

AGENDA ITEM
REGULAR JOINT CITY
COUNCIL/REDEVELOPMENT AGENCY

TUESDAY, MARCH 2, 2010

ITEM No. 14B

PUBLIC HEARING

**RENT STABILIZATION ORDINANCE
AND RESOLUTIONS**

Proposed Revisions to the Rent Stabilization
Ordinance for the June 8, 2010 Ballot
(Vincent C. Ewing, City Attorney)



**CITY OF EAST PALO ALTO
OFFICE OF THE CITY ATTORNEY**

Administrative Report

Date: March 2, 2010
To: The Honorable Mayor and Members of the East Palo Alto City Council
From: Vincent C. Ewing, City Attorney
Re: Proposed Rent Stabilization Ordinance for June 8, 2010 General Election

Recommendation

1. Adopt a Resolution submitting the Proposed Rent Stabilization Ordinance to a vote of the People at the June 8, 2010 Countywide General Election;
2. Adopt a Resolution requesting the County of San Mateo to consolidate the Municipal Election with the Countywide General Election on June 8, 2010.

Background

Since February 2009, the City Council has conducted numerous Council meetings to consider and discuss proposed revisions to the City's Rent Stabilization Ordinance (herein "RSO"). At meetings held in April and May 2009, the Council reviewed the key issues and possible alternative approaches to various provisions of the RSO and received extensive public testimony from interested community members.

On July 15, 2009, City staff presented the Council with draft language for the Revised Rent Stabilization Ordinance (herein "Revised RSO"). The Council suggested further modifications to the Revised RSO and the modifications were incorporated and accepted by the City Council on August 4, 2009. The final language of the Revised RSO is included as *Attachment 1a* to the Resolution submitting the Ordinance to a vote of the People (*Attachment 1*).

Analysis

In order for the Revised RSO to be placed on the June 8, 2010 ballot, the City Council will need to call for the election and provide all supporting materials to the County of San Mateo no later than March 12, 2010. Attached is a proposed resolution submitting

the Revised RSO to the voters at the June 8, 2010 Countywide General Election (*Attachment 1*).

Additionally, the Elections Code requires cities seeking to consolidate municipal elections with countywide elections to adopt a resolution to that effect. Therefore, attached is a proposed resolution requesting the County of San Mateo to consolidate the called-for Municipal Election with the Countywide General Election to be held on June 8, 2010 (*Attachment 2*).

Staff recommends that the City Council adopt these.

CEQA

The initiative ordinance repeals the existing RSO and adopts a new RSO. The new RSO carries forward most of the provisions of the existing RSO. The changes to the existing RSO involve allowable rent increases, registration and certification of rents, the selection of Rent Board members, and minor changes in the administration of the rent stabilization scheme that could not have physical impacts on the environment. An initial study and mitigated negative declaration were prepared pursuant to the California Environmental Quality Act. It and the attendant resolutions have been provided in a separate staff report by the Planning Manager for your independent review, analysis and consideration.

Fiscal Impact

According to the County Registrar, the cost to place a measure on the June 8, 2010 ballot will be approximately \$30,000.

Attachments:

1. Proposed Resolution submitting the Proposed Rent Stabilization Ordinance to a vote of the People at the June 8, 2010 Countywide General Election (*Attachment 1a. Proposed Rent Stabilization Ordinance*)
2. Proposed Resolution requesting consolidation of the Municipal Election with the Countywide General Election on June 8, 2010

Attachment 1

Proposed Resolution Calling and Ordering a General Municipal Election to be held on June 8, 2010 Municipal Election, and Submitting to the Voters a City Council Sponsored measure repealing and replacing the City's Rent Stabilization

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO CALLING AND ORDERING A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, JUNE 8, 2010, AND SUBMITTING TO THE VOTERS A CITY COUNCIL-SPONSORED MEASURE REPEALING AND REPLACING THE CITY'S RENT STABILIZATION ORDINANCE

WHEREAS, under the provisions of state law and East Palo Alto municipal regulations relating to elections, there is to be held a General Municipal Election on Tuesday, June 8, 2010; and

WHEREAS, the City Council finds and determines submission of the proposed measure regarding amendment of the Rent Stabilization Ordinance ("RSO") repeals the existing RSO and adopts a new RSO. The new RSO carries forward most of the provisions of the existing RSO. The changes to the existing RSO involve allowable rent increases, registration and certification of rents, the selection of Rent Board members, and other minor changes in the administration of the rent stabilization scheme that could not have physical impacts on the environment. Using its independent analysis and judgment the City Council has reviewed the initial study and mitigated negative declaration prepared pursuant to the California Environmental Quality Act, in conjunction with the RSO, the supporting documents, and attendant resolutions and made findings this day, March 2, 2010, as set forth in the Resolution No.: _____ associated with the said initial study and mitigated negative declaration.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of East Palo Alto, State of California, does hereby find, declare, act, determine and order as follows:

Section 1: Calling the Election

That pursuant to the requirements of the laws of the State of California, there is called and ordered to be held in the City of East Palo Alto, California, on Tuesday, June 8, 2010, a general municipal election for the purposes of submitting to the voters a proposed ordinance as set forth in Section 2, below.

