

ORDINANCE NO. 076

**AN ORDINANCE TO STABILIZE RENTS
FOR RESIDENTIAL HOUSING AND
ESTABLISH GOOD CAUSE EVICTIONS
APRIL 1988**

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**AN ORDINANCE TO STABILIZE RENTS
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ESTABLISH GOOD CAUSE EVICTIONS**

The people of the City of East Palo Alto do ordain as follows:

Section 1. TITLE

This ordinance shall be known as the Rent Stabilization and Eviction for Good Cause Ordinance.

Section 2. FINDINGS

A. On July 1, 1983, the City Council established a moratorium on rent increases for residential housing in the City of East Palo Alto, based upon the Council's findings of a pattern of excessive rent increases, a shortage of decent, safe and sanitary housing, and resultant displacement of tenants due to their inability to pay increased rents. The Council found that the foregoing conditions created hardships for senior citizens, persons on fixed income and low moderate-income households.

B. Using the U.S. Census definition of overcrowding as more than one person per room in a household, the City Council finds that East Palo Alto's overcrowding rate as compared to the rate of overcrowding in San Mateo County, clearly indicates a serious overcrowding problem. The Council finds that this condition has not presently changed.

C. Defining vacancy rate as the ratio of units offered for rent to the total number of habitable units in 1983, the available data showed that as compared to the county-wide vacancy rate, the vacancy rate for East Palo Alto is seriously low. The Council finds that this condition has not presently changed.

D. Applying a rate of 30% of gross income, the most conservative standard commonly used for determining what maximum percentage of a household's income should be spent for housing, the City Council found that a substantial proportion of East Palo Alto's rental households are unable to find housing at affordable rent levels.

E. The moratorium on rent increases expired after 90 days and was extended an additional 90 days.

F. On the 23rd of November 1983, the Council adopted Ordinance No. 17-83, providing for Rent Stabilization and Eviction for Good Cause. A referendum petition was filed which suspended the operation of that ordinance and required it to be submitted to

the voters.

G. At the April 10, 1984 General Municipal Election, the voters defeated the referendum petition by a substantial margin and on May 1, 1984, the Rent Stabilization and Eviction for Good Cause Ordinance became effective.

H. The City Council finds that the Rent Stabilization and Eviction for Good Cause Ordinance No. 17-83, by its terms will expire on April 30, 1986. The City Council finds that this Ordinance has accorded substantial protection to senior citizens, persons on fixed income and low and moderate-income households against unreasonable and arbitrary eviction as well as excessive rent increase.

I. It is found and declared that unless this Rent Stabilization and Good Cause for Eviction Ordinance is passed by the voters, many tenants will be displaced because of their inability to pay such substantial and unreasonable rent increases, and as a result of the shortage of rental units, will be unable to find substitute, decent, safe and sanitary housing at affordable rent levels. Furthermore, the transition to an unregulated market will have a significant effect on seniors and low-income residents of East Palo Alto.

Section 3. PURPOSE

The purpose of this Ordinance is to protect residential tenants in the City from unreasonable rent increased by discouraging speculation in rental property and stabilizing rent increases; to protect tenants from arbitrary, discriminatory or retaliatory evictions; and at the same time to assure landlords both a fair return and rental income sufficient to cover costs of maintenance and operating expenses as well as the costs of capital improvements to their rental properties.

Section 4. DEFINITIONS

A. **BOARD:** The term "Board" refers to the appointed Rent Stabilization Board established by this Ordinance.

B. **BOARD MEMBERS:** The members of the Board are denominated Board members.

C. **HOUSING SERVICES:** Housing services include but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishings, telephone, parking and any other benefit, privilege of facility connected with the use of occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

D. **LANDLORD:** An owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use of occupancy of any rental unit, or an agent representative or successor of any of the foregoing.

E. RENT: The consideration, including security deposit, cleaning deposit and any other deposits, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

F. RENTAL AGREEMENT: An agreement, oral, written or implied, between a landlord and a tenant for use or occupancy of a rental unit and for housing services.

G. RENTAL UNIT: Any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy, located in the City of East Palo Alto, together with all housing services connected with the use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.

H. PROPERTY: A parcel of real property, which is assessed and taxed as an undivided whole.

I. TENANT: Any renter, tenant, subtenant, leasee or subleasee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, leasee's, or subleases of any rental unit, or any other person entitled to the use of occupancy of such rental unit.

J. SKILLED NURSING FACILITY: A health facility or a distinct part of a hospital which provides the following basic services, skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes medical, nursing dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility can be obtained promptly when needed.

K. HEALTH FACILITY: Any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer.

L. RECOGNIZED TENANT ORGANIZATION: Any group of tenants, residing in rental units in the same building or in different buildings operated by the same management company agent or landlord, which requests to be so designated.

M. RENT CEILING: The maximum allowable rent, which a landlord may charge on any rental unit, covered by this Ordinance.

N. BASE RENT: The maximum allowable rent established under Section 10

of this Ordinance.

O. FEES: A fee, for the purpose of this Ordinance, is a charge fixed by law for services of public office or for use of a privilege under control of government.

