

1 [Administrative Code - Tenant Buyout Agreements]

2

3 **Ordinance amending the Administrative Code to classify certain types of unlawful**
 4 **detainer settlement agreements as “Buyout Agreements;” require the Rent Board to**
 5 **provide more information on the disclosure form that landlords must give to tenants**
 6 **before buyout negotiations commence; require landlords to give the disclosure form to**
 7 **tenants a certain number of days before the Buyout Agreement is executed and to**
 8 **verify to the Rent Board that the disclosures were provided; and allow a tenant to**
 9 **invalidate any provision of the Buyout Agreement in which the tenant waived their**
 10 **rights if the landlord did not timely file the Buyout Agreement with the Rent Board.**

11

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

16

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

18

19 Section 1. Findings and Purpose.

20 Adopted in 2014, the Buyout Ordinance (Administrative Code Section 37.9E) was
 21 intended primarily to increase fairness to tenants in buyout negotiations and agreements with
 22 landlords, and to help the City collect data about tenant buyout agreements. The Buyout
 23 Ordinance does not apply to unlawful detainer settlements, which over time has developed
 24 into a significant loophole. Elevating form over substance, some landlords will start buyout
 25 negotiations, but then file unlawful detainer actions so that they can resolve the negotiations

1 as “settlements” rather than as “buyouts,” and thereby avoid complying with the Buyout
2 Ordinance. This undermines the goals of the Buyout Ordinance. Another concern is that
3 some landlords continue to employ the high-pressure tactic of giving tenants very little time to
4 conduct buyout negotiations. Further, although the Buyout Ordinance requires landlords to
5 give tenants a set of written disclosures before buyout negotiations start, some landlords do
6 not do so until the negotiations are almost complete.

7 In light of these various problems, this ordinance revises the Buyout Ordinance to
8 modify certain pre-notification disclosure rules, so that the process is fairer and so that the
9 City can better monitor compliance.

10

11 Section 2. The Administrative Code is hereby amended by revising Section 37.9E, to
12 read as follows:

13 **SEC. 37.9E. TENANT BUYOUT AGREEMENTS.**

14 * * * *

15 (c) **Definitions.** For purposes of this Section 37.9E, the following definitions shall
16 apply:

17 "Buyout Agreement" means an agreement wherein the landlord pays the tenant money
18 or other consideration to vacate the rental unit. The term “Buyout Agreement” includes an
19 agreement to settle a pending unlawful detainer action if the action was filed within 120 days after
20 Buyout Negotiations commenced. In all other instances, An agreement to settle a pending
21 unlawful detainer action shall not be a "Buyout Agreement."

22 "Buyout Negotiations" means any discussion or bargaining, whether oral or written,
23 between a landlord and tenant regarding the possibility of entering into a Buyout Agreement.

24 (d) **Disclosure Required Prior to Buyout Negotiations.** Prior to commencing
25 Buyout Negotiations for a rental unit, the landlord shall provide each tenant in that rental unit a

1 written disclosure, on a form developed and authorized by the Rent Board, that shall include
2 the following:

3 * * * *

4 (9) Any other information required by the Rent Board consistent with the
5 purposes and provisions of this Section 37.9E; ~~and~~

6 (10) A space for ~~each~~ the tenant to sign and write the date the landlord provided
7 the tenant with the disclosure; and

8 (11) Information provided by the Mayor’s Office of Housing and Community
9 Development regarding the impact of the buyout on the tenant’s eligibility for the City’s affordable
10 housing programs.

11 The landlord shall retain a copy of each signed disclosure form for five years, along
12 with a record of the date the landlord provided the disclosure to each tenant and the method of
13 service that the landlord used (regular mail, electronic mail, hand delivery, etc.).