Section 2: Actions Relating to Measure

a) The proposed measure is hereby entitled:

- 1. Rent Stabilization and Just Cause for Eviction Ordinance of the City of East Palo Alto**

- b) Pursuant to the California Elections Code, including without limitation section 9222, the City Council submits the measure as set forth in Attachment A to the qualified electors of the City of East Palo Alto at the General Municipal Election to be held on June 8, 2010.
- c) The City Council hereby orders that the following question shall be submitted to the qualified electors of the City of East Palo Alto regarding the measure:

Shall the Rent Stabilization and Just Cause for Eviction Ordinance – which would repeal the City’s existing rent stabilization ordinance with respect to residential tenancies other than mobile home park space tenancies and adopt new procedures to establish permissible rent levels, protect residential tenants from unreasonable rent increases and from arbitrary discriminatory or retaliatory evictions, and assure landlord’s right to a fair return on their property – be adopted? Yes _____, or No _____

- d) The City Clerk is directed to publish a notice of the June 8, 2010 election, and a synopsis of the measure, within the time prescribed by law.
- e) Pursuant to the California Elections Code, including without limitation section 9280, the City Clerk shall transmit the measure to the City Attorney, and the City Attorney shall prepare an impartial analysis of the measure. The impartial analysis shall be filed by the date set by the Elections Official for the filing of primary arguments.
- f) Written arguments for and against the measure shall be provided under the California Elections Code, including without limitation sections 9281 and 9282. Rebuttal arguments shall be permitted and shall be provided under Elections Code section 9285, the provisions of which are hereby adopted. (A copy of Elections Code section 9285 is attached hereto as Attachment B.) The City Clerk is directed to make available to the public in a timely manner information regarding important filing dates and important deadlines regarding arguments for and against said ballot measure, including rebuttal arguments in support of said ballot measure and the rebuttals to any arguments in opposition to the measures.
- g) The City Council expressly authorizes ALL members of the City Council to file a written argument In Favor of the City-sponsored measure, accompanied by the printed names and signatures of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and to change the argument until and including the date fixed by the City Clerk .
- h) The City Clerk is hereby authorized to enter into an agreement with the San Mateo County Elections office for provision of election services.

- i) In all particulars not recited in this resolution, the election shall be held and conducted as provided by law for the holding of consolidated municipal elections.

Section 3: CEQA Compliance

The City Council hereby finds and determines submission of the proposed measure regarding amendment of the Rent Stabilization Ordinance (“RSO”) repeals the existing RSO and adopts a new RSO. The new RSO carries forward most of the provisions of the existing RSO. The changes to the existing RSO involve allowable rent increases, registration and certification of rents, the selection of Rent Board members, and other minor changes in the administration of the rent stabilization scheme that could not have physical impacts on the environment. Notwithstanding, using its independent analysis and judgment the City Council has reviewed the initial study and mitigated negative declaration prepared pursuant to the California Environmental Quality Act, in conjunction with the RSO, the supporting documents, and attendant resolutions and made findings this day, March 2, 2010, as set forth in the Resolution No.: _____ associated with the said initial study and mitigated negative declaration.

Section 3: Severability

If any section, subsection, sentence, clause, phrase, word or portion of this Resolution (collectively "Portion") is for any reason held -- by act of the Legislature or by the decision of a court of competent jurisdiction -- to be invalid or contrary to law or unconstitutional or otherwise unenforceable (collectively "invalid portion"), such invalid portion shall be deemed removed from this Resolution and the remaining portions of this Resolution shall remain in full force and effect. The City Council hereby declares that it would have adopted this Resolution and each portion regardless of the fact that an invalid portion may have been presented.

* * *

The resolution submitting said measure to the voters at the June 8, 2010 General Municipal Election was adopted at a meeting of the City Council held on March 2, 2010, upon the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

David Woods, Mayor

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Attachment 1A

Rent Stabilization Ordinance

RENT STABILIZATION AND JUST CAUSE FOR EVICTION ORDINANCE
OF THE CITY OF EAST PALO ALTO

JUNE 8, 2010

REVISED DRAFT -AUG 4 2009

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RENT STABILIZATION AND JUST CAUSE FOR EVICTION ORDINANCE

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

SECTION 1. TITLE AND PURPOSE

This Ordinance shall be known as the Rent Stabilization and Just Cause for Eviction Ordinance of 2009. The purpose of this Ordinance is to protect residential tenants in the City from unreasonable rent increases and to protect tenants from arbitrary, discriminatory or retaliatory evictions; and at the same time to assure landlords the right to a fair return.