Section 5. APPLICABILITY

5.1 This Ordinance shall apply to all real property including mobile home parks, which are being rented or are available for rent for residential use in whole or in part, except for the following:

- A.
 - 1. Rental units, which are owned by landlords who own a maximum of four rental units in East Palo Alto.
 - 2. Units exempted under this provision however, are not exempted from the coverage of Section 13 of this Ordinance.
 - 3. For the purposes of Subsection 5A, the term landlord shall be defined only as the owner of record holding at least 50% interest in the property.
- B. Rental units, which are owned and leased by any government agency including the San Mateo County Housing Authority under the Section 8 program.
- C. Rental units which are rented primarily to transient guests for a period of use or occupancy of less than fourteen (14) consecutive days in establishments such as hotels, motels, inns tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen (14) days or less shall not by itself exempt any unit from coverage by this Ordinance.
- D. Rental units in any hospital, skilled nursing facility, health facility, asylum, or nonprofit home for the aged.
- E. Newly constructed rental units, which are completed and offered for rent for the first time after the effective date of this Ordinance, provided that such new units were not created as a result of rehabilitation or conversion as opposed to new construction. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 8, Rent Registration; Section 10, Establishment of Base Rent and Posting; Section 11, Annual General Adjustment of Rent Ceilings; and Section 12, Individual Rent Adjustments of Rent Ceilings, of this Ordinance.
- F. Properties that have been substantially rehabilitated.
- G. Rental units in nonprofit or limited equity housing cooperatives owned and controlled by majority of the residents.
- H. The scope of all of the above exemptions shall be interpreted in a manner

consistent with the over provisions of this Ordinance.

Section 6. RENT STABILIZATION BOARD (*superseded by 2010 RSO §7*)

A. COMPOSITION AND ELIGIBILITY: There shall be in the City of East Palo Alto a Rent Stabilization Board. The Board shall consist of seven (7) appointed Board Members and three alternates, all of whom shall be residents of East Palo Alto.

The Board shall elect annually as chairperson one of its members to serve in that capacity. The Board shall be composed of three tenants, two landlords and two homeowners who do not own rental property in East Palo Alto. The appointment of alternates shall reflect these categories.

B. APPOINTMENT OF BOARD MEMBERS: Board members shall be appointed by the East Palo Alto City Council at a public meeting after interviewing the applicants.

C. TERMS OF OFFICE: Board Members shall be appointed to two (2) year staggered terms.

D. POWER AND DUTIES: The Board shall have the following powers and duties:

1. Set the rent ceilings for all rental units.
2. Require registration of all rental units under Section 8 of this Ordinance.
3. Publicize the manner in which the Base Rent is established under Section 10.
4. To make adjustments in the rent ceilings in accordance with Sections 11 and 12.
5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this Ordinance.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set forth below.
7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
8. Reports quarterly to the City Council of the City of East Palo Alto on the status of rental housing units covered by this Ordinance.
9. Decide on tenant's petition for refund of excess rent paid in violation of Ordinance No. 10-83, Ordinance No. 30-83, and Ordinance No. 17-83.
10. Administer oaths and affirmations and subpoena witnesses and relevant

documents.

11. Establish rules and regulations for settling civil claims under Section 15.
12. Seek injunctive relief under Section 15.
13. Pursue civil remedies in courts of appropriate jurisdiction.
14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this Ordinance.
15. Hold public hearings.
16. Other powers necessary to carry out the purposes of this Ordinance, which are not inconsistent with the terms of this Ordinance.
17. Except as provided in Section 6L of this Ordinance, the Board shall finance its reasonable and necessary expenses for its operation without the use of General Fund monies of the City of East Palo Alto.

E. **RULES AND REGULATIONS:** The Board shall issue and follow such rules and regulations, including those that are contained in this Ordinance, as will further the purposes of this Ordinance.

The Board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the City of East Palo Alto. A copy of the Board's rules and regulations shall be available to the public for the cost of copying and shall be posted in a location easily accessible to all tenants. The rules and regulations shall also be posted in three general locations throughout the City of East Palo Alto.

All rules and regulations and relevant documents explaining the decisions, order, and policies of the Board shall be kept in the Board's office and shall be available to the public for inspection and copying. These materials as well as other materials maintained in the property file shall be available for public inspection and copies will be made available for the cost of copying and /or mailing.

The Board shall publicize this Ordinance so that all residents of East Palo Alto will have the opportunity to become informed about their legal rights and duties under this Ordinance. The Board shall prepare a brochure with fully describes the legal rights and duties of landlords and tenants under this Ordinance. The brochure shall be made available to the public.

F. **MEETINGS:** The Board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the Members of the Board. At least twenty-four (24) hours notice shall be given for a special meeting of the Board.

G. QUORUM: Four (4) Board Members shall constitute a quorum for the Board.

H. VOTING: The affirmative vote of four (4) Members of the Board is required for a decision, including all motions, rules, regulations, and orders of the Board.

I. COMPENSATION: The Rent Stabilization Board shall be a working Board. The City Council, by Resolution, shall establish the compensation schedule of both members and alternates.

J. DOCKETS: The Board shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.

K. VACANCIES: If a vacancy shall occur on the Board, a qualified person to fill such vacancy shall be appointed by the City Council in accordance with this Ordinance.

