shall apply to utility passthroughs where the notice of
9 rent increase for the utility passthrough was served after November 1, 2004 where a Petition For
10 Approval Of The Utility Passthrough was required to be filed under Section 6.16 of these Rules:

11 (i) A tenant may petition for an arbitration hearing if the landlord has
12 increased the tenant's rent based on an increase in utility costs, but (1) has failed to file a
13 petition for approval of the utility passthrough pursuant to Section 6.16 of these Rules, or (2) has
14 failed to discontinue the utility passthrough after twelve months.

15 (ii) The landlord shall have the burden of proving that the utility passthrough
16 has been approved and/or imposed in accordance with Section 6.16 of these Rules.

17 (iii) A petition based on this section shall be accompanied by the notice of
18 increase.

19 (b) The following provisions shall apply to utility passthroughs where the notice of
20 rent increase for the utility passthrough was served after January 1, 2009 where a Petition For
21 Approval Of The Utility Passthrough was not required to be filed under Section 6.16:

22 (i) A tenant may petition for an arbitration hearing if the landlord has
23 increased the tenant's rent based on an increase in utility costs, but (1) did not file a Utility
24 Passthrough Calculation Worksheet with the Rent Board pursuant to Section 6.16 of these
25 Rules; or (2) did not serve the tenant with a copy of the Utility Passthrough Calculation
26 Worksheet, date-stamped by the Rent Board, with the notice of increase for the utility
27 passthrough; or (3) did not properly calculate the utility passthrough or used an incorrect room
28 count; or (4) did not discontinue the utility passthrough after twelve months.

1 (ii) The landlord shall have the burden of proving that the utility passthrough
2 has been approved and/or imposed in accordance with Section 6.16 of these Rules.

3 (iii) A petition based on this section shall be accompanied by the notice of
4 increase.

5 **Section 10.14 Improper Water Revenue Bond Passthrough**

6 (Effective July 20, 2005)

7 (a) Within one year of the effective date of a water revenue bond passthrough, a
8 tenant may petition for an arbitration hearing on the following grounds;

9 (1) The landlord has not properly calculated the passthrough;

10 (2) The passthrough is calculated using an incorrect unit count;

11 (3) The landlord failed to provide a clear written explanation of the charges
12 and the calculation of the passthrough;

13 (4) The unit is not in compliance with applicable laws requiring water
14 conservation devices;

15 (5) The tenant requested a copy of the applicable water bill(s) and the
16 landlord has not provided them;

17 (6) The tenancy began during or after the billing period(s) included in the
18 passthrough calculation;

19 (7) The landlord failed to discontinue the passthrough after it was fully paid.

20 (b) The landlord shall have the burden of proving the accuracy of the calculation that
21 is the basis of the water revenue bond passthrough, and that the unit is in compliance with
22 applicable laws requiring water conservation devices.

23 (c) A petition based on this section shall be accompanied by the notice of the water
24 revenue bond passthrough.

25 **Section 10.15 Tenant Financial Hardship Applications**

(Added July 12, 2016, effective August 13, 2016; amended August 11, 2020)

26 A tenant may seek relief from payment of the following types of rent increases or
27 passthroughs on the grounds of financial hardship by filing a Tenant Financial Hardship
28

1 Application with the Board: Capital Improvement Passthrough; Water Revenue Bond
2 Passthrough; Utility Passthrough; General Obligation Bond Passthrough; and, Operating and
3 Maintenance Expense Increase. However, only that portion of a General Obligation Bond
4 Passthrough that is attributable to obligation bonds approved by the voters on or after November
5 5, 2019 may be deferred due to financial hardship. The Rent Board shall prepare a hardship
6 application form and make it available in multiple languages.

7 (a) Applicability and Time of Filing

8 (1) With respect to any Capital Improvement Passthrough certified pursuant to
9 Section 37.7 of the Ordinance, a tenant may file a Tenant Financial Hardship Application with the
10 Board at any time after receipt of the notice of rent increase or decision of the Administrative
11 Law Judge, whichever is earlier. Payment of the capital improvement passthrough(s) set forth in
12 the hardship application shall be stayed from the date of filing until a decision is made on the
13 Tenant Financial Hardship Application.

14 (2) With respect to a Water Revenue Bond Passthrough, General Obligation Bond
15 Passthrough, or a Utility Passthrough based on a Utility Passthrough Calculation Worksheet filed
16 with the Rent Board, a tenant may file a Tenant Financial Hardship Application with the Board
17 within one year of the effective date of the passthrough. Payment of such passthrough(s) set
18 forth in the hardship application shall be stayed from the date of filing until a decision is made on
19 the Tenant Financial Hardship Application.

20 (3) With respect to an Operating and Maintenance Expense Increase or Utility
21 Passthrough based on a Utility Passthrough Petition, a tenant may file a Tenant Financial
22 Hardship Application with the Board within one year of the effective date of the increase or
23 passthrough. The hardship application cannot be filed until the tenant receives the notice of rent
24 increase or decision of the Administrative Law Judge, whichever is earlier. Payment of the
25 operating and maintenance increase or utility passthrough set forth in the hardship application
26 shall be stayed from the date of filing until a decision is made on the Tenant Financial Hardship
27 Application.

28 (b) Tenant Financial Hardship Application Standards and Process

1 (1) Standards for Establishing Financial Hardship. A tenant will qualify under
2 Section 10.15 for relief from payment of a certified Capital Improvement Passthrough, Water
3 Revenue Bond Passthrough, Utility Passthrough, General Obligation Bond Passthrough and/or
4 Operating and Maintenance Expense Increase if the tenant demonstrates that one of the
5 following financial hardship situations applies:

6 (A) Tenant is a recipient of means-tested public assistance, such as
7 Social Security Supplemental Security Income (SSI), General Assistance (GA), Temporary
8 Assistance for Needy Families (TANF), CalFresh (SNAP/Food Stamps) or California Work
9 Opportunity and Responsibility to Kids (CalWORKS); or,

10 (B) Gross household income is less than 80% of the current Unadjusted
11 Area Median Income (AMI) as published by the U.S. Department of Housing and Urban
12 Development (HUD) for the "Metro Fair Market Rent Area" that includes San Francisco; and rent
13 charged is greater than 33% of gross household income; and assets, excluding non-liquid assets
14 and retirement accounts, do not exceed asset amounts permitted by the Mayor's Office of
15 Housing when determining eligibility for below market rate (BMR) home ownership; or,

16 (C) Exceptional circumstances exist, such as excessive medical bills.

17 (2) Procedures for Filing. A Tenant Financial Hardship Application must be filed:

18 (A) By each occupant in the unit who is 18 years of age or older, except
19 not by any subtenant who pays rent to the master tenant (the gross income of the master tenant
20 must include the amount of the subtenant's rent payment);

21 (B) Under penalty of perjury, stating that the tenant qualifies under one of
22 the standards in Section 10.15(b)(1)(A), (B), or (C);

23 (C) With documentation demonstrating the tenant's qualifications; and,

24 (D) With an acknowledgment that the Rent Board will provide a copy of
25 the Tenant Financial Hardship Application to the landlord.

26 (3) Hearing Options, Decision.

27 (A) A decision on the Application will be issued administratively by a Rent
28 Board Administrative Law Judge unless a hearing is requested by the landlord within fifteen days

1 of the date the completed Tenant Financial Hardship Application is mailed to the landlord by the
2 Rent Board, or unless a Rent Board Administrative Law Judge otherwise determines that a
3 hearing is needed.

4 (B) Landlord Request for Hearing, Procedures.

5 (i) A landlord's request for a hearing on the Application shall
6 specify the claim(s) in the Application that the landlord disputes, and attach any relevant
7 documentation.

8 (ii) A Rent Board Administrative Law Judge will review any
9 landlord request for hearing, to determine whether a hearing is necessary to resolve disputed
10 facts.

11 (iii) If the landlord's request for a hearing is granted, it will be the
12 landlord's burden to demonstrate that the tenant's financial hardship eligibility under Section
13 10.15(b)(1) criteria, as stated in the Application, has not been established.

14 (iv) If it is determined that a hearing as requested by the landlord
15 is not needed to determine the facts, a decision on the Application will be issued administratively
16 by a Rent Board Administrative Law Judge.

17 (4) Term of Relief. Relief from payment of a certified capital improvement
18 passthrough, water revenue bond passthrough, utility passthrough, general obligation bond
19 passthrough, and/or operating and maintenance expense increase may be for an indefinite
20 period, or for a limited period of time, all subject to the landlord's request to reopen the case if
21 the landlord has information that the tenant is no longer eligible.