SECTION 2. FINDINGS

- A. 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 was high compared to the rate of overcrowding in San Mateo County and indicated a serious overcrowding problem. The Council finds that this condition has not presently changed.
- B. Applying a rate of 30% of gross income standard, the commonly used state and federal standard for determining what maximum percentage of a household's income should be spent for housing, the City Council finds that a substantial proportion of East Palo Alto's rental households are paying rents in excess of the affordability standard.
- C. As of the 2000 census, 55.6% of all tenant households in multifamily dwellings spent 30% or more of their income on rent.
- D. The 2007 American Community Survey of the Census Bureau indicates that 32% of the residents of East Palo Alto are in the extremely low income category (under 30% of the County median, under \$33,940 for a four person household) and that 24% of all households are in the very low income category (31 to 50% of the County median income, between \$33,950 and \$56,550).
- E. As of the 4th quarter of 2008 and the 1st quarter of 2009, average rents for one bedroom apartments were \$1,055 and average rents for two bedroom apartments were \$1,663. The average rents for one bedroom units exceed the top of the income range considered to be the affordability threshold for extremely low income households.
- F. Average rent levels in the County and neighboring cities are substantially above the average rents in East Palo Alto and are even less affordable to a substantial portion of the residents of East Palo Alto.
- G. In April 1988, the People of the City of East Palo Alto adopted an initiative ordinance entitled The Rent Stabilization Ordinance of the City of East Palo Alto (Prior Ordinance) to protect residential tenants in the City from unreasonable rent increases and to protect tenants from arbitrary, discriminatory or retaliatory evictions; and at the same time to assure landlords the right to a fair return. The Prior Ordinance does not take into account changes in California law since it was adopted, including the Costa-Hawkins Act.

H. The changes to the Prior Rent Stabilization Ordinance effected by this Ordinance concern residential rent increases and other rights and obligations of residential landlords and tenants that will not have any physical impact on the environment. Accordingly, the City Council finds that this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines section 15061(b)(3) in that it can be seen with certainty that there is no possibility that this ordinance or its implementation would have a significant effect on the environment.

SECTION 3. PRIOR ORDINANCE REPEALED

On the effective date of this Ordinance, this Ordinance shall govern residential tenancies in the City except for mobile home park space tenancies. The Prior Ordinance, and any Rules and Regulations adopted by the Rent Stabilization Board under the Prior Ordinance, shall be repealed with respect to residential tenancies but shall continue to be applicable to mobile home park space tenancies, and shall be administered under the Board as designated under this Ordinance

SECTION 4. DEFINITIONS

A. BOARD. The Rent Stabilization Board established by this Ordinance.

B. CITY. The City of East Palo Alto.

C. CPI. The Consumer Price Index for all items for all urban consumers for the San Francisco/Oakland/San Jose Area published by the Bureau of Labor Statistics.

D. COSTA-HAWKINS ACT. California Civil Code Sections 1954.50-1954.535.

E. ELLIS ACT. California Government Code Sections 7060-7060.7.

F. HEALTH FACILITY. Any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of physical or mental human illness, 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.

G. 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, parking and any other benefit, privilege or facility connected with the use or 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.

H. INITIAL RENT. The monthly rent lawfully established by a landlord and tenant for a new tenancy. In the event of a dispute between a landlord and a tenant concerning the amount of the initial rent, where no conclusive documentation of the initial rent level can be produced, the initial rent shall be considered the lawful rent actually charged to the tenant on January 1, 2006, or the monthly rent charged on January 1 of the first year for which documentation can be produced, whichever is later, and that date shall be presumed to be the initial date of the tenancy

for all subsequent calculations. This presumption can be rebutted by the parties before a Hearing Examiner.

I. **LANDLORD.** An owner of record, lessor, sublessor or any other person, entity, or non-natural person entitled to receive rent for the use or occupancy of any rental unit, or an agent representative, affiliate, member, shareholder, trustee, or successor of any of the foregoing. If an owner of a rental unit is other than a single natural person, then all entities, structures, and persons that share ownership and/or control of the units shall be considered one and the same landlord.

J. MAXIMUM ALLOWABLE RENT.

1. TENANCIES COMMENCING PRIOR TO JULY 15, 2009.

a. BASED ON VALID CERTIFICATE. The maximum allowable rent for tenancies commencing prior to July 15, 2009 shall be the maximum allowable rent set forth in the last valid certificate issued prior to July 15, 2009 adjusted by annual general adjustments authorized by the Prior Ordinance subsequent to the issuance of that certificate, and rent increases implemented pursuant to this Ordinance.

b. CERTIFICATE INVALID OR NO CERTIFICATE.

i. Tenancy beginning before January 1, 2006: Where either the certificate stating the maximum allowable rent is invalid or no certificate stating the maximum allowable rent has been issued and the tenancy began prior to January 1, 2006, the maximum allowable rent shall be the rent actually charged on January 1, 2006 adjusted by the annual general adjustments authorized under the Prior Ordinance and increases authorized pursuant to this Ordinance.

ii. Tenancy beginning on or after January 1, 2006: Where either the certificate stating the maximum allowable rent is invalid or no certificate stating the maximum allowable rent has been issued and the tenancy began on or after January 1, 2006, the maximum allowable rent shall be the rent on the date the tenancy commenced adjusted by the annual general adjustments authorized under the Prior Ordinance and increases authorized under this Ordinance since the date the tenancy commenced.