L. FINANCING: The Board shall finance its reasonable and necessary expenses for its operation without the use of General Fund monies of the City of East Palo Alto except as stated in this subsection, by charging landlords an annual registration fee of thirty dollars (\$30) per unit, per year, the Board may make reasonable annual adjustments in the fee. The Board is also empowered to request and receive funding when and if necessary from any available source, except the City of East Palo Alto's General Fund, for its reasonable and necessary expenses, including but not limited to salaries and all other operating expenses.

Notwithstanding the preceding provision of this Section, the City Council of the City of East Palo Alto shall appropriate as a loan to the Rent Stabilization Board sufficient funds for the reasonable and necessary expenses of the Board during the twelve month period following the approval of this Ordinance by the voters, said funds to be repaid to the City by the Rent Stabilization Board within one year's period following the approval of this Ordinance by the voters. The duration of the repayment period may be extended by the City Council at its discretion.

M. STAFF: The City Manager is authorized to employ and pay staff for the Board, including hearing examiners and inspectors, as may be necessary to perform the Board's functions efficiently in order to fulfill the purposes of this Ordinance.

N. REGISTRATION: The Board shall require the registration of all rental units covered by this Ordinance as provide for in Section 8. The Board may also require landlords to provide current information supplementing their registration statements.

O. CONFLICT OF INTEREST: Board Members shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a Board Member shall be disqualified from ruling on a petition for an individual rent adjustment of a rent ceiling under Section 12, where the Board Member is either the landlord of the

property or a tenant residing in the property that is involved in the petition.

Section 7. SECURITY DEPOSITS

Any payment or deposit of monies by the tenant, the primary function of which is to secure the performance of a rental agreement or any part of such an agreement including an advance payment of rent, shall be placed by the landlord, in an interest bearing account insured by either the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation until such time as it is returned to the tenant or entitled to be used by the landlord. The interest earned on said deposit monies shall be returned to the tenant annually either through a rent rebate or a cash payment, in December of each year. The balance of any interest earned by said payment or deposit on monies shall be returned along with the appropriate part of principal to the tenant upon his/her departure from the premises.

Section 8. RENT REGISTRATION AND CERTIFICATION

A. The Board shall require all landlords subject to the provisions of this Ordinance to file with the Board by July 1, of each year and annual registration statement for all property, which they hold in the City. The annual statement shall provide for.

1. The address of each rental unit;
2. The name, address and telephone number of the landlord(s) and managing agent, if any.
 - a. If the landlord is a corporation, the name, address and telephone number of a corporate officer to whom correspondence may be addressed.
3. The date on which the landlord received legal title to or equitable interest in the rental unit;
4. Any other information deemed relevant by the Board.

B. All registration statements provided by landlords in accordance with this Ordinance shall include an affidavit signed by the landlord declaring under penalty of perjury that the property is in compliance with the Ordinance and that the information provided in the statement is true and correct.

C. There shall be an annual fee per unit, set by the Board in accordance with Section 6L of the Ordinance which shall be paid at the time that statements are submitted to the program, but no later than July 1, of each year.

D. The Board shall provide forms for the information required by the Section and mail them to all property owners who are known to be covered by the Ordinance. The Board shall make reasonable efforts to facilitate the fulfillment of the requirement set

forth in this Section.

E. Every annual fee required by this Ordinance which is not paid on or before July 1, is declared delinquent and the Board shall add to said fee and collect a penalty of one hundred percent (100%) of the fee so delinquent in addition to the fee. Every ninety (90) days that the fee and penalty remain delinquent, the penalty shall be increased by one hundred percent (100%) of the original fee.

1. The Board may waive the penalty in accordance with its Rules and Regulations and with Section 1947.7 of the California Civil Code, if a statement is filed and fees paid after the first notice of delinquency.

F. The amount of any fee and penalty imposed by the provisions of the Ordinance shall be deemed a debt to the City, and the Board may, at its discretion, cause a lien to be filed on all properties on which statements and fees are delinquent more than 180 days.

G. Within thirty (30) days of the filing of a complete annual statement and the paying of annual fees, the Board shall provide a Certificate of Maximum Legal Rent for each rental unit covered by this Ordinance. The certificate shall include the most recently adopted annual general adjustment. The certificate shall be mailed to the landlord and tenant of each rental unit, and may be challenged for up to ten (10) days after receipt, pursuant to Section 1947.7 of the California Civil Code; provided that the ten (10) day deadline does not apply in the event of alleged fraud or misrepresentation on the part of the landlord filing the annual statement.

1. Landlords shall provide at least thirty (30) days written notice prior to increasing rents pursuant to an issued Certificate of Maximum Legal Rent. In no event shall a landlord give a notice to increase rents until a Certificate of Maximum Legal Rent is issued for a given unit.

H. Landlords of formerly exempt units shall file an annual statement within sixty (60) days of coming under coverage of this Ordinance. The annual fee for this first-time statement shall be prorated based upon the number of months remaining to the next July 1 annual deadline.