22 (5) Change in Tenant Eligibility Status. If a tenant is granted relief from payment
23 of a certified capital improvement passthrough, water revenue bond passthrough, utility
24 passthrough and/or operating and maintenance expense increase under Section 10.15, and
25 subsequently the tenant is no longer eligible for such relief:

26 (A) The tenant shall notify the Rent Board of this changed eligibility status
27 in writing within 60 days, with a copy to the landlord.

28 (B) Whether or not the tenant notifies the Rent Board and landlord as

1 provided in Section 10.15(b)(5)(A), the landlord may notify the Rent Board if the landlord has
2 information that the tenant is no longer eligible, with a copy to the tenant.

3 (C) Upon receipt of notice under Section 10.15(b)(5)(A) or (B), a Rent
4 Board Administrative Law Judge shall decide whether to grant or deny the previously granted
5 relief. That decision may be made administratively by a Rent Board Administrative Law Judge
6 without a hearing unless the Administrative Law Judge determines that a hearing is needed, or
7 unless the landlord or tenant requests a hearing. Any such hearing shall be promptly scheduled.

8 (6) Any decision granting or denying the Tenant Financial Hardship Application,
9 or any subsequent decision on a previously granted Tenant Financial Hardship Application, may
10 be appealed to the Rent Board. Appeals of decisions on a tenant's hardship application shall be
11 governed by Ordinance Section 37.8(f). The Rent Board's final decision will be subject to
12 judicial review by writ of administrative mandamus in the San Francisco Superior Court.

13 (c) Notice to Tenants Regarding Tenant Financial Hardship Applications

14 The Rent Board shall provide written notice in multiple languages of the Tenant Financial
15 Hardship Application procedures to each affected unit with a copy of the landlord's capital
16 improvement petition, utility passthrough petition, general obligation bond passthrough, and
17 operating and maintenance petition. The Rent Board shall include notice of the Tenant Financial
18 Hardship Application procedures on the utility passthrough worksheet and water revenue bond
19 passthrough worksheet. The Rent Board shall also provide written notice in multiple languages
20 of the Tenant Financial Hardship Application procedures to each affected unit with each
21 Administrative Law Judge decision regarding capital improvement passthroughs, utility
22 passthroughs and operating and maintenance rent increase.

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1 **PART XI HEARINGS**

2 **Section 11.10 Time of Hearing; Consolidation**

3 (Amended September 19, 1989; and October 20, 1998)

4 Within a reasonable time following the filing of a petition and payment of the estimator
5 fee, if required, the petition shall be referred to a Administrative Law Judge. If the petition is for a
6 determination of disability pursuant to Ordinance Sections 37.9(i)(1)(B)(i) and (ii), such hearing
7 may be conducted by a Administrative Law Judge or other designee of the Rent Board. That
8 Administrative Law Judge shall hold the hearing within forty-five (45) days of the date of the filing
9 of the petition. Where petitions are filed by or for tenants of a single housing complex, and there
10 are common material issues of law or fact, those petitions shall be consolidated for hearing,
11 unless to do so would be unfair to either party. Written notice of the hearing, by mail, shall be
12 given at least ten (10) days prior to the date of the hearing. A declaration under penalty of
13 perjury stating the date and place of the mailing of such notice and stating to whom and at what
14 addresses the notice was sent shall be retained in the file of each case.

15 **Section 11.11 Notice of Hearing; Response**

16 Written notice of the hearing shall be given by mailing a notice stating the date, time, and
17 place of the hearing and generally describing what will take place, who has the burden of proof
18 and the types of evidence likely to be useful at the hearing to the responding party. The
19 responding party may file at the Board office a written response to the petition at any time before
20 the hearing. Any response so filed may not be considered as evidence and is not a substitute for
21 appearance at the hearing. If a response has been filed, the Administrative Law Judge shall give
22 the petitioner a reasonable opportunity to review it and to respond to it as argument by the
23 respondent.

24 **Section 11.12 Notice to Attorney**

25 Whenever any document other than evidence containing the attorney's name, address,
26 and telephone number is filed by an attorney on behalf of a party, or whenever any party so
27 requests in a notice signed and dated by the party and giving the name, address, and telephone
28 number of the party's attorney, all notices sent by the Board thereafter shall be sent to the party's

1 attorney instead of the party. Notices will not be sent both to the party and to the attorney. A
2 request to send notices to a party's attorney may be withdrawn at any time by a written notice to
3 that effect signed and dated by the party and filed with the Board.

4 **Section 11.13 Postponements**

5 (Amended June 18, 1991)

6 (a) The Administrative Law Judge or Commissioners or designated staff member
7 may grant a postponement of a hearing only for good cause and in the interest of justice.

8 (b) "Good cause" shall include, but is not limited, to the following:

9 (1) the illness of a party, an attorney or other authorized representative of a
10 party, or a material witness of a party;

11 (2) verified travel outside of San Francisco scheduled before the receipt of
12 notice of the hearing; or,

13 (3) any other reason which makes it impractical to appear on the scheduled
14 date due to unforeseen circumstances or verified pre-arranged plans which cannot be changed.
15 Mere inconvenience or difficulty in appearing shall not constitute "good cause."

16 (c) Parties may agree to a postponement at any time. Where the parties have
17 agreed to a postponement, the Board shall be notified in writing at the earliest date possible.

18 (d) Requests for postponement of a hearing must be made in writing at the earliest
19 date possible, with supporting documentation attached. The person requesting a postponement
20 should notify the other parties of the request and provide them with any supporting
21 documentation.

22 **Section 11.14 Absence of Parties**

23 (Amended March 11, 1986)

24 (a) If a party fails to appear at a properly noticed hearing or fails to file a written
25 excuse for non-appearance prior to a properly noticed hearing, the Administrative Law Judge
26 may, as appropriate: continue the case; decide the case on the record in accordance with these
27 rules; dismiss the case with prejudice; or proceed to a hearing on the merits.

28 (b) If the party who does not appear bases an appeal substantially on the fact that

1 notice of the hearing was not received, the appellant must attach a declaration under penalty of
2 perjury on a form provided by the Rent Board. The declaration must include facts to support the
3 contention that the notice was not received.

4 **Section 11.15 Mediation**

5 (Amended March 7, 1989; November 19, 1996)

6 In any case that the Board may deem appropriate, the Administrative Law Judge may
7 make an earnest effort to settle the controversy by mediation. The parties shall be given written
8 notice of the mediation session in accordance with Sections 11.10 (Time of Hearing;
9 Consolidation) and 11.11 (Notice of Hearing; Response). Section 11.13 governing postponement
10 of hearings shall apply to mediation sessions. Written notice of the mediation session shall
11 explain the following: that participation in a mediation session is voluntary; that a request by any
12 party for an arbitration hearing instead of a mediation session received prior to the scheduled
13 mediation shall be granted and held at the date and time of the scheduled mediation session;
14 that any request by any party for an arbitration hearing instead of a mediation session received
15 after the commencement of the mediation session but before the Administrative Law Judge has
16 communicated privately with either party in a caucus shall be granted and held at the date and
17 time of the scheduled mediation session; that an arbitration hearing will be conducted instead of
18 a mediation session if the responding party fails to appear; and that the petition will be dismissed
19 with prejudice if the petitioning party fails to appear. Sections 11.14(b) (Absence of Parties),
20 11.22 (Personal Appearances and Representation by Agent) and 11.23 (Legal Representation or
21 Assistance of an Interpreter in Certain Cases) shall apply to mediations. If the parties fail to
22 settle their differences through the mediation process, an arbitration hearing on the merits will be
23 scheduled in approximately thirty to forty-five days with a different Administrative Law Judge.
24 The Administrative Law Judge must fully inform the parties of their rights under the Ordinance
25 before any mediation agreement becomes binding. To the extent possible, mediation
26 agreements shall be self-enforcing. The Administrative Law Judge shall not allow any tenant to
27 waive her/his rights to the lawful base rent.

1 **Section 11.16 Refusal of Hearing in Certain Instances**

2 (a) The Administrative Law Judge may dismiss any petition, complaint or request
3 without a hearing if the Administrative Law Judge concludes that it is frivolous. The
4 Administrative Law Judge shall file a written statement with the Board setting forth the basis
5 upon which the decision rests.