2. TENANCIES COMMENCING ON OR AFTER JULY 15, 2009. The maximum allowable rent for tenancies commencing on or after July 15 2009 shall be the initial rent for the new tenancy adjusted by rent increases implemented pursuant to this Ordinance.

K. **NEW TENANCY.** A tenancy shall be deemed to commence on the date of the tenant's initial occupancy of the unit. The tenant's entry into a written lease following the initial

occupancy does not alter the date of commencement of the tenancy. The Board's rules and regulations may define methods for further determining the date of a new tenancy or for calculating the initial rent where the rental agreement includes periods for which the tenant pays reduced, discounted, or "free" rent. The addition of new tenants shall not be deemed a new tenancy when the addition of the tenant(s) does not permit the landlord to set a new initial rent pursuant to the Costa-Hawkins Act.

L. **PRIOR ORDINANCE.** The Rent Stabilization Ordinance of the City of East Palo Alto adopted by voter initiative in April 1988.

M. **PROPERTY.** A parcel of real property that is assessed and taxed as an undivided whole.

N. **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.

O. **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. Rent includes monies and the fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

P. **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.

Q. **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, together with all housing services connected with the use or occupancy of such property such as common areas and recreational facilities available for use by the tenant.

R. **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.

S. **TENANT.** Any renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessee's, or sublessee's of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

SECTION 5. APPLICABILITY

A. **FULLY EXEMPT UNITS.** The following dwelling units are fully exempt from this Ordinance:

1. **SUBSIDIZED UNITS.** Units whose rents are controlled, regulated (other than by this Ordinance), or subsidized by any governmental unit, agency or authority, including units

for which Section 8 subsidies are provided, unless the landlord or governmental agency contracts to apply this Ordinance.

2. **TRANSIENT OCCUPANCY.** Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses, provided that such accommodations are not occupied by the same tenant for 30 or more continuous days.

3. **CARE FACILITIES.** Housing accommodations in any hospital, skilled nursing, health or care facility, convalescent home, or nonprofit home for the aged.

4. **RESIDENT OWNED NON-PROFIT HOUSING.** Dwelling units in a nonprofit cooperative that is owned, occupied, and controlled by a majority of the residents.

5. **UNITS EXEMPTED BY STATE AND FEDERAL LAW.** Units exempted pursuant to state and federal law.

6. **UNITS (ROOMS) WITHIN A DWELLING UNIT SHARED WITH THE LANDLORD.** Units within a dwelling unit, if the dwelling unit is the principal residence of a landlord, and that landlord shares the bathroom or kitchen facilities with the tenant.

B. PARTIALLY EXEMPT UNITS. The following dwelling units are exempt only from Sections 8, 9, 10, 12, 13, 14, and 18.A and B of this Ordinance:

1. **SINGLE-FAMILY DWELLINGS.** Single-family dwellings on parcels with only one dwelling unit and other units exempted from rent controls pursuant to the Costa-Hawkins Act.

2. **UNITS CONSTRUCTED AFTER JANUARY 1, 1988.** Units which were newly constructed and received a certificate of occupancy on or after January 1, 1988. To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential. This exemption does not apply to any newly constructed dwelling units that replace covered units withdrawn from the rental market in accordance with the Ellis Act if the notice to withdraw the unit was filed after June 1, 2009.

3. **UNITS IN OWNER OCCUPIED TWO AND THREE-UNIT PROPERTIES.** Dwelling units in properties that have either two or three total units in which one of the units is currently occupied as the principal residence of a natural person who is the owner or a parent or child or sibling of the owner and who has occupied the unit for a continuous period of one year or more.

SECTION 6. NOTICE OF ORDINANCE AT COMMENCEMENT OF TENANCY.

At the commencement of any tenancy, the owner of any covered unit must provide the tenant with a written notice of this Ordinance on a form prescribed by the City. The form shall include notice of the existence and scope of this Ordinance, a summary of the restrictions on rent increases and good cause for eviction requirements in the Ordinance, and notice of the rights of tenants to petition against certain rent increases. The form shall be posted on the City's web

page and shall be available from the City Clerk and the Board. The form shall be published in languages that are commonly used in the community.

SECTION 7. RENT STABILIZATION BOARD

A. **COMPOSITION AND ELIGIBILITY.** There shall be in the City a Rent Stabilization Board. The Board shall consist of seven appointed Board Members and one alternate, all of whom shall be residents of the City. The Board shall select annually as chairperson and as vice-chairperson one of its members to serve in that capacity.

B. **APPOINTMENT OF BOARD MEMBERS.** Board members shall be appointed by the City Council at a public meeting after interviewing the applicants. All applicants shall submit an application to the City Council, by a date specified prior to the public meeting at which the Council votes on Board appointments. The application shall include a statement under penalty of perjury of the applicant's interests and dealings in real property, including but not limited to ownership, trusteeship, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in ownership, sale or management of real property during the previous three years.