I. No landlord shall be deemed to be in substantial compliance with this Section with respect to a given unit until the landlord has completed registration for all covered units in the same property. Substantial compliance shall mean that all required information has been provided, and all outstanding fees, interest and applicable penalties have been paid.

J. Fifty percent (50%) of the registration fee may be passed on to the tenants. Under no circumstances shall penalties be passed along to tenants.

Section 9. USE AND CONFIDENTIALITY OF INFORMATION SUBMITTED TO BOARD

- A. All information and forms required by this Ordinance and submitted to the Board shall not be used by any other governmental unit of the City of East Palo Alto for the enforcement of City of East Palo Alto Ordinances other than this Ordinance.
- B. The Board shall adopt rules and regulations providing for the confidentiality of information submitted to the Board in support of a petition for an individual rent adjustment under Section 12 of this Ordinance when such confidentiality is deemed necessary by the Board.

Section 10. ESTABLISHMENT OF BASE RENT AND POSTING

- A. **Base Rent:** Upon approval of this Ordinance no landlord shall charge rent for any rental unit covered by the terms of this Ordinance affecting rents, in any amount greater than the lawful base rent as prescribed by the terms of this Ordinance, except as permitted by the Board under Sections 11 and 12 of this Ordinance. The base rent is the lawful rent established as April 1, 1985. The base rent is a reference point from which the rent ceiling shall be adjusted in accordance with Sections 11 and 12. For such rental units where no rent was in effect on April 1, 1985, the base rent shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding that date, the base rent shall be a good faith estimate of the median rent in effect for comparable units in the City of East Palo Alto on April 1, 1985.
- B. **Posting:** The Board may establish reasonable rules and regulations for the posting of rent ceilings and other relevant information to further the purposes of this Ordinance.

Section 11. ANNUAL GENERAL ADJUSTMENT OF RENT CEILINGS

- A. **Annual General Adjustment:** Once each year all landlords shall be permitted to charge rents in excess of that which they were lawfully charging the previous year based upon one hundred percent (100%) of the percent change in consumer price index designated “All Urban” or “Shelter: Rent Residential”, whichever is lower for the year period ending the month of April immediately preceding the rent adjustment date.
 - 1. As used herein, the term “Consumer Price Index (CPI)” shall mean that portion of the Consumer Price Index published by the United States Department of Labor for the San Francisco/Oakland Metropolitan Area, designated as “All Urban: or “Shelter; Rent Residential, 1967-100”, whichever is lower for the year period ending the month of April immediately preceding the adjustment date.
 - 2. In May annually, the Board shall compute the annual general adjustment permitted. The Board will then notify each properly registered landlord of

the percentage rental increase allowed, such that said notice will be received by said landlord no later than June 15, 1986 and June 30, of each subsequent year. Should the landlord desire to take advantage of the annual rent adjustment and/or any individual rent adjustment permitted her/him, he/she shall serve, in the manner prescribed by law, each tenant

affected with written notice thereof thirty (30) days in advance of the first day for which such adjusted rent may be charged or collected.

3. Computation of rent increases allowable under this Section shall be according to the following formula:

Subtract the previous April index number from the latest April index number. The resulting figure is the index point difference.

Divide the index point difference by the previous April index figure. The resulting figure is the applicable percentage change in the CPI for the year, expressed in decimal figures.

Multiply the rent ceiling, by the allowable percentage rent increase. The resulting figure is the maximum allowable rent, or rent ceiling, which is required to be granted to landlords under this Section, expressed in dollars.

All rent increases or adjustments provided for in this Ordinance shall be rounded off to the nearest dollar or tenth of a percentage, whichever is appropriate.

To the extent any rental ceiling has been adjusted to cover the amortized cost of capital improvements as provided in Section 12C herein, the amount of said adjustment shall not be included or considered in determining and fixing the annual adjustment provided herein.

B. An upward general adjustment in rent ceilings does not automatically provide for a rent increase. Allowable rent increases pursuant to a general upward adjustment shall become effective only after the landlord gives the tenant at least a thirty (30) day written notice of such rent increase and the notice period expires.

C. If the Board makes a downward general adjustment in the rent ceilings, landlords of rental units to which this adjustment applies shall give tenants of such rental units written notice of the rent decrease to which they are entitled. Such rent decreases shall take effect not later than thirty (30) days after the effective date set by the Board for the downward general adjustment.

D. If the maximum allowable rent specified under this Ordinance for a rental unit is greater than the rent specified for such unit in the rental agreement, the lower rent specified in the rental agreement shall be the maximum allowable rent until the rental agreement expires. If the maximum allowable rent specified under this Ordinance for a rental unit is less than the rent specified in the rental agreement, the lower rent specified under this Ordinance shall be maximum allowable rent.

E. No rent increase pursuant to an upward general adjustment of a rent ceiling shall be effective if the landlord:

1. Has failed to comply with any provisions of this Ordinance and /or orders or regulations issued there under, or
2. Has failed to bring the rental unit into compliance with the implied warranty of habitability, or
3. Has failed to make repairs as ordered by the House Inspection Services of the City, or
4. Has failed to completely register by July 1.