6 (b) The Administrative Law Judge may decide any matter without a hearing if it
7 appears from the record prior to a hearing that there is no genuine issue as to any material fact.

8 **Section 11.17 Conduct of Hearing**

9 (Amended March 7, 1989; Subsection (c) amended January 18, 1994)

10 (a) Oral evidence shall be taken only on oath or affirmation.

11 (b) Each party shall have these rights: to call and examine witnesses; to introduce
12 exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though
13 that matter was not covered in the direct examination; to impeach any witness regardless of
14 which party first called him or her to testify; and to rebut the evidence against him or her. If
15 respondent does not testify in his or her own behalf he or she may be called and examined as if
16 under cross-examination.

17 (c) The hearing need not be conducted according to technical rules relating to
18 evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be
19 admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the
20 conduct of serious affairs, regardless of the existence of any common law or statutory rule which
21 might make improper the admission of such evidence over objection in civil actions. For petitions
22 filed on or after January 19, 1994, in the absence of a timely and proper objection, relevant
23 hearsay evidence is admissible for all purposes. Proffered hearsay evidence to which timely and
24 proper objection is made is admissible for all purposes, including as the sole support for a
25 finding, if (a) it would otherwise be admissible under the rules of evidence applicable in a civil
26 action or (b) the Administrative Law Judge determines, in his or her discretion, that, based on all
27 the circumstances, it is sufficiently reliable and trustworthy. The rules of privilege shall be
28 effective to the extent that they are otherwise required by statute to be recognized at the hearing,

1 and irrelevant and unduly repetitious evidence shall be excluded.

2 **Section 11.18 Burden of Proof**

3 (Amended March 11, 1986)

4 In any proceeding before the Board or any Administrative Law Judge thereof, the
5 landlord shall have the burden of proving that an increase in rent in excess of the allowable
6 annual rent increase is justified. The tenant shall have the burden of proving that there has been
7 (1) an increase in the dollar amount of the rent in excess of the limitations, (2) a rent increase
8 due to reduction in housing services without a corresponding reduction in rent, and/or (3) a
9 failure to perform ordinary maintenance and repair as required under state and local law.

10 **Section 11.19 Stipulations**

11 The parties, by stipulation in writing filed with the Administrative Law Judge, may agree
12 upon the facts or any portion thereof involved in the hearing. The parties may also stipulate as to
13 the testimony that would be given by a witness if the witness were present. The Administrative
14 Law Judge may require additional evidence on any matter covered by stipulation.

15 **Section 11.20 Record of Proceedings**

16 (Amended September 19, 1989; November 19, 1996)

17 All proceedings before the Administrative Law Judge or the Board, except investigatory
18 review of Reports of Alleged Wrongful Eviction and mediation sessions, shall be recorded by
19 tape or other mechanical means. A mediation agreement itself may be recorded by tape. The
20 Board may order a transcript of a recorded proceeding or mediation agreement, provided the
21 Board makes a copy available to the parties at the parties' expense. A party may order a
22 transcript, provided that such party makes a copy for the Board and offers a copy to the adverse
23 party without charge.

24 **Section 11.21 Party Use of Reporter**

25 (Amended November 19, 1996)

26 A party desiring to preserve a record of a proceeding, except a mediation session, may
27 employ a reporter, provided that copies of any transcript are supplied to the Board and offered to
28 the adverse party or parties without charge.

1 **Section 11.22 Personal Appearances and Representation by Agent**

2 In any proceeding before the Administrative Law Judge or Board, each party may appear
3 personally or by an attorney, or by a representative designated in writing by the party, other than
4 an attorney. Each party, attorney, other representative of a party, and witness appearing at the
5 hearing shall file a written notice of appearance and oath with the Administrative Law Judge,
6 which notice and oath shall become part of the record. No exception to the rule (11.17) against
7 basing any Finding of Fact solely on hearsay evidence inadmissible under the California
8 Evidence Code will be made on account of the absence of a party.

9 **Section 11.23 Legal Representation or Assistance of an Interpreter in Certain Cases**
10 (Amended July 20, 2004)

11 Both parties are entitled to legal representation at any stage of the proceeding. If it shall
12 appear to the Administrative Law Judge that the issue or facts in a matter before him or her are
13 so involved or intricate that in the interests of justice, of conserving time or of facilitating the
14 preparation of an adequate record, a party ought to be represented by an attorney or an
15 interpreter, the Administrative Law Judge may urge such party to procure such services. If the
16 party agrees to procure an attorney or an interpreter, the Administrative Law Judge shall allow a
17 party a reasonable period of time to do so. When this occurs, the opposing party shall be
18 advised, and the matter may be continued for this purpose. If the Administrative Law Judge
19 determines that a party cannot afford the services of an interpreter, the Board shall assist in
20 obtaining an interpreter at no cost to the party. The term "interpreter" shall include persons
21 trained in the international language for the deaf.

22 **Section 11.24 Decisions of the Administrative Law Judge**

23 (a) The Administrative Law Judge shall make written findings of fact and a written
24 decision as to whether the noticed or proposed rent increase exceeding the limitations of Section
25 37.3 is justified. The decision of the Administrative Law Judge shall contain the date upon which
26 a rent increase or decrease shall become effective.

27 (b) If a decrease in rent is granted, the Administrative Law Judge shall state when the
28 decrease commenced, the value of the decrease and the nature of the service. The decision

1 shall also state to what amount the rent can be increased when, and if, the service is restored.

2 (c) If an increase is denied for failure to perform ordinary maintenance and repair, the
3 Administrative Law Judge shall specifically enumerate the repairs necessary, and the amount to
4 which the rent can be increased when those repairs are completed.

5 **Section 11.25 Expedited Hearings**

6 (Added by Ordinance No. 133-92, effective June 20, 1992)

7 (a) Applicability. In the following cases, a tenant or landlord may obtain an expedited
8 hearing and order:

9 (1) Any landlord capital improvement petition where the proposed increase for
10 certified capital improvement costs does not exceed the greater of 10% or \$30.00 of a tenant's
11 base rent and the parties file a signed stipulation setting forth the cost of the capital
12 improvements on a form provided by the Rent Board;

13 (2) Any tenant petition alleging decreased housing services with a past value
14 not exceeding \$1,000.00 as of the date the petition is filed;

15 (3) Any tenant petition alleging the landlord's failure to repair and maintain the
16 premises as required by state and local law, provided that the tenant attaches to the petition
17 documentary evidence showing that the unrepaired/unmaintained conditions constitute violations
18 of applicable health or safety codes;

19 (4) Any tenant petition alleging unlawful rent increases where the parties file a
20 signed stipulation setting forth the tenant's rent history on a form provided by the Rent Board and
21 the rent overpayments do not exceed a total of \$1,000.00 as of the date the petition is filed;

22 (5) Any tenant or landlord petition concerning only jurisdictional questions
23 where the parties file a signed stipulation setting forth the relevant facts.

24 (b) Application for Expedited Hearing and Order. In order to obtain an expedited
25 hearing and order, the petitioner must file an application for an expedited hearing and order,
26 including the written consent of all parties, on a form provided by the Rent Board. The
27 application, and the applicable stipulations and documentary evidence required in subsection (a)
28 above, must be filed at the time of filing the petition in order to obtain an expedited hearing date

1 within twenty-one (21) calendar days of the filing of the application. Within seven (7) calendar
2 days of the simultaneous filing of the application, stipulations and petition, a staff member shall
3 determine whether an expedited hearing is appropriate under subsection (a) above.

4 (1) If an expedited hearing is found to be appropriate, an expedited hearing
5 shall be scheduled within twenty-one (21) calendar days of the filing of the application for an
6 expedited hearing and order. Written notice of the expedited hearing date shall be mailed to all
7 parties at least ten (10) calendar days prior to the date of the expedited hearing. A declaration
8 under penalty of perjury stating the date and place of the mailing of such notice and stating to
9 whom and at what addresses the notice was sent shall be retained in the file of each case. The
10 notice shall state the date, time and place of the hearing and generally describe what will take
11 place, who has the burden of proof and the types of evidence likely to be useful at the hearing.

12 (A) Postponement of Expedited Hearing. Requests for postponement
13 of an expedited hearing date shall be governed by Section 11.13 (Postponements) above. If an
14 expedited hearing is postponed, it will be rescheduled at the earliest available date which may
15 not be within twenty-one (21) calendar days of the filing of the application.