C. **TERMS OF OFFICE.** Board Members shall be appointed to three year staggered terms. Upon the effective date of this Ordinance, all current Board Members selected by the City Council shall continue to serve terms as previously appointed under the Prior Ordinance, and new Board Members shall be appointed only when there is a vacancy.

D. **POWERS.** The Board shall have the following powers:

1. Set rents at fair and equitable levels to achieve the purposes of this Ordinance. Notwithstanding any other provision of this Ordinance, the Board shall have the authority to adopt regulations authorizing individual and/or general rent adjustments or base rent adjustments required by state or federal law.
2. Require registration of all rental units under Section 8 of this Ordinance and set fees for such registration.
3. Set maximum allowable rent for all rental units.
4. Issue certificates of maximum allowable rent.
5. Publicize the manner in which annual general adjustments are established under Section 10.
6. Make adjustments in the maximum allowable rent in accordance with Section 12 and Section 13.
7. Hold public hearings.
8. Issue orders, rules and regulations, and charge fees, including annual registration fees.
9. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.

10. Report periodically to the City Council on the status of rental housing units covered by this Ordinance.
11. Decide on tenant petitions for refund of excess rent paid in violation of this Ordinance.
12. Administer oaths and affirmations and subpoena witnesses and relevant documents.
13. Enforce the Ordinance under Section 18.
14. Establish rules and regulations for enforcement of the Ordinance under Section 18.
15. Pursue civil remedies in courts of appropriate jurisdiction.
16. 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.
17. Establish a schedule of penalties which may be imposed for non-compliance with this Ordinance or Rules and Regulations promulgated under this Ordinance.
18. Other powers necessary to carry out the purposes of this Ordinance, which are not inconsistent with the terms of this Ordinance.

E. RULES AND REGULATIONS. The Board may issue and apply 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. A copy of the Board's rules and regulations shall be available to the public for inspection at no charge and copying at actual costs for copying and shall be posted in a location easily accessible to all landlords and tenants. All rules and regulations and relevant documents explaining the decisions, orders, and policies of the Board shall be kept in the Board's office and shall be available to the public for inspection and copying, consistent with the provisions of the Public Records Act, Government Code Sections 6250 et seq.

F. PUBLICATION OF ORDINANCE. The Board shall publicize this Ordinance so that all residents of the City will have the opportunity to become informed about their legal rights and duties under this Ordinance. The Board shall prepare a brochure which describes the legal rights and duties of landlords and tenants under this Ordinance. The brochure shall be made available to the public.

G. MEETINGS. The Board shall hold regularly scheduled meetings. Special meetings shall be called at the request of the chair or at least a majority of the Board. Notice of meetings, agendas and the conduct of meetings shall conform to the provisions of the Ralph M. Brown Act, Government Code Sections 54950 et seq.

H. QUORUM. Four Board Members shall constitute a quorum of the Board.

I. VOTING. The affirmative vote of four Members of the Board is required for a decision, including all motions, rules, regulations, and orders of the Board.

J. COMPENSATION. The Board shall be a working Board. The City Council, by resolution, may establish a compensation schedule for members and alternates.

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

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

M. FINANCING. The Board, except as stated in this subsection, shall finance the reasonable and necessary expenses for its operation by charging landlords an annual registration fee for each unit in an amount determined to be reasonable and necessary by the Board. The Board may make reasonable annual adjustments in the registration fee charged to landlords. The Board is also empowered to request and receive funding when and if necessary from any available source, including the City's General Fund, if approved by a four-fifths vote of the City Council, for its reasonable and necessary expenses, including but not limited to salaries and all other operating expenses.

N. 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.

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

P. 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 maximum allowable rent under Section 10, where the Board Member is either the landlord of the property or a tenant residing in the property that is involved in the petition. The provisions of the Political Reform Act, Government Code Sections 87100 et seq. shall apply.

SECTION 8. RENT REGISTRATION AND CERTIFICATION

A. ANNUAL REGISTRATION STATEMENTS. All landlords subject to the provisions of this Ordinance shall file with the Board an annual registration statement for all rental units that they own in the City by March 1, 2010 and by January 1 of each year after 2010. The annual statement shall provide:

1. The address of each rental unit.
2. The name, address and telephone number of the landlord(s) and managing agent, if any. 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. The date of any new tenancy created since the last annual registration statement was filed, the initial rent and a signed copy of the rental agreement or lease.
5. The current rent charged for each unit and the housing services provided, or, if the unit is vacant, a statement that the unit is vacant.
6. The grounds for exemption for any rental units claimed to be exempt from the provisions of this Ordinance.
7. Any other information deemed relevant by the Board to the implementation of this ordinance.

B. REGISTRATION OF INITIAL RENTS FOR NEW TENANTS (VACANCY REGISTRATION). Within thirty days after the commencement of a new tenancy, a landlord shall file a registration statement on the form provided by the Board stating the initial rent for the new tenant(s). The landlord shall append a copy of the rental agreement or lease to the new vacancy registration statement. A landlord shall not be required to file a vacancy registration statement where the addition of tenants to an existing tenancy does not result in a landlord being permitted to set a new initial rent pursuant to the Costa-Hawkins Act.