Section 12. INDIVIDUAL ADJUSTMENTS OF RENT CEILINGS

A. Petitions: Upon receipt of petition by a landlord and/or tenant, the rent ceiling of individual controlled rental ceiling of individual controlled rental units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this Ordinance. The petition shall be on a form provided by the Board and shall be submitted to the Board by the petitioner. The petition shall identify any persons who may have positions adverse to the request and all such parties shall be notified of the existence a content of the content of the petition at the petitioner's expense. Any such party may file an objection to the petition. Each petition shall be accompanied by a filing fee of an amount set by the Board per unit affected by the proposed adjustment. The Board shall provide for waiver of fees for petitions in forma pauperis. No petition shall be filed before August 15, 1986. If there is an objection to the petition, the Board shall here the matter, and must decide to either grant or deny the petition in whole or in part.

Notwithstanding any other provision of this Section, the Board or Hearing Examiner may refuse to hold a hearing and/or grant an individual rent ceiling adjustment as provided in this Section for a rental unit if an individual hearing had been held and a decision has been made in regards to the rent ceiling for such unit(s) within the previous six months. Failure to supply information requested on the petition form shall be grounds for denial of the petition in question. The Board, by appropriate regulation, shall determine the fees for filing petitions as well as the conditions for waiver.

B. Hearing Procedure: The Board shall enact rules and regulations governing hearings and appeals of individual rent adjustments of rent ceiling, which shall include the following.

1. Hearing Examiner: A Hearing Examiner appointed by the Board shall conduct a hearing to act upon the petition for individual adjustments of rent ceilings and shall have the power to administer oaths and affirmation
2. Notice: The Board shall notify the landlord if the petition was filed by the tenant, or the tenant, if the petition was filed by

the landlord, of the receipt of such a petition and a copy thereof.

3. Time of Hearing: The Hearing Officer shall notify all parties as to the time, date and place of the Hearing.
4. Records: The Hearing Examiner may require either party to an individual rent ceiling adjustment hearing to provide it with any books, record and paper deemed pertinent, in addition to that information contained in registration statements. The Hearing Examiner shall conduct a current building inspection and /or request the City to conduct a current building inspection if the Hearing Examiner finds good cause to believe the Board's current information does not reflect the current condition of the controlled rental unit. The tenant may request the Hearing Examiner to order such an inspection prior to the date of the hearing. All documents required under this Section shall be made available to the parties involved prior to the hearing, at the office of the Board. In cases where information filed in a petition for an individual rent ceiling adjustments or an additional submission filed at the request of the Hearing Examiner is inadequate or false, no action shall be taken on said petition until the deficiency is remedied.
5. Open Hearings: All individual rent ceiling adjustment hearings shall be open to the public.
6. Right of Assistance: All parties to a hearing may have assistance in presenting evidence and developing their position from attorneys, legal workers, tenant organization representatives or any other organizations or persons designated by said parties.
7. Hearing Board: The Board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be obtainable for the cost of copying. The record of the hearing shall include: all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted in the proceedings; a statement of all materials officially noticed; all recommended decisions, orders and /or rulings; all final decisions, orders and /or rulings, and the reasons for each final decision, order and /or ruling. Any party may have the proceeding tape recorded or otherwise transcribed at his or her own expense.
8. Quantum of Proof and Notice of Decision: No individual rent ceiling adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing. The burden

of proof for costs shall be on the landlord. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of

fact and a copy of the findings of fact and conclusion of law upon which said decision is based. At the same time, parties to the proceedings shall also be notified of their right appeal allowed by the Board and/or to judicial review of the decision pursuant to this Section and Section 18 of this Ordinance.

9. Consolidation: All landlord petitions pertaining to tenants in the same building shall be consolidated for hearing, and all petitions filed by tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.
10. Appeal: Any person aggrieved by the decision of the hearing examiner may appeal to the Board or to any appeals panel of the Board established by the Board, so long as such panel has at least three (3) Board Members. On appeal, the Board or panel shall affirm, reverse, remand or modify the decision of the Hearing Examiner. The Board or panel may conduct a new (de novo) hearing or may act on the basis of the record before the Hearing Examiner without holding hearing. An appeal to the Board shall be filed on later than ten (10) days after receipt of the notice of the decision of the Hearing Examiner. The Board may set a reasonable appeal fee to be paid by the appellant at the time of filing the appeal.
11. Finality of Decision: The decision of the Hearing Examiner shall be the final decision of the Board in the event of no appeal to the Board. The decision of the Hearing Examiner shall not be stayed pending appeal; however, in the event that the Board or panel reverses or modifies the decision of the Hearing Examiner, the Board shall order the appropriate party to make retroactive payments to restore the parties to the position they would have occupied had the Hearing Examiners' decision been the same as that of the Board's.
12. Time for Decision: The rules and regulations adopted by the Board shall provide for final Board action on any individual petition within one hundred and twenty (120) days following the date of filing of the individual rent ceiling adjustment petition, unless the conduct of the petitioner or other good cause is responsible for the delay.
13. Board Action in Lieu of Reference to Hearing Examiner: The Board, on its own motion or on the request of any landlord or tenant, may hold a hearing on an individual petition for a rent ceiling adjustment without the petition first being heard by a

Hearing Examiner.