16 (2) If an expedited hearing is not appropriate under subsection (a) above,
17 written notice of rejection of the application shall be mailed to the parties within a reasonable
18 time following the filing of the application and a hearing on the petition shall be scheduled within
19 forty-five (45) calendar days of the filing of the petition. Written notice of the hearing shall be
20 mailed to the parties in accordance with Sections 11.10 (Time of Hearing; Consolidation) and
21 11.11 (Notice of Hearing; Response) above. The hearing shall be conducted in accordance with
22 Ordinance Sections 37.7(g) (Certification Hearings) or 37.8(e) (Hearings).

23 (c) Late Application for Expedited Hearing and Order. If any portion of the
24 application, written consent of all parties, required stipulations or documentary evidence
25 necessary for obtaining an expedited hearing and order are filed at any time after the petition is
26 filed, a hearing on the petition shall be scheduled within forty-five (45) calendar days of the filing
27 of the petition. Prior to commencement of the hearing, the Administrative Law Judge shall
28 determine if an expedited hearing and order are appropriate under subsection (a) above. Where

1 an expedited hearing and order are appropriate, the Administrative Law Judge shall conduct the
2 hearing in accordance with the expedited hearing procedures set forth in subsections (e) and (f)
3 below, provided that all parties sign a written waiver of the right to receive an expedited hearing
4 date within twenty-one (21) calendar days of the filing of the application.

5 (d) Application for Expedited Hearing and Order at the Hearing. Even if no application
6 for an expedited hearing and order is filed prior to commencement of the hearing, the
7 Administrative Law Judge may determine that an expedited hearing and order are appropriate
8 under subsection (a) above and offer the parties an opportunity to file an application at the
9 hearing and as long as the record in the case remains open. The Administrative Law Judge must
10 fully inform the parties of their rights under the Ordinance before accepting the application.

11 (e) Conduct of Expedited Hearing. Expedited hearings shall be conducted in
12 accordance with Sections 11.17 (Conduct of Hearing) and 11.22 (Personal Appearances and
13 Representation by Agent) above. Burden of proof requirements set forth in Section 11.18
14 (Burden of Proof) above are applicable. All parties are entitled to legal representation or the
15 assistance of an interpreter at any stage of the proceeding. No record of the hearing shall be
16 maintained for any purpose.

17 (f) Order of the Administrative Law Judge. The Administrative Law Judge shall issue
18 a written order deciding the petition no later than ten (10) calendar days after the hearing. The
19 Administrative Law Judge shall make no written findings of fact. The Administrative Law Judge
20 shall order payment or refund of amounts owing to a party or parties, if amounts are owed, within
21 a period of time not to exceed forty-five (45) calendar days of the mailing of the order. If amounts
22 owed are not paid or refunded within forty-five (45) calendar days, the Administrative Law Judge
23 may order the amount(s) added to or offset against future rents.

24 (1) For expedited hearings conducted pursuant to subsection (a)(1) above in
25 which the petitioner prevails, the Administrative Law Judge's written order shall contain the date
26 upon which a capital improvement passthrough shall become effective, the monthly passthrough
27 amount per unit and the applicable amortization period(s).

28 (2) For expedited hearings conducted pursuant to subsection (a)(2) above in

1 which the petitioner prevails, the Administrative Law Judge's written order shall contain the
2 nature of each substantially decreased housing service, the value of the decrease and the total
3 amount of the past rent reduction corresponding with the decreased housing service(s). The
4 order will also include the amount of any prospective rent reduction for a continuing decreased
5 housing service. The order shall state under what conditions the landlord may be able to restore
6 the rent reductions.

7 (3) For expedited hearings conducted pursuant to subsection (a)(3) above in
8 which the petitioner prevails, the Administrative Law Judge's written order shall contain the date
9 and amount of the deferred rent increase, a specific enumeration of the necessary repairs and/or
10 maintenance and the amount to which the rent can be increased when those repairs and/or
11 maintenance are completed.

12 (4) For expedited hearings conducted pursuant to subsection (a)(4) above in
13 which the petitioner prevails, the Administrative Law Judge's written order shall contain the dates
14 of each relevant rent increase, the amount of rent actually paid by the tenant, the lawful amount
15 of rent owed by the tenant and the amount of rent overpayments.

16 (5) For expedited hearings conducted pursuant to subsection (a)(5) above,
17 the Administrative Law Judge's written order shall state whether the subject rental unit(s) is/are
18 subject to the jurisdiction of the Rent Board.

19 (g) Stay of Administrative Law Judge's Order. The Administrative Law Judge's written
20 order shall be stayed for fifteen (15) calendar days from the date of mailing the order.

21 (h) Objection to Administrative Law Judge's Order. Any objection to the
22 Administrative Law Judge's order must be received by the Rent Board within fifteen (15)
23 calendar days of the mailing of the order unless such time limit is extended for good cause by a
24 staff member. "Good cause" shall include, but is not limited to, the following: verified illness or
25 death of a party which prevented the filing of a timely objection; verified absence from the party's
26 mailing address during the fifteen (15) calendar days following the mailing of the order; any other
27 reason which made it impractical to file a timely objection. Mere inconvenience or difficulty in
28 filing the objection shall not constitute "good cause." The objection to the Administrative Law

1 Judge's order shall be filed on a form provided by the Rent Board. The form shall state the basis
2 of the objection, and shall be accompanied by sufficient copies to distribute to each party, along
3 with one set of business-sized envelopes (with no return address) addressed to each party, with
4 first class postage affixed to each envelope.

5 (1) Effect of Timely Objection. The timely filing of an objection will
6 automatically dissolve the Administrative Law Judge's order. The petitioning party may refile the
7 petition for hearing under any other appropriate hearing procedure set forth in the Ordinance. To
8 the greatest extent possible, the new case will be assigned for hearing to the same
9 Administrative Law Judge who issued the dissolved order.

10 (2) Finality of Administrative Law Judge's Order. If no timely objection to the
11 Administrative Law Judge's order is made, the order becomes final. The order is not subject to
12 appeal to the Board under Ordinance Section 37.8(f) nor is it subject to judicial review pursuant
13 to Ordinance Section 37.8(f)(9).

14 (i) Consolidation. To the greatest extent possible, and only with the consent of all
15 parties, expedited hearings with respect to a given building shall be consolidated.
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1 **PART XII LEGAL ACTIONS UNDER ORDINANCE SECTION 37.9(e)**

2 **Section 12.10 Reports of Alleged Wrongful Evictions; Notice to Parties**

3 The Board shall adopt a form for reports of alleged wrongful evictions. Upon submission
4 to the Board of a completed Report of Alleged Wrongful Eviction, the Board shall send a notice
5 acknowledging receipt of the report and summarizing the rights and responsibilities of landlords
6 and tenants regarding possession of, and eviction from, residential rental units and unlawful
7 detainer proceedings to both landlord and tenant, without fee.

8 **Section 12.11 Investigation of Reports of Alleged Wrongful Eviction**

9 (a) The Executive Director shall investigate a Report of Alleged Wrongful Eviction to
10 determine if there is evidence of any of the following:

- 11 (1) A landlord is evicting more than one tenant at approximately the same
12 time;
- 13 (2) that an eviction may be in retaliation for a dispute arising from a tenant's
14 exercising of his or her rights under the Ordinance;
- 15 (3) that a dispute over the proper interpretation of the Ordinance is involved in
16 an eviction or eviction attempt;
- 17 (4) that after a tenant has been required to vacate a rental unit, it appears that
18 the eviction was effected by fraud or in bad faith; or
- 19 (5) a policy issue of city-wide importance is raised.

20 (b) If the Executive Director finds that none of the above acts of unlawful eviction is
21 met regarding a case of alleged wrongful eviction, the tenant shall be informed of such decision
22 immediately and in writing.

23 **Section 12.12 Hearing of Alleged Wrongful Eviction**

24 If the Executive Director determines that there is evidence of any of the acts of unlawful
25 eviction set forth in Section 12.11, the Executive Director shall mail a notice to the complainant
26 and to the allegedly wrongfully evicting landlord that a hearing has been set before a
27 Administrative Law Judge of the Board at the date no less than five (5) and no more than twenty
28 (20) days from the date of mailing of the notice, to consider whether or not the landlord has

1 acted or is acting in violation of Section 37.9(a) A copy of the tenant's Report shall be sent with
2 such notice to the landlord. Both landlord and tenant shall be notified that they or their
3 representatives may address the Administrative Law Judge at such meeting on the question of
4 the existence or absence of a violation of Section 37.9(a) of the Ordinance, may make sworn
5 statements if they wish, and may invite witnesses to speak on the matter.