C. AFFIDAVIT. 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.

D. REGISTRATION FEE. There shall be an annual registration fee per unit, set by the Board in accordance with Section 7.D.2 of this Ordinance, which shall be paid at the time that an annual registration statement is due to the Board each year.

E. FORMS. The Board shall develop forms for the information required by this Section and provide 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.

F. PENALTIES. Every annual fee and registration statement required by this Ordinance which is delinquent shall be subject to delinquency fees in accordance with Regulations adopted by the Board.

G. WAIVER OF PENALTY. In accordance with its rules and regulations and with applicable state laws, the Board shall waive penalties or fees in those cases where a landlord who had not been in substantial compliance with the registration requirements of this Ordinance, but who had made a good faith attempt to comply, enters into substantial compliance by filing a registration statement, paying necessary fees, and fulfilling any other requirement of this Ordinance and rules and regulations adopted pursuant to this Ordinance.

H. LIEN. The amount of any fee or 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 registration statements and fees are delinquent more than 180 days.

I. CERTIFICATE. Within one year following the effective date of this Ordinance, the Board shall issue a certificate stating the maximum allowable rent for each rental unit covered by this

Ordinance. Thereafter, the Board shall issue a certificate of maximum allowable rent upon the written request of a landlord or tenant or following a new tenancy under Section 8.B.

1. A request for issuance of a certificate shall be accompanied by supporting materials documenting such information as the Board deems necessary to assure an accurate determination of the maximum allowable rent, including, but not limited to, current rent, initial rent, and, if the landlord is making the request, the information that the landlord would be required to provide in an annual registration statement under Subsection A of this Section. Where a landlord requests a certificate of maximum allowable rent but has not supplied complete information, the Board shall immediately notify the landlord that the request for the certificate is denied because it is not complete and that the Board will not issue the certificate unless the landlord submits complete information.
2. The Board shall issue such certificates within five business days following the request or the landlord's registration of the new tenancy and mail the certificate to the landlord and tenant. All certificates issued after the adoption of this ordinance shall set the maximum allowable rent as specified in 4(J).
3. A landlord or tenant shall have the right to appeal the maximum allowable rent stated in the certificate.
4. The maximum allowable rent stated in the certificate shall, in the absence of intentional misrepresentation or fraud, be binding and conclusive upon the local agency for the period stated on the certificate unless the landlord or tenant appeals the determination of the maximum allowable rent.
5. The Board shall adopt appropriate fees and rules and regulations for issuance of certificates and appeal of the maximum allowable rent stated in such certificates.
6. If Civil Code Section 1947.7 or Section 1947.8 is repealed or otherwise determined not to apply to this Ordinance, this Subsection 8.I shall be of no force or effect.

J. EXEMPT UNITS. Landlords of formerly exempt units shall file an annual registration statement within 60 days after this Ordinance becomes applicable to the unit. The registration fee for this newly registered unit shall be prorated based upon the number of months remaining to the next annual registration deadline.

K. REGISTRATION OF ALL UNITS. 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 on the same Assessor's parcel. Substantial compliance shall mean that all required information has been provided, and all outstanding fees, interest and applicable penalties have been paid.

L. PASS THROUGH OF REGISTRATION FEE. Fifty percent of the registration fee may be passed on to tenants in equal installments over the course of twelve months. Under no circumstances shall penalties be passed through to tenants.

M. SECURITY DEPOSITS. The Board may establish rules and regulations for the payment of interest on tenants' security deposits.

SECTION 9. LIMITATION ON RENT INCREASES

Rental increases pursuant to this Ordinance shall be limited to increases authorized pursuant to Section 10 (Annual Adjustments) or Section 12 (Fair Return) of this Ordinance or to increases that a landlord has a right to implement pursuant to State law, see Section 11 – Initial Rents for New Tenants (Vacancy Decontrol).

SECTION 10. ANNUAL GENERAL ADJUSTMENTS OF MAXIMUM ALLOWABLE RENT

A. **ONE INCREASE PER YEAR.** Once each year all landlords shall be permitted to increase maximum allowable rents in accordance with the provisions of this Section. No more than one rent increase per twelve month period may be imposed on a rental unit pursuant to this Section.

B. **ANNUAL GENERAL ADJUSTMENT BASED ON CPI.** On or after July 1 of each year, , owners shall be permitted a percentage rent increase over the current rent equal to 65% of the percentage increase in the CPI as defined in Section 4 of this Ordinance. The current rent is the rent being charged to the tenant, unless the allowable rent pursuant to this Ordinance is lower, in which case the permissible increase shall be calculated from the lower rent.

C. **COMPUTATION OF ANNUAL GENERAL ADJUSTMENT.** Each year, in April, the Board shall compute the annual general adjustment. The computation of all rent increases allowable under this Section shall be according to the following formula.

1. **Step One.** In 2010, subtract the February 2009 CPI index from the February 2010 CPI index. Starting in 2011, subtract the one year prior February CPI index from the current February CPI index. The resulting figure is the index point difference.