C. Standard for Decision on Individual Adjustment:

1. Purpose: It is the intent of this individual adjustment section to establish rents at a level, which will provide landlords a fair return by providing the landlords the right to maintain net operating income.

2. Definitions: For purpose of individual rent adjustment proceedings, the following definitions shall be used:

- a. Net operating Income equals Gross Income less Operating Expenses.
- b. Gross Rental Income equals the following:
 - i. Gross Rents, computed as gross rental income at 100% paid occupancy, plus
 - ii. Interest from rental deposits, unless directly paid by the landlord to the tenants (interest shall be imputed as the rate of 5 ½ percent of all deposits unless such deposits earn greater inters), plus
 - iii. Income from laundry facilities, cleaning fees or services, garage and parking fees, plus
 - iv. All other income or consideration received or receivable for or in connection with the use or occupancy of rental units and housing services
 - v. Minus uncollected rents due to vacancy and bad debts to the extent that the same are beyond the landlord's control. Uncollected rents in excess of 3% of Gross Rents shall be presumed to be unreasonable unless established otherwise. Where uncollected rents must be estimated, the average of the preceding 3 years experience shall be used, or some other comparable method.
- c. Operating Expenses
 - i. Operating expenses shall include the following:
 - (1) Real Property taxes
 - (2) Utility costs
 - (3) Management expenses (contracted or performed),

capital improvement up to 120 months.

(9) Increased costs of debt service due to either of both:

(a) Increases in interest payments associated with refinancing of balloon payment notes between January and July 1, 1983, where the proceeds of such notes are used for the purchase or improvement of property in East Palo Alto provided that the total debt does not exceed 70% of the purchase price of the property. Only increased interest required to refinance outstanding principle shall be considered. Such cost shall be allocated over the units in a building in proportion to the rent on the units therein. Increases in periodic costs may be passed through in full. One time cost shall be amortized over the lifetime of the financing involved.

(b) Interest rate increases on variable mortgages where such mortgages are described in (a) above, or were or are contracted for the time of purchase of the security property, or existed prior to April 1, 1983.

ii. Operating Expenses shall not include:

- (1) Avoidable and unnecessary expense increases since the base year;
- (2) Mortgage principal and interest payments which are not allowed by this Ordinance under Section 3 below;
- (3) Any penalties, fees or interest assessed or awarded for violation of this or any other law;
- (4) Legal fees except as provided in subsection d;
- (5) Depreciation of the property; and
- (6) Any expense for which the landlord has been reimbursed by any security deposit, insurance settlement, judgment for damages, settlement, or any other method.

d. Allowable Legal Expenses shall include:

Attorney's fees and costs incurred in connection with successful good faith attempts to recover rents owing and successful good faith unlawful detainer actions not in derogation of applicable law, to the extent it are not recovered from tenants. Attorney's fees and costs incurred in proceedings before the Board, or in connection with civil actions against the Board are not allowable as Operating Expenses.

iii. Presumption of Fair Base Year Net Operating Income:
Except as provided in paragraph 4, it shall be presumed that the Net Operating Income produced by a property during the base year provided a fair return. Landlords shall be entitled to maintain and increase their Net Operating income from year to year in accordance with Section vii.

iv. Rebutting the Presumption:

It may be determined that the base year Net Operating Income yielded other than a fair return on property, in which case, the base year Net Operating Income may be adjusted accordingly. In order to make such a determination, the Board or Hearing Examiner must make at least one of the following findings:

- (1) The landlord's operating and maintenance expenses in the base year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating such expenses so the base year Operating Expense reflect average expenses for the property over a reasonable period of time. The Board of Hearing Examiner shall consider the following factors:
 - (a) The landlord made substantial capital improvements during 1985, which were not reflected in the rent levels on the base date;
 - (b) Substantial repairs were made due to damage caused by natural disaster or vandalism;
 - (c) Maintenance and repair was below accepted standards so as to cause deterioration in the quality of housing service;
 - (d) Other expenses were unreasonably high or low notwithstanding the following of prudent

business practice. In making this determination, the fact that property taxes prior to 1985 may have been higher than in the base year shall not be considered.

- (e) The base period rent was not established at an arms length transaction.
- (2) The rent on the base date was disproportionate due to one of the enumerated factors below. In such instances, adjustments may be made in calculating Gross Rents consistent with the purposes of this Section.
- (a) The rent on the base date was established by a lease or other formal rental agreement which provided for substantially higher rent at other periods during the term of the lease;
 - (b) The rent on the base date was substantially higher than at other times of the year by reason of seasonal demand or seasonal variations in rent;
 - (c) The rent on the base date was substantially higher or lower than preceding months by reason of premium being charged or rebates being charged or rebated being given for reasons unique to particular units or limited to the period determining the base rent.
- (3) It shall be presumed that where Net Operating Income in the base year is less than 50% of Gross Rental Income in the base year, after making adjustments as permitted by subsections (1) and (2) of this Section, the landlord was receiving less than a fair return on property. In such a case, for purpose of determining Base Year Net Operating Income, Gross Rental Income in the base year shall be adjusted upward to twice the amount of adjusted Base Year Operating Expenses.

v. Determining of Base Year Net Operating Income:

- (1) To determine the Net Operating Income during the base year, there shall be deducted from the

annualized Gross Income being realized on April 1, 1985, a sum equal to the actual operating expenses for calendar year 1985 unless the landlord demonstrates to the satisfaction of the Board or Hearing Examiner that some other 12 consecutive month period is justified by reasons independent of the purpose of this paragraph. In all cases, April 1, 1985, shall fall within the 12-month period utilized herein, except as provided in Subsection (2) below.