6 At the conclusion of the hearing, the Administrative Law Judge shall report to the Board a
7 summary of the evidence produced at the hearing. The Board may elect to hold additional
8 hearings. If the Board finds, by a vote of at least three (3) members, that it appears there has
9 been or there exists an eviction or attempted eviction in violation of the Ordinance by the
10 landlord, the Board's public consideration of the matter shall end. Thereafter, the matter shall be
11 one of prospective or actual litigation and shall be discussed in Executive Session unless, and to
12 the extent, the members unanimously approve public discussion thereof. Notice of a decision by
13 the Board to take no action on an alleged wrongful eviction shall be sent to the parties and such
14 decision shall not prejudice a request by the tenant for further consideration upon the discovery
15 of new evidence.

16 **Section 12.13 Legal Action**

17 Where the Board first finds an eviction or attempted eviction to be in violation of the
18 Ordinance, the Board shall decide whether or not to commence legal action against the landlord
19 requiring the vote of three (3) or more members.

20 **Section 12.14 Evictions under Section 37.9(a)(8)**

(Amended June 18, 1991; Subsection (c) amended March 7, 1995;
21 Subsection (d) added October 20, 1998; amended June 10, 2008; Subsections
22 (a)-(d) amended and Subsections (e)-(f) added November 21, 2017, effective
January 1, 2018)

23 (a) **Definition of Landlord.** For purposes of an eviction under Section 37.9(a)(8) of
24 the Ordinance, the term "landlord" shall mean a natural person, or group of natural persons, and
25 for evictions under Ordinance Section 37.9(a)(8)(i) only, the term "landlord" shall also mean two
26 individuals registered as Domestic Partners as defined in San Francisco Administrative Code
27 Chapter 62.1-62.8, who in good faith hold a recorded fee interest in the property and meet one of
28 the following requirements:

1 (1) held a recorded fee interest of at least 10%, or a recorded equitable
2 interest under contract of sale of at least 10%, or in the case of Domestic Partners a combined
3 ownership of record of at least 10%, which interest was recorded on or before February 21,
4 1991, and continues to hold at least such a 10% interest on the date of service of the notice to
5 vacate; or

6 (2) holds a recorded fee interest of at least 25%, or a recorded equitable
7 interest under contract of sale of at least 25%, or in the case of Domestic Partners a combined
8 ownership of record of at least 25%, on the date of service of the notice to vacate.

9 (b) **Information to Accompany Notice to Vacate.** In addition to general eviction
10 notice requirements, a landlord who endeavors to recover possession under Ordinance Section
11 37.9(a)(8) shall provide the tenant with the following documents and information in writing on or
12 before service of the notice to vacate and file a copy of same with the Rent Board within 10 days
13 after service of the notice to vacate on the tenant, together with a copy of the notice to vacate
14 and proof of service upon the tenant:

15 (1) the identity and percentage of ownership of all persons holding a full or
16 partial percentage ownership in the property;

17 (2) the name(s) of the landlord endeavoring to recover possession and, if
18 applicable, the name(s) and relationship of the relative(s) for whom possession is being sought
19 and a description of the current residence of the person(s) for whom possession is being sought;

20 (3) the dates the current percentages of ownership were recorded;

21 (4) a description of all residential properties owned, in whole or in part, by the
22 landlord and, if applicable, a description of all residential properties owned, in whole or in part, by
23 the landlord's relative for whom possession is being sought;

24 (5) the current rent for the unit and a statement that if the unit is offered for
25 rent during the five-year period following service of the notice to vacate under Section 37.9(a)(8),
26 the tenant has the right to re-rent the unit at the same rent, as adjusted by Ordinance Section
27 37.9B(a);

28 (6) the contents of Ordinance Section 37.9B, by providing a copy of same;

1 (7) the right the tenant(s) may have to relocation costs under Ordinance
2 Section 37.9C, the amount of those relocation costs, and a copy of Section 37.9C;

3 (8) a declaration executed by the landlord under penalty of perjury stating:
4 (i) the reason why the landlord or relative is moving from his/her current residence to the unit for
5 which possession is being sought; (ii) that the landlord seeks to recover possession of the unit in
6 good faith, without ulterior reasons and with honest intent, for use or occupancy as the principal
7 residence of the landlord or the landlord's relative (identified by name and relation to the
8 landlord), for a period of at least 36 continuous months, as set forth in Ordinance Sections
9 37.9(a)(8)(i) and (ii); (iii) whether the landlord served a notice to vacate pursuant to Ordinance
10 Section 37.9(a)(8) for a different unit; and, (iv) whether the landlord has recovered possession of
11 other rental units in the City and County of San Francisco for any reason under Ordinance
12 Section 37.9(a) other than nonpayment of rent in which the tenant displaced from such rental
13 unit had resided for at least 36 consecutive months;

14 (9) a warning that the tenant must submit a statement to the landlord within
15 30 days of service of the notice to vacate, with supporting evidence, if the tenant claims to be a
16 member of a protected class under Ordinance Sections 37.9(i) or (j), and that failure to do so
17 shall be deemed an admission that the tenant is not protected by Sections 37.9(i) or (j);

18 (10) a form prepared by the Rent Board stating that a tenant's failure to timely
19 act in response to a notice to vacate may result in a lawsuit by the landlord to evict the tenant,
20 that advice regarding the notice to vacate is available from the Rent Board, and that the tenant
21 may be eligible for affordable housing programs through the Mayor's Office of Housing and
22 Community Development; and

23 (11) a blank change of address form prepared by the Rent Board that the
24 tenant can use to keep the Rent Board apprised of any future change of address.

25 (c) **Principal Place of Residence.** For purposes of an eviction under Section
26 37.9(a)(8) of the Ordinance, a landlord or landlord's relative can have only ONE "principal place
27 of residence" which is defined as the permanent or primary home of the party claiming that a unit
28 has that status attached to it. It is a unit that the party occupies for more than temporary or

1 transitory purposes. Evidence that a unit is or is intended to be the party's "principal place of
2 residence" includes, but is not limited to, the following elements, a compilation of which lends
3 greater credibility to the claim of "principal place of residence of a party" whereas the presence
4 of only one element may not support such claim:

5 (1) the subject premises are listed as the party's place of residence on any
6 motor vehicle registration, driver's license, automobile insurance policy, homeowner's or renter's
7 insurance policy, and with the party's current employer or any public agency, including State and
8 local taxing authorities;

9 (2) utilities are installed under the party's name at the subject premises;

10 (3) the party's personal possessions have been moved into the subject
11 premises;

12 (4) a homeowner's tax exemption has been issued in the party's name for the
13 subject premises;

14 (5) the party's current voter registration is for the subject premises;

15 (6) a U.S. Postal Change of Address form has been filed requesting that mail
16 be forwarded to the subject premises;

17 (7) the subject premises are the place the party normally returns to as his/her
18 home, exclusive of military service, hospitalization, vacation, or travel necessitated by
19 employment;

20 (8) notice to move at another dwelling unit was given in order to move into the
21 subject premises; and

22 (9) the party sold or placed on the market for sale the home he/she occupied
23 prior to the subject premises.

24 (d) **Definition of Disability for Protected Status.** A tenant is disabled under
25 Ordinance Section 37.9(i)(1)(B)(i) if the tenant meets the standard for blindness or disability
26 under the federal Supplemental Security Income/California State Supplemental Program
27 (SSI/SSP). In determining whether a tenant is disabled, a finder of fact shall consider relevant
28 evidence, including:

- 1 (1) findings by any government entity concerning a disability;
- 2 (2) testimony concerning the disability; and
- 3 (3) medical evidence concerning the disability.