14 **(e) Notification of the Rent Board.** After providing the disclosures required by subsection
15 (d) and pPrior to commencing Buyout Negotiations, the landlord shall file a declaration executed
16 under penalty of perjury with the Rent Board, on a form prepared by the Rent Board, that provides the
17 following information ~~to the Rent Board, on a form developed and authorized by the Rent Board:~~

18 (1) The landlord's name, business address, business email address, and
19 business telephone number;

20 (2) The name of each tenant (if known) with whom the landlord intends to enter
21 into Buyout Negotiations;

22 (3) The address of the rental unit that may be the subject of Buyout
23 Negotiations; and

1 (4) ~~A statement signed under penalty of perjury that~~ The date that the landlord
2 provided each tenant with the disclosure required by subsection (d), and the method of service
3 that the landlord used prior to commencing Buyout Negotiations.

4 The Rent Board shall make the information included on this form ~~publically~~publicly
5 available, except that the Rent Board shall redact all information regarding the identity of the
6 tenants.

7 (f) **Requirements for Buyout Agreements.** Every Buyout Agreement shall:

8 (1) Be in writing. The Agreement may be executed no sooner than 30 days after
9 Buyout Negotiations commenced. The landlord shall give each tenant a copy of the Buyout
10 ~~at~~Agreement at the time the tenant executes the Agreement.

11 (2) Include the following statement in bold letters in a size equal to at least 14-
12 point type in close proximity to the space reserved for the signature of the tenant(s). "You, the
13 tenant, may cancel this agreement at any time on or before the 45th day after all parties have
14 signed this agreement. To cancel this agreement, mail or deliver a signed and dated notice
15 stating that you, the tenant, are cancelling this agreement, or words of similar effect. The
16 notice shall be sent to: _____ (Name of landlord) at _____ (Address of landlord). If
17 you do not cancel this agreement by the 45th day after all parties have signed the agreement, the
18 landlord will be required to file a copy of the agreement with the Rent Board no later than the 59th day
19 after all parties have signed the agreement. If the landlord does not file the agreement by the 59th day,
20 you may file a copy, and you shall also have the option to void any language in the agreement in which
21 you have waived your rights or released claims. Any provision of this agreement that purports to
22 excuse the landlord from filing the agreement by the 59th day, or that purports to limit, restrict, or
23 prevent you from filing a copy and/or exercising these options if the landlord has not filed by the 59th
24 day, shall be void and unenforceable." Immediately after this statement, there shall be a line for
25 each tenant to affix his or her initials.

1 (3) Include the following statements in a size equal to at least 14-point type:
2 "You, the tenant, have a right not to enter into a buyout agreement"; "You, the tenant, may
3 choose to consult with an attorney and/or a tenants' rights organization before signing this
4 agreement. You can find a list of tenants' rights organizations on the Rent Board's website –
5 www.sfrb.org"; and "The Rent Board has created a ~~publically~~publicly available, searchable
6 database that may include information about other buyout agreements in your neighborhood.
7 You can search this database at the Rent Board's office at 25 Van Ness Avenue, Suite 320."
8 Immediately after each statement, there shall be a line for each tenant to affix his or her
9 initials.

10 (4) Include the following statements in a size equal to at least 14-point type:
11 "Under Section 1396-(e)(4) of San Francisco's Subdivision Code, a property owner may not
12 convert a building into a condominium where: (A) a senior, disabled, or catastrophically ill
13 tenant has vacated a unit under a buyout agreement after October 31, 2014, or (B) two or
14 more tenants who are not senior, disabled, or catastrophically ill have vacated units under
15 buyout agreements, if the agreements were entered after October 31, 2014 and within the ten
16 years prior to the condominium conversion application. A 'senior' is a person who is 60 years
17 or older and has been residing in the unit for ten years or more at the time of the Buyout
18 Agreement; a 'disabled' tenant is a person who is disabled under the Americans with
19 Disabilities Act (Title 42 United States Code Section 12102) and has been residing in the unit
20 for ten years or more at the time of Buyout Agreement; and a 'catastrophically ill' tenant is a
21 person who is disabled under the Americans with Disabilities Act (Title 42 United States Code
22 Section 12102) and who is suffering from a life threatening illness and has been residing in
23 the unit for five years or more at the time of the Buyout Agreement. Do you believe that you
24 are senior, disabled, or catastrophically ill as those terms are defined above? Yes ____ No
25 ____ I don't know ____ I prefer not say ____." The question listed in this subsection (f)(4)

1 shall appear in the Buyout Agreement once for each tenant who is a party to the Buyout
2 Agreement. Next to each question shall be a line for the tenant to affix his or her initials.