- (2) In the event that the landlord did not own the subject property on January 1, 1985, the Operating expenses for 1985 shall be determined by one of the following manners, whichever the Board or Hearing Examiner determines to be more reliable in the particular case:
 - (a) The previous owner's actual Operating Expenses as defined in Section 2C; or, where unavailable;
 - (b) Actual Operating Expenses for the first calendar year of ownership, discounted to 1985 by the schedule in Section vi below.

vi. Schedule of Increase in Operating Expense:
Where scheduling of rent increases or other calculations require projections of income and expenses, it shall be assumed that Operating Expenses, exclusive of Property Taxes and Management Expenses, increase at the rate of increase of all items of the CPI, that property taxes increase at 2% per year, and that Management Expenses are 5% of Gross income.

vi. Allowable Rent Increases:

Upon filing of an individual petition by a landlord, the Board may permit rent increases, unless otherwise prescribed by law, such that the landlord's Net Operating income will be increased at the rate of 100 percent (100%) of the increase in the Consumer Price Index (CPI), designated "All urban" or "Shelter: Rent Residential", whichever is lower, Rent Residential 1967-100", over the

Base Year. The increase in the CPI shall be calculated by dividing the most recently reported monthly figure at the time of filing of the petition by the monthly figure at the

time of filing of the petition by the monthly figure for April 1, 1985.

viii. Allowable Rent Increase

Any individual adjustment established pursuant to this section shall take into account the extent of any General Adjustments the landlord may be implementing, or otherwise entitled to, at and during the time their individual adjustment is to be implemented, and the individual adjustment may be limited or conditioned accordingly. The Board shall calculate and establish General Adjustments consistent with this section.

D. In determining the rent increase or decrease pursuant to Section 12, the Board and/or the Hearing Examiner shall also take into account:

1. Increases or decreases in the number of tenants, furniture, equipment or other housing services provided or occupancy rules;
2. Substantial deterioration of the controlled unit other than as a result of normal wear and tear;
3. Failure of the landlord to provide adequate housing services or to comply substantially with applicable state rental housing laws, local housing, health and safety codes or the rental agreement.

E. Rent increases granted pursuant to Section 11A are not appealable. A rent increase notice pursuant to Section 12 shall state that it is subject to appeal by petition to the Board, whose address and telephone number shall be listed on the notice.

F. Allowable rent increases pursuant to an individual upward adjustment of the rent ceiling shall become effective only after the landlord gives the tenant at least a thirty (30) day written notice period expires.

G. If the Board makes a downward individual adjustment of the rent ceiling, such rent decrease shall take effect no later than thirty (30) days after the effective date set by the Board for the downward adjustment.

H. No provision of this Ordinance shall be applied so as to prohibit the Board from granting an individual rent adjustment that is demonstrated necessary by the landlord to provide the landlord with a fair return.

Section 13. GOOD CAUSE REQUIRED FOR EVICTION

A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this Ordinance unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law, and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days.
2. The tenant has continued, after written Notice to Cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement.
3. The tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.
4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.
5. The tenant has continued, following written Notice to Cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises.
6. The tenant has, after written Notice to Cease, refused the landlord access to the unit as required by state or local law.
7. The landlord after having obtained all necessary permits from the City of East Palo Alto, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.
 - (a) Where the landlord recovers possession under this subsection

13A.7(a) and 8, the tenant must be given the right of first refusal to any comparable vacant rental units owned by the landlord or to reoccupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to reoccupy the premises pursuant to this subsection.

8. The landlord, after having obtained all necessary permits from the City of East Palo Alto, seeks in good faith to recover possession the rental unit in order to remove the rental unit from the market by demolition.
9. The landlord seeks in good faith to recover possession for his or own use or and occupancy as his or her principal residence, or for the use and occupancy as his or her principal residence, or for the use and occupancy as a principal residence by the landlord's spouse or by the landlord's child, sister or brother and parent, grandparents or grandchildren. For the purposes of his subsection the term landlord shall be defined as the owner of record.
10. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 13A.7(a), following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenancy (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of ninety (90) days).

B. A landlord's failure to specify good cause as listed above in subsections 1 through 10 of Section 13A in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this Ordinance.

C. In any action to recover possession of a rental unit covered by the terms of this Ordinance, except an action to recover possession under subsections 13A.7 and 13A.8, a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the commencement of the action for possession with

Sections 10 (Base Rent) and 8 (Rent Registration) of this Ordinance.

D. The landlord shall file with Board a copy of any notice of termination, notice to quit, and/or summons and complaints, within ten (10) days after the tenant has been served with such notice or summons and complaints.