4 (e) **Evidence of a Lack of Good Faith.** For purposes of an eviction under Section
5 37.9(a)(8) of the Ordinance, evidence that is relevant to determining whether a landlord acted or
6 is acting in good faith may include, but is not limited to, any of the following:

- 7 (1) the landlord has failed to file the notice to vacate with the Rent Board as
8 required by Ordinance Sections 37.9(c) and 37.9B(c);
- 9 (2) the landlord or relative for whom the tenant was evicted did not move into
10 the rental unit within three months after the landlord recovered possession and then occupy said
11 unit as that person's principal residence for a minimum of 36 consecutive months;
- 12 (3) the landlord or relative for whom the tenant was evicted lacks a legitimate,
13 bona fide reason for not moving into the unit within three months after the recovery of
14 possession and/or then occupying said unit as that person's principal residence for a minimum of
15 36 consecutive months;
- 16 (4) the landlord did not file a Statement of Occupancy with the Rent Board as
17 required by Ordinance Section 37.9(a)(8)(vii) and Section 12.14(f) of these Rules and
18 Regulations;
- 19 (5) the landlord violated Ordinance Section 37.9B during the five-year period
20 following service of the notice to vacate under Ordinance Section 37.9(a)(8) by renting the unit to
21 a new tenant at a rent greater than that which would have been the rent had the tenant who had
22 been required to vacate remained in continuous occupancy and the rental unit remained subject
23 to the Ordinance;
- 24 (6) the landlord served a notice to vacate pursuant to Ordinance Section
25 37.9(a)(8) for a different unit and has not sought a rescission or withdrawal of that notice;
- 26 (7) the landlord has recovered possession of multiple rental units in the same
27 building within 180 days of the service of the notice to vacate pursuant to Ordinance Section
28 37.9(a)(8); and/or

1 (8) the landlord completed buyout negotiations as defined in Ordinance
2 Section 37.9E(c) with any other tenant(s) in the building.

3 (f) **Statement of Occupancy.** A landlord who seeks to recover possession of a unit
4 pursuant to Ordinance Section 37.9(a)(8) on or after January 1, 2018 must complete a
5 Statement of Occupancy under penalty of perjury on a form to be prepared by the Rent Board
6 that discloses whether the landlord has recovered possession of the unit. The landlord shall file a
7 Statement of Occupancy with the Rent Board within 90 days after the date of service of the
8 notice to vacate pursuant to Ordinance Section 37.9(a)(8), and shall file an updated Statement of
9 Occupancy every 90 days thereafter; provided, however, if the Statement of Occupancy
10 discloses that the landlord has recovered possession of the unit, the landlord shall then be
11 required to file updated Statements of Occupancy once a year for five years, no later than 12
12 months, 24 months, 36 months, 48 months and 60 months after the date the landlord recovered
13 possession of the unit. Each Statement of Occupancy filed after the landlord has recovered
14 possession of the unit shall disclose the date of recovery of possession. If the Statement of
15 Occupancy discloses that the landlord is no longer endeavoring to recover possession of the unit
16 under Ordinance Section 37.9(a)(8) and the Rent Board has granted the landlord's written
17 request for rescission of the notice to vacate pursuant to Ordinance Section 37.9B(e), no further
18 Statements of Occupancy need be filed.

19 (1) If the Statement of Occupancy discloses that the landlord has not yet
20 recovered possession of the unit, the landlord shall provide the following information:

21 (i) whether the landlord is still pursuing an eviction of the tenant and,
22 if not, the landlord shall: include proof that the landlord has notified the tenant in writing that the
23 notice to vacate has been rescinded and that the Rent Board has granted the landlord's written
24 request for rescission of the notice to vacate pursuant to Ordinance Section 37.9B(e); state
25 whether any tenant still occupies the unit and provide the name(s) and contact information for
26 each tenant still in occupancy; and, if any tenant still occupies the unit after written rescission of
27 the notice to vacate and/or rescission by the Rent Board of the notice of constraints, include
28 proof of the most recent rental payment received from the tenant and proof that the landlord has

1 deposited or cashed it;

2 (ii) whether the landlord has filed an unlawful detainer action against
3 the tenant to recover possession of the unit;

4 (iii) the identity and percentage of ownership of all persons holding a
5 full or partial percentage ownership in the property;

6 (iv) the dates the current percentages of ownership were recorded;

7 (v) the name(s) of the landlord endeavoring to recover possession
8 and, if applicable, the name(s) and relationship of the relative(s) for whom possession is being
9 sought, a description of the current residence of the landlord or relative(s) for whom possession
10 is being sought and an explanation of why the owner or relative is moving from his/her current
11 residence to the unit;

12 (vi) a description of all residential properties owned, in whole or in part,
13 by the landlord and, if applicable, a description of all residential properties owned, in whole or in
14 part, by the landlord's relative for whom possession is being sought;

15 (vii) the current rent for the unit;

16 (viii) whether and when the landlord served a notice to vacate pursuant
17 to Ordinance Section 37.9(a)(8)(i) for a different unit, and the address of such unit; and

18 (ix) whether and when the landlord has recovered possession of any
19 other rental unit in the same building subsequent to the service of the notice to vacate pursuant
20 to Ordinance Section 37.9(a)(8).

21 (2) If the Statement of Occupancy discloses that the landlord has already
22 recovered possession of the unit and the owner or relative for whom the tenant was evicted is
23 currently occupying the unit as that person's principal residence, the landlord shall provide the
24 following information:

25 (i) the name(s) and ownership interest of the current occupant(s) of
26 the unit, and the date such occupancy commenced;

27 (ii) at least two forms of the supporting documentation specified in
28 Section 12.14(f)(4) below;

1 (iii) whether the current occupant's personal possessions have been
2 moved into the unit;

3 (iv) the rent charged for the unit if any;

4 (v) whether the subject unit is listed as the owner's or relative's place
5 of residence on any motor vehicle registration, driver's license, automobile insurance policy,
6 homeowner's or renter's insurance policy, is used by or for the person's current employer and
7 any public agency, including state and local taxing authorities;

8 (vi) whether utilities are installed at the unit under the owner's or
9 relative's name;

10 (vii) whether the owner occupant has claimed a homeowner's tax
11 exemption for the subject unit;

12 (viii) whether the occupant filed a U.S. Postal Service Change of
13 Address form;

14 (ix) whether the subject unit is the place the owner or relative normally
15 returns to as his/her home, exclusive of military service, hospitalization, vacation, or travel
16 necessitated by employment;

17 (x) whether notice to move at another dwelling unit was given in order
18 to move into the subject unit; and

19 (xi) whether the owner occupant sold or placed on the market for sale
20 the home he/she occupied prior to the subject unit.

21 (3) If the Statement of Occupancy discloses that the landlord has already
22 recovered possession of the unit and the owner or relative for whom the tenant was evicted is
23 not occupying the unit as that person's principal residence, the landlord shall provide the
24 following information:

25 (i) whether the owner or relative for whom the tenant was evicted
26 ever occupied the unit as that person's principal residence, the dates of such occupancy, and
27 the reasons why the unit is no longer occupied by that person;

28 (ii) if the owner or relative for whom the tenant was evicted never

1 occupied the unit as that person's principal residence, the reasons why occupancy has not yet
2 commenced;

3 (iii) If the owner or relative for whom the tenant was evicted has moved
4 out of the unit within five years after service of the notice to vacate under Ordinance Section
5 37.9(a)(8), a copy of the written offer to the displaced tenant to re-rent the unit at a rent no
6 greater than what the tenant would have paid had the tenant remained in continuous occupancy
7 and the unit remained subject to the Rent Ordinance; and

8 (iv) If the owner or relative for whom the tenant was evicted has moved
9 out of the unit within five years after service of the notice to vacate under Ordinance Section
10 37.9(a)(8) and the unit was re-rented to someone other than the displaced tenant, the amount of
11 rent paid by the current tenant.

12 (4) Where the Statement of Occupancy discloses that the owner or relative for
13 whom the tenant was evicted is currently occupying the unit as that person's principal residence,
14 the landlord shall attach to the Statement of Occupancy at least two of the following forms of
15 supporting documentation. Confidential information may be redacted from the supporting
16 documentation prior to filing it with the Rent Board.

17 (i) current motor vehicle registration, plus a copy of the current
18 insurance policy for the vehicle that shows the name of the insured, the address of the unit and
19 the period of coverage, with proof of payment;

20 (ii) current driver's license;

21 (iii) Social Security statement of benefits that shows the name of the
22 recipient, the address of the unit and the current period of coverage;

23 (iv) current voter registration;

24 (v) current homeowner's or renter's insurance policy for the contents
25 of the unit showing the name of the insured, the address of the unit and the period of coverage,
26 with proof of payment; and/or

27 (vi) the most recent state or federal tax return that shows the name
28 and address of the owner or relative occupying the unit and proof of filing.

1 (5) The Rent Board shall make all reasonable efforts to send the displaced
2 tenant a copy of each Statement of Occupancy with supporting documentation within 30 days of
3 the date of filing, or a notice that the landlord did not timely file a Statement of Occupancy if no
4 Statement of Occupancy was timely filed.

