Section 6.15E  Additional Occupants Who Are Not Family Members—Where Rental Agreement Limits the Number of Occupants or Limits or Prohibits Subletting
(Added December 4, 2015)

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

(b) If the tenant makes a written request to the landlord for permission to add an additional occupant to the rental unit, and the landlord fails to deny the request in writing with a 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 tenant's request for the additional occupant is deemed approved pursuant to Ordinance Section 37.9(a)(2)(C). If the tenant's request is sent to the landlord by mail, the request shall be deemed received on the fifth calendar day after the postmark date. If the tenant's request is sent to the landlord by email, the request shall be deemed received on the 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 purposes of this subsection 6.15E(b), the 14-day period begins to run on the day after the tenant's written request is received by the landlord.

(c) The tenant’s inability to obtain the landlord’s consent to the addition of a person specified in subsection 6.15E(a) above shall not constitute a breach of the lease or rental agreement for purposes of eviction under Ordinance Section 37.9(a)(2), where the additional person is deemed approved pursuant to subsection (b) above or where the landlord has
unreasonably denied, pursuant to subsection (d) below, the tenant’s request to add an additional person allowed under subsection 6.15E(a) above and the following requirements have been met:

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

(2) The landlord has five calendar days after receipt of the tenant’s written request to request the tenant to submit a completed standard form application for the proposed additional occupant or provide sufficient information to allow the landlord to conduct a typical background check, including full name, date of birth and references if requested. The 5-day period begins to run on the day after receipt of the tenant’s written request for permission to add an additional occupant to the unit. The landlord may request credit or income information only if the additional occupant will be legally obligated to pay some or all of the rent to the landlord.

Nothing in Section 6.15E shall be construed as allowing a landlord to require an additional occupant to pay some or all of the rent to the landlord.

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

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

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

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

(d) Denial by the landlord of the tenant’s written request to add an additional person
allowed under subsection 6.15E(a) above shall not be considered unreasonable in some circumstances, including but not limited to the following:

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

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

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

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

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

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

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

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

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

(8) where an additional occupant would require the landlord to increase the electrical or hot water capacity in the building, or adapt other building systems or existing
amenities, and payment for such enhancements presents a financial hardship to the landlord, as determined by a Rent Board Administrative Law Judge.

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

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

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

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