Section 14. RETALIATION PROHIBITED

No landlord may threaten to bring, or bring, an action to recover possession, cause the tenant to quit the unit involuntarily, serve any notice to quit or notice of termination of tenancy, decrease any services or increase the rent where the landlord's intent is retaliation against the tenant for the tenant's assertion or exercise of rights under this Ordinance. Such retaliation shall be a defense to an action to recover possession, or it may serve as the basis for an affirmative action by the tenant for actual and punitive damages and injunctive relief.

A tenant may assert retaliation affirmatively or as a defense to the landlord's action without the aid of the presumption regardless of the period of time, which has elapsed between the tenant's assertion or exercise of rights under this Ordinance and the alleged act of retaliation.

Section 15. REMEDIES

A. For violation of Rent Ceilings or Failure to Register

If a landlord fails to register in accordance with Section 8 of this Ordinance, or if a landlord demands, accepts, receives or retains any payment in excess of the maximum allowable rent permitted by this Ordinance, a tenant may take any or all of the following actions until compliance is achieved.

1. A tenant may petition the Board for appropriate relief. If the Board, after the landlord has proper notice and after a hearing, determines that a landlord has willfully and knowingly failed to register a rental unit covered by this Ordinance, the Board may authorize the tenant of such rental unit to withhold all or a portion of the rent for the unit until such time as the rental unit is brought into compliance with this Ordinance. After a rental unit is brought into compliance, the Board shall determine what portion, if any, of the withheld rent is owed to the landlord for the period in which the rental was not in compliance. Whether or not the Board allows such withholding, no landlord who has failed to comply with the Ordinance shall at any time increase rents for a rental unit until such unit is brought into compliance.
2. A tenant may withhold up to the full amount of his or her periodic rent which is charged or demanded by the landlord under the provisions of this Ordinance. In any action to recover possession based on nonpayment of rent, possession shall not be granted where the tenant has withheld rent in good faith under this Section.
3. A tenant may seek injunctive relief on behalf of her/himself to restrain the landlord from demanding or receiving any rent on the unit until the landlord has complied with the terms of this Ordinance.

4. A tenant may file a damage suit against the landlord for actual damages when the landlord receives or retains any rent in excess of the maximum rent allowed under this Ordinance. Upon further proof of a bad faith claim by the landlord or the landlord's retention of rent in excess of the maximum rent allowed by this Ordinance, the tenant shall receive a judgment of up to five hundred dollars (\$500) in addition to any actual damages sustained, whichever is greater.
 5. In any civil proceeding that a landlord or a tenant initiates to enforce his/her right under this Ordinance, the prevailing party shall be entitled to reasonable attorney's fee as determined by the court.
- B. For Violation of Eviction Proceedings. If it is shown in the appropriate court that the event which the landlord claims as grounds to recover possession under Subsection 13.A.9, is not initiated within two months after the tenant vacates the unit, or it is shown that the landlord's claim was false or in bad faith, the tenant shall be entitled to regain possession and to actual damages. If the landlord's conduct was willful, the tenant shall be entitled to damages in an amount of \$500 or three time the actual damages sustained, whichever is greater.
- C. The Board may direct the City Attorney to seek injunctive relief to restrain or enjoin any violation of this Ordinance or of the rules, regulations, orders and decisions of the Board.
- D. If a tenant fails to bring a civil or administrative action within one hundred and twenty (120) days from the date of the first occurrence of a violation of this Ordinance, the Board shall either settle the claim arising from the violation or bring such action. Thereafter, the tenant on whose behalf the Board acted may not bring an action against the landlord in regard to the same violation for which the Board has made a settlement or brought an action. In the event the Board settles the claim it shall be entitled to retain from any payments made by the landlord, the costs incurred in settlement and the tenant aggrieved by violation shall be entitled to the remainder.
- E. A tenant who paid rent more than the legally allowable rent provided under Ordinance 10-83 and/or Ordinance 30-83 and Ordinance No. 17-83, may file a petition for refund against the landlord on a form provided by the Board.

Section 16. PARTIAL INVALIDITY

If any provision of this Ordinance or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this Ordinance are severable.

Section 17. NONWAIVERABILITY

Any provision in a rental agreement which waives or modifies any provision of this Ordinance is contrary to public policy and void.

Section 18. JUDICIAL REVIEW

A landlord aggrieved by any action or decision of the Board may seek judicial review in a court of appropriate jurisdiction.

Section 19. CRIMINAL PENALTIES

Any landlord who is found by a court of appropriate jurisdiction to be guilty of a willful violation of this Ordinance shall be subject to up to a five hundred dollar (\$500) fine and/or ninety (90) days in jail for a first offense and up to a three thousand dollar (\$3000) fine and/or one year in jail for any subsequent offenses.

The foregoing ordinance was introduced at a meeting of the City Council held on April 8, 1986, and adopted at a meeting held on April 15, 1986, by the following vote:

AYES: ABRICA, BLAKEY, MOUTON and SATTERWHITE
NOES: NONE
ABSENT: WILKS

Barbara A. Mouton, Mayor

ATTEST:

Frederic A. Newell, City Clerk

This Ordinance and the modification contained herein approved by the vote of the people on April 12, 1988, and duly certified by the City Clerk on April 19, 1988, constitutes this ordinance and its provisions in its entirety.