5 (6) The Rent Board shall impose an administrative penalty on any landlord
6 who fails to timely file a Statement of Occupancy with the supporting documentation required by
7 Section 12.14(f)(4) of these Rules and Regulations, in violation of Ordinance Section
8 37.9(a)(8)(vii) and Section 12.14(f). Penalties shall be in the following amounts: \$250 for the first
9 violation, \$500 for the second violation, and \$1,000 for every subsequent violation. The
10 procedure for the imposition, enforcement, collection, and administrative review of the
11 administrative penalty shall be governed by Administrative Code Chapter 100, "Procedures
12 Governing the Imposition of Administrative Fines," which is hereby incorporated in its entirety.

13 **Section 12.15 Evictions Regarding Capital Improvement or Rehabilitation Work**

14 (Amended February 10, 1987, effective February 14, 1987 and applicable to
15 notices served on or after that date; amended January 9, 2007; amended January
16 28, 2020)

17 (a) For purposes of an eviction under Section 37.9(a)(11) of the Ordinance, the
18 capital improvement and/or rehabilitation work to be done must involve work that would make
19 the unit hazardous, unhealthy, and/or uninhabitable while work is in progress. If there is a
20 dispute between the landlord and the tenant as to whether the work that is to be performed
21 creates a hazardous or unhealthy environment, the tenant may file a report of alleged wrongful
22 eviction with the Board.

23 (b) In addition to general eviction notice requirements, a landlord who endeavors to
24 recover possession under Ordinance Section 37.9(a)(11) shall provide the tenant with the
25 following documents and information in writing on or before service of the notice to vacate and
26 file a copy of same with the Rent Board within 10 days after service of the notice to vacate on
27 the tenant, together with a copy of the notice to vacate and proof of service upon the tenant:

28 (1) a statement in the notice to vacate of the lawful rent for the unit;

(2) a description of work to be done and an anticipated date of completion as to
when the tenant can reoccupy the unit;

1 (3) copies of all necessary permits, and a written statement that the permit
2 application and the rehabilitation or capital improvement plans, if required by the Bureau of
3 Building Inspection, are on file with the Central Permit Bureau of the Department of Building
4 Inspection located at 1660 Mission Street and arrangements may be made to review such
5 applications or plans;

6 (4) the right the tenant(s) may have to relocation costs under Ordinance Section
7 37.9C, the amount of those relocation costs, and a copy of Section 37.9C;

8 (5) a warning that the tenant must submit a statement to the landlord within 30
9 days of service of the notice to vacate, with supporting evidence, if the tenant claims to be a
10 member of a protected class under Ordinance Sections 37.9(j), and that failure to do so shall be
11 deemed an admission that the tenant is not protected by Sections 37.9(j);

12 (6) a form prepared by the Rent Board stating that a tenant's failure to timely act
13 in response to a notice to vacate may result in a lawsuit by the landlord to evict the tenant, that
14 advice regarding the notice to vacate is available from the Rent Board, and that the tenant may
15 be eligible for affordable housing programs through the Mayor's Office of Housing and
16 Community Development; and

17 (7) a blank change of address form prepared by the Rent Board that the tenant
18 can use to keep the landlord and Rent Board apprised of any future change of address and that
19 advises the tenant of the tenant's right to return to the unit upon completion of the capital
20 improvement or rehabilitation work.

21 (c) The tenant will vacate the unit only for the minimum time required to do the work
22 as stated in the notice, not to exceed three months, unless the time is extended by the Board
23 upon petition by the landlord pursuant to subsection (e) below. Displaced tenants should advise
24 the Board and the landlord of their temporary addresses during the period of displacement in
25 order that they may be notified regarding their relocation.

26 (d) Moving Costs

27 Any landlord who seeks to recover possession of a unit pursuant to Section 37.9(a)(11)
28 of the Ordinance for 20 days or more shall pay relocation expenses as provided in Section 37.9C

1 of the Ordinance. The amount of relocation payments under Ordinance Section 37.9(a)(11) for
2 temporary evictions of less than 20 days is governed by California Civil Code Section 1947.9
3 and not Ordinance Section 37.9C.

4 (e) Landlord's Petition for Extension of Time

5 (1) Before giving the notice to vacate, if the landlord knows or should know
6 that the work will require the removal of the tenant(s) for more than the three months authorized
7 under Ordinance Section 37.9(a)(11), the landlord shall petition the Rent Board for approval of
8 displacement for more than three months. The petition shall include one original and copies for
9 each involved tenant of the following documents:

10 (A) A completed petition form;

11 (B) Copies of all necessary building permits, showing approval has
12 been granted;

13 (C) A written breakdown of the work to be performed, detailing where
14 the work will be done, the cost of the work, and whether all of the work is reasonable and
15 necessary to meet state or local requirements concerning the safety or habitability of the building
16 or the unit, or whether any of the work is elective in nature;

17 (D) An estimate of the time needed to accomplish the work and
18 approximate date (month and day) each involved tenant may reoccupy.

19 (2) If, after the notice to vacate has been given or after the work has
20 commenced, it is apparent that the work will take longer than the three months authorized under
21 Section 37.9(a)(11) or longer than the time approved by the Board, the landlord immediately
22 shall file a petition pursuant to subsection (e)(1) above, along with a statement of why the work
23 will require more time.

24 (3) A hearing on the landlord's petition shall be scheduled within 30 days of
25 the date of filing the petition and conducted pursuant to Part 11 of these Rules and Regulations.
26 The Administrative Law Judge shall render a written decision as to the reasonableness of the
27 landlord's time estimate. The tenants or the landlord may appeal this determination by filing an
28 appeal with the Commissioners pursuant to Ordinance Section 37.8(f).

1 (f) Nothing in this section shall preclude a tenant from filing a report of alleged
2 wrongful eviction with the Board.

3 **Section 12.16 Reoccupancy Following Evictions Under Section 37.9(a)(11)**

(Formerly Section 12.15; amended February 10, 1987, effective February 14,
4 1987 and applicable to notices to vacate served on or after that date;
5 Subsection (a) amended September 8, 2009, to be effective November 1, 2009;
6 amended January 28, 2020)

7 (a) Where a tenant has vacated a unit to allow a landlord to carry out capital
8 improvements or rehabilitation work, pursuant to Section 37.9(a)(11) of the Ordinance, the
9 landlord shall advise the tenant, in writing, immediately on completion of the improvements, and
10 shall allow the tenant to reoccupy the unit as soon as the improvements or rehabilitation work is
11 completed, and shall not increase the rent for such reoccupancy by more than the limitations set
12 forth in Section 4 above. The landlord shall notify the tenant by mailing a written offer to the
13 address that the tenant has provided to the landlord. If the tenant has not provided the landlord a
14 mailing address, the landlord shall mail the offer to the address on file with the Rent Board, and if
15 the Rent Board does not have an address on file, then to the unit from which the tenant was
16 displaced and to any other physical or electronic address of the tenant of which the landlord has
17 actual knowledge. The landlord shall file a copy of the offer with the Rent Board within 15 days of
18 the offer. The tenant shall have 30 days from receipt of the landlord's offer of reoccupancy to
19 notify the landlord of acceptance or rejection of the offer and, if accepted, shall reoccupy the unit
20 within 45 days of receipt of the landlord's offer. If the landlord's offer is sent to the tenant by mail,
the request shall be deemed received on the fifth calendar day after the postmark date.

21 (b) If the time period allowed to perform the work pursuant to Section 12.15 above
22 has passed and the landlord has not informed the tenant that the unit is ready for reoccupancy,
23 the tenant may file a decrease in service petition and/or a report of alleged wrongful eviction.
24 Upon a proper showing, the tenant may be awarded a rent reduction to correspond with the
25 decrease in services calculated by the difference between the monthly rent formerly paid for the
26 unit from which the tenant was displaced and the monthly rent paid for the replacement unit.

27 (c) If the landlord does not timely allow the tenant to reoccupy the unit, and upon
28 completion of the work the subsequent occupant is someone other than the original tenant, there

1 shall be a rebuttable presumption that the original tenant did not reoccupy the unit due to the
2 delay and therefore, for purposes of restricting the rent as set forth in Ordinance Section
3 37.3(f)(1), that the original tenancy was terminated by the landlord.