2. **Step Two.** Divide the index point difference computed in Step One by the one year prior February CPI index. The resulting figure is the applicable percentage change in the CPI.

3. **Step Three.** Multiply the percentage change in the CPI by 65% (0.65). The resulting percentage amount shall be rounded to the nearest one tenth of one percent. This figure is the percentage increase that shall be the allowable annual general adjustment.

4. In the event that the CPI decreases, then no increase shall be permitted and no rent decrease shall be required. The percentage decrease shall be deducted from the next allowable percentage increases authorized pursuant to this section when computing the allowable annual general adjustment for that year.

D. **NOTICE OF ANNUAL INCREASE BY RENT BOARD.** Each year, the City shall notify each properly registered landlord of the percentage rental increase allowed. Said notice shall be mailed no later than May 15.

E. **RENT INCREASES FOR NEW TENANCIES.** No increase shall be permitted for a unit pursuant to this section if the increase pursuant to this section was authorized within twelve months after the date that an increase was authorized pursuant to the Costa-Hawkins Act. This

subsection shall apply as long as a new initial rent was authorized pursuant to the Costa-Hawkins Act, even if an increase was not actually implemented.

F. **LIMIT ON ALLOWABLE RENT INCREASES.** The overall rent increase in any twelve month period pursuant to this section may not exceed 10%.

G. **NOTICE BY LANDLORD TO TENANT OF INCREASE.** Prior to imposing a rent increase pursuant to this section, the landlord shall notify each affected tenant in the manner prescribed by law, with written notice thereof 30 days in advance of the first day for which such adjusted rent may be charged or collected.

H. **CONDITIONS UNDER WHICH INCREASE NOT ALLOWED.** No rent increase pursuant to an upward general adjustment of maximum allowable rent shall be effective if the landlord:

1. Has failed to register all units under the landlord's control.
2. Has failed to substantially comply with any provisions of this Ordinance and /or orders or regulations issued thereunder, or
3. Has failed to bring the rental unit into compliance with the implied warranty of habitability, or
4. Has failed to make repairs as ordered by the City.

I. **BANKING RENT INCREASES.** If a rent increase that is authorized by this section is not implemented in the year that it is authorized, it may be implemented in future years, subject to the following conditions and limitations:

1. The overall rent increase in any one year pursuant to the CPI-based rent adjustment and the banking adjustment authorized pursuant to this section may not exceed 10%.
2. By April 2010 and by February 1 of each year after 2010, the landlord has provided an annual notice to the tenant that lists which, if any, authorized rent increases have not yet been implemented.
3. The right to bank rent increases shall not include the right to impose rent increases authorized prior to the last date that a rent increase for the unit could have been implemented pursuant to the Costa-Hawkins Act.
4. A landlord may not bank increases in rent from more than three annual general adjustments during an occupancy by the same tenant. Implementation of banked rent increases shall be limited to the last three annual general adjustments that have been banked by the landlord.

SECTION 11. INITIAL RENTS FOR NEW TENANTS (VACANCY DECONTROL)

A. PURPOSE. The purpose of this section is to provide notice of a state law providing for vacancy decontrol and the rights of landlords to set the initial rent for new tenants rather than to constitute an operative provision of this Ordinance. Pursuant to the Costa-Hawkins Act, initial rents for new tenants are not subject to restrictions, unless:

1. The previous tenancy has been terminated by the owner by notice pursuant to California Civil Code Section 1954.53(a)(1).
2. The previous tenancy was terminated following a notice of a rent increase not permitted by this chapter. (See California Civil Code § 1954.53(a)(1).)
3. “[A]n owner ... [who] terminates or fails to renew a contract or recorded agreement with a government agency that provides for a rent limitation to a qualified tenant” ... “shall not be eligible to set an initial rent for three years following the date of the termination or nonrenewal of the contract or agreement.” (California Civil Code § 1954.53(a)(1)(A).)
4. The dwelling unit was cited for serious health, safety, fire, or building code violations at least 60 days prior to the vacancy and the violations were not abated by the time the unit was vacated. (California Civil Code § 1954.53(f).)
5. The previous tenancy was terminated after an Ellis Act Notice, but the withdrawal of the property was not fully or properly completed under the Ellis Act and its local implementing ordinances.
6. The owner has agreed to a rent restriction in return for public support. (California Civil Code § 1954(a)(1)(B)(2)).

B. SUBLETS AND ASSIGNMENTS. Under specified conditions, the Costa-Hawkins Act permits an owner to set initial rents without restriction when a covered unit is sublet or assigned and none of the original occupants permanently reside in the covered unit. (California Civil Code § 1954.53(d).)

C. RENT INCREASES AFTER SETTING AN INITIAL RENT. After the owner sets an initial rent without restriction pursuant to the Costa-Hawkins Act, the owner may only increase rent for the same tenant in conformance with Section 10 (Annual Adjustments) and Section 12 (Fair Return) of this Ordinance. The owner may not increase rents based on banking, cost increases, capital improvements, or other circumstances that arose before the new tenancy began.