3 A Buyout Agreement that does not satisfy all the requirements of this subsection (f)
4 shall not be effective and may be rescinded by the tenant at any time. A Buyout Agreement
5 that does not include the initials of each tenant next to each of the statements described in
6 subsections (f)(2)-(4), ~~and (f)(3) shall not be effective and may be rescinded by the tenant at any time.~~
7 ~~A Buyout Agreement that does not contain an answer from each tenant to the question listed in~~
8 ~~subsection (f)(4),~~ as well as the initials of each tenant next to his or answer to the question
9 listed in subsection (f)(4), shall not be effective and may be rescinded by the tenant at any
10 time.

11 (g) **Rescission of Buyout Agreements.** A tenant shall have the right to rescind a
12 Buyout Agreement for up to and including 45 days after its execution by all parties. In order to
13 rescind a Buyout Agreement under this subsection (g), the tenant must, on or before the 45th
14 day following the execution of the Buyout Agreement by all parties, hand deliver, email, or
15 place in the mail a statement to the landlord indicating that the tenant has rescinded the
16 Buyout Agreement.

17 (h) **Filing of Buyout Agreements.** The landlord shall file a copy of the Buyout
18 Agreement with the Rent Board no sooner than the 46th day after the Buyout Agreement is
19 executed by all parties, and no ~~more~~later than 59 days after the agreement is executed by all
20 parties. After the 59th day, either the landlord or the tenant may file a copy of the Buyout Agreement.
21 However, regardless of whether any party files the Buyout Agreement after the 59th day, if the landlord
22 had not filed a copy by the 59th day, any provision of the Buyout Agreement in which the tenant waived
23 their rights or released claims shall not be effective and shall be void at the option of the tenant, and
24 the tenant shall be entitled to all remedies authorized by law; provided, however, that said remedies
25

1 shall not include the displacement of a subsequent tenant in the unit. Buyout Agreements
2 rescinded under subsection (g) need not be filed with the Rent Board.

3 (i) **Posting of Buyout Agreements.** The Rent Board shall create a searchable
4 database with information received from filings under subsection (h). The database shall be
5 accessible to the public at the Rent Board's office and shall include a copy of all filings
6 received under subsection (h). Before posting a copy of any filing received under subsection
7 (h) on its database, the Rent Board shall redact all information regarding the identity of the
8 tenants. The party who filed the Buyout Agreement shall inform the Rent Board whether the Buyout
9 Agreement concerned an unlawful detainer action. If so, the Rent Board shall also redact from the
10 posted Buyout Agreement any information concerning the unlawful detainer action that may be
11 confidential under California Code of Civil Procedure 1161.2.

12 * * * *

13
14 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the "Note" that appears under
19 the official title of the ordinance.

20
21 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word
22 of this ordinance, or any application thereof to any person or circumstance, is held to be
23 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
24 shall not affect the validity of the remaining portions or applications of the ordinance. The
25 Board of Supervisors hereby declares that it would have passed this ordinance and each and

1 every section, subsection, sentence, clause, phrase, and word not declared invalid or
2 unconstitutional without regard to whether any other portion of this ordinance or application
3 thereof would be subsequently declared invalid or unconstitutional.

4
5 Section 6. Undertaking for the General Welfare. In enacting and implementing this
6 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
7 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
8 is liable in money damages to any person who claims that such breach proximately caused
9 injury.

10
11 Section 7. Effective and Operative Dates.

12 (a) This ordinance shall become effective 30 days after enactment. Enactment
13 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or
14 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors
15 overrides the Mayor’s veto of the ordinance.

16 (b) This ordinance shall become operative on March 1, 2020.

17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20
21 By: _____
22 MANU PRADHAN
23 Deputy City Attorney

24 n:\legana\as2019\1900471\01412298.docx