4 **Section 12.17 Notices to Vacate Filed with the Board**

(Added February 10, 1987, effective February 14, 1987; amended November 21,
5 2017, effective January 1, 2018; amended September 11, 2018; amended
6 January 28, 2020)

7 At the time of filing, the Board shall make no determination as to the legal sufficiency of
8 notices to vacate filed pursuant to Ordinance Section 37.9(c) or of procedures followed by the
9 parties; provided, however, that for notices to vacate under 37.9(a)(8), 37.9(a)(9), 37.9(a)(10),
10 37.9(a)(11) and 37.9(a)(14), the Board may request that the notice state the tenant's rent and for
11 notices to vacate under 37.9(a)(8) and 37.9(a)(11) only, the Board may request that the notice
12 include a blank change of address form for the tenant, as required by Ordinance Sections
13 37.9(a)(8)(v) and 37.9(a)(11)(A).

14 **Section 12.18 Procedures Regarding Evictions under Section 37.9(a)(13)**

(Formerly Section 12.17 adopted October 29, 1986; numerical correction to
15 subsection (j) August 20, 1996; Entire Section deleted, effective June 29, 1999)

16 **Section 12.19 Other Displacements**

(Added March 7, 1989; Subsections (a) and (c) amended September 17, 2013)

17 (a) If a tenant is forced to vacate her/his unit due to fire or other disaster, the landlord
18 shall, within 30 days of completion of repairs to the unit, offer the same unit to that tenant under
19 the same terms and conditions as existed prior to her/his displacement. The landlord's offer shall
20 be sent to the address provided by the tenant. If the tenant has not provided an address, the
21 offer shall be sent to the unit from which the tenant was displaced and to any other address of
22 the tenant of which the landlord has actual knowledge, including electronic mail (e-mail)
23 addresses.

24 (b) The tenant shall have 30 days from receipt of the landlord's offer to notify the
25 landlord of acceptance or rejection of the offer and, if accepted, shall reoccupy the unit within 45
26 days of receipt of the landlord's offer.

27 (c) However, the cost of capital improvements which are necessary before rerenting
28 a unit which was damaged or destroyed as set forth in subsection (a) above, which cost was not

1 reimbursed by insurance proceeds or by any other means (such as a satisfied judgment) may be
2 passed through to the tenant by utilization of the capital improvement petition process as set
3 forth in Part 7 above. Any rent increase under this section would require that a notice be served
4 upon the tenant(s) pursuant to Civil Code Section 827.

5 (d) The landlord who attempts to re-rent a unit, but refuses to allow a tenant to
6 return to her/his home under this section shall have wrongfully endeavored to recover or
7 wrongfully recovered said tenant's rental unit in violation of Section 37.9 of the Ordinance and
8 shall be liable to the displaced tenants for actual and punitive damages as provided by
9 Ordinance Section 37.9(f). This remedy shall be in addition to any other remedy available to the
10 tenant under the Rent Ordinance.

11 **Section 12.20 Evictions under Section 37.9(a)(2)**

12 (Adopted November 12, 1997; amended March 6, 2007; amended December 14,
13 2011; amended February 1, 2012)

14 (a) Unilaterally Imposed Obligations and Covenants

15 Notwithstanding any change in the terms of a tenancy pursuant to Civil Code Section
16 827, a tenant may not be evicted for violation of a covenant or obligation that was not included in
17 the tenant's rental agreement at the inception of the tenancy unless: (1) the change in the terms
18 of the tenancy is authorized by the Rent Ordinance or required by federal, state or local law; or
19 (2) the change in the terms of the tenancy was accepted in writing by the tenant after receipt of
20 written notice from the landlord that the tenant need not accept such new term as part of the
21 rental agreement. The landlord's inability to evict a tenant under this Section for violation of a
22 unilaterally imposed change in the terms of a tenancy shall not constitute a decrease in housing
23 service under the Rent Ordinance as to any other tenant.
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1 **PART XIII REPORTING OBLIGATIONS UNDER ORDINANCE SECTION 37.15**

2 **Section 13.10 Reporting of “Approximate Square Footage”**
3 (Adopted July 12, 2022)

4 For the purpose of the reporting obligations imposed by Ordinance Section
5 37.15(b)(2)(C), approximate square footage shall be reported in 250 square foot increments as
6 follows: 1-250; 251-500; 551-750; 751-1,000; 1,001-1,250; 1,251-1,500; 1,501-1,750; 1,751-
7 2,000; 2,001-2,250; 2,251-2,500; 2,500+. In the absence of accurate building drawings or other
8 similar data, an owner or manager may rely on any available information to approximate this
9 information to the best of their ability. If approximate information cannot be ascertained, an
10 owner or manager may state that the square footage is unknown and provide an explanation as
11 to why the information is unknown (e.g., the owner/manager is unable to gain access to the unit
12 to take specific measurements).

13 **Section 13.11 “Bedroom” and “Bathroom” Defined**
14 (Adopted July 12, 2022)

15 For the purpose of the reporting obligations imposed by Ordinance Section
16 37.15(b)(2)(C) only, “bedroom” shall be defined as a room primarily used for sleeping which
17 includes a closet and an accessible fire exit, and “bathroom” shall be defined as a room
18 containing a bathtub, tub or shower compartment; water closet and lavatory or other similar
19 facilities provided immediately adjacent thereto.

20 **Section 13.12 Date “Occupancy Commenced”**
21 (Adopted July 12, 2022)

22 Pursuant to state law and the Rent Ordinance, the rights of tenants who do not have a
23 written or current lease are protected. (See, e.g., Cal. Civ. Code §§ 1091, 1624(a)(3); Rent
24 Ordinance §§ 37.2(t), 37.3(a).) As such, an owner or manager may not have exact or accurate
25 information regarding the date a tenant’s occupancy commenced. In the absence of a current
26 lease or other written document memorializing the date a tenant’s occupancy commenced, an
27 owner or manager may rely on any available information to approximate this information to the
28 best of their ability, including but not limited to a certificate of estoppel or a verbal statement from

1 the tenant. If approximate information cannot be ascertained, an owner or manager may state
2 that the date occupancy commenced is unknown, and provide an explanation as to why the
3 information is unknown (e.g., the occupancy commenced prior to the owner/manager taking
4 ownership or responsibility for the property).

5 **Section 13.13 No Penalty for Inadvertent Failure to Report or Accurately Convey**
6 **Information that is Unknown and Otherwise Unobtainable by Legal Means**
7 **and Reasonable Efforts**
(Adopted July 12, 2022)

8 If certain information is unknown to an owner or manager, and the owner or manager is
9 not able to ascertain exact information through legal means and reasonable efforts, the owner or
10 manager may report requested information on information or belief, or note that information
11 provided is approximate, or state that the requested information is unknown. An owner or
12 manager who reports the required information in accordance with the foregoing shall be deemed
13 to have substantially complied with the reporting requirements of Ordinance Section 37.15.

14 Accordingly, when an owner or manager reports information required by Ordinance
15 Section 37.15 under penalty of perjury, such information shall be considered to be reported on
16 information and belief where the owner does not have direct, firsthand knowledge of the
17 requested information, and an owner or manager shall not be penalized for failure to report
18 information accurately or stating it is unknown, so long as they have reported the requested
19 information “to the best of the owner’s or manager’s knowledge.”

20 The form of certification under penalty of perjury shall be as follows:

21 I have used all reasonable diligence in preparing this statement. I have reviewed the
22 statement and to the best of my knowledge the information contained herein is true and
23 complete. To the extent I was unable, despite the use of reasonable diligence, to
24 ascertain the exact information to be reported, I have provided the most accurate
approximation that I can based on information and belief where possible or, where such
approximation is not feasible, I have stated that the information is unknown. I certify
under penalty of perjury under the laws of the State of California that the foregoing is true
and correct.

25 **Section 13.14 Licensing – Notice of Rent Increase**
26 (Adopted July 12, 2022)

27 A landlord who has substantially complied with their obligation to report information about
28 a rental unit as described above shall receive a license to increase rent for that unit under

1 Ordinance Sections 37.3(a)(1)-(2). Any rent increase under Ordinance Sections 37.3(a)(1)-(2)
2 purporting to be effective while the landlord is unlicensed shall render the entire rent increase
3 null and void; provided, however, that the effective date of the rent increase, not the date of
4 service, shall be used to determine whether or not the increase conforms with the provisions of
5 this section. Nothing in this Regulation shall affect a landlord's banking rights or the ability to
6 accumulate otherwise lawful rent increases that were found to be null and void.

7 This section shall apply to all rent increases that are effective on or after July 1, 2022,
8 except that with respect to condominium units and buildings with less than ten residential units,
9 this section shall only apply to rent increases that are effective on or after March 1, 2023.

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