SECTION 12. FAIR RETURN RENT ADJUSTMENTS

A. PURPOSE. It is the intent of this section to establish rents at a level which will provide landlords a fair return. A landlord may petition the Board for a fair return rent adjustment in accordance with the procedures set forth in Section 14 of this Ordinance.

B. MAINTENANCE OF NET OPERATING INCOME. A maintenance of net operating income standard shall be used to determine whether a landlord is obtaining a fair return (fair net operating income). Fair return shall be defined as 1985 calendar year net operating income

adjusted by 100% of the percentage increase in the CPI between the annual CPI for 1985 and the annual CPI for the year that is the current income and expense calendar year in the rent increase application.

C. NET OPERATING INCOME. Net operating income equals gross rental income minus operating expenses.

D. GROSS RENTAL INCOME. Gross rental income equals:

1. the sum of gross scheduled rental income at 100% paid occupancy, plus garage and parking fees, and all other income or consideration received or receivable for or in connection with the use or occupancy of rental units and housing services;
2. 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 three years' experience shall be used, or some other comparable method.

E. OPERATING EXPENSES. Operating expenses include the following expenses:

1. Real Property taxes.
2. Utility costs that are not reimbursed by the tenants.
3. Management expenses (contracted or performed), including necessary and reasonable advertising, accounting, insurance, and other managerial expenses, and allowable necessary and routine legal expenses. Management expenses shall be presumed to be the same percentage of gross rental income in the base year and current year unless the level of management service has substantially diminished or increased and/or it is demonstrated that the expense increases in excess of the percentage increases in rents since the base year were reasonable.
4. Normal repair and maintenance expenses including painting, normal cleaning, fumigation, landscaping, and repair of all standard services.
5. Owner-performed labor, which shall be compensated at the following hourly rates upon documentation being provided showing the date, time, and nature of the work performed:

General Maintenance \$15.00/hr

Skilled Labor \$25.00/hr

These rates shall be adjusted by the percentage increases in the CPI since June 8, 2010. Notwithstanding the above, a landlord may receive greater or lesser compensation for self-labor if the landlord demonstrates that the rates set forth above are unfair in a given case. There shall be a maximum allowance for owner-performed labor of 5% of Gross Income, unless the landlord shows greater services for the benefit of tenants.

6. License and registration fees required by law that are not reimbursed by the tenants.
7. Capital expenses with a total cost of less than \$100 per year per benefitted unit.
8. The amortized costs of capital improvements costing in excess of \$100 per benefitted unit. An interest allowance shall be permitted as part of the cost of amortized capital improvements. The interest allowance shall be equal to the prime mortgage rate for single-family dwellings plus two percent (2%) as of the date the application was first submitted. The prime mortgage rate shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission to the tenant of a request for a capital improvement increase. (In the event that this rate is no longer published, the Board shall designate an alternate rate that most closely approximates this rate.)
9. 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 they are not recovered from tenants.
10. Reasonable attorney's fees and other reasonable costs incurred in filing rent increase applications pursuant to Section 12 of this Ordinance or participating in other rent adjustment proceedings pursuant to this Ordinance.

F. EXCLUSIONS FROM OPERATING EXPENSES. Operating Expenses shall not include:

1. Avoidable and unnecessary expense increases since the base year.
2. Any penalties, fees, or interest assessed or awarded for violation of this or any other law with respect to the rental unit.
3. Depreciation of the property.
4. Any expense for which the landlord has been reimbursed by any security deposit, insurance settlement, judgment for damages, settlement, or any other method.
5. Mortgage interest or principal.
6. Income taxes.

G. PRESUMPTION OF FAIR BASE YEAR NET OPERATING INCOME. It shall be presumed that the net operating income produced by a property during the base year provided a fair return.

H. REBUTTING PRESUMPTION OF FAIR BASE YEAR NET OPERATING INCOME. 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. 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 expenses reflect average expenses for the property over a reasonable period of time. In making this determination, the Board or Hearing Examiner shall consider the following factors:

- a. The landlord made substantial capital improvements during 1987, which were not reflected in the rent levels on the base date.
- b. The landlord made substantial repairs 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 in the course of 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 as used in this Section.

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.

I. DETERMINATION OF BASE YEAR NET OPERATING INCOME.

1. Net operating income during the base year shall be equal to annualized Gross Income being realized on April 1, 1985 minus 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.

2. In the event that the landlord did not own the subject property on April 1, 1985 and records of base year operating expenses are unavailable, then the actual operating expenses for the current year shall be discounted to project 1985 operating expenses. Discounting of current year expenses to determine base year expenses shall be conducted in accordance with the following guidelines, unless the landlord or tenants demonstrate that different projections of base year operating expenses would be more reasonable. It shall be assumed that:

a. operating expenses, exclusive of property taxes and management expenses, increased at the rate of increase of all items of the CPI,

b. that property taxes increased at 2% per year, unless the landlord or tenants can document that property taxes must have increased by a different amount, and

c. management expenses are the same percentage of gross rental income in the base year and the current year, unless there has been an increase or reduction in the level of services.

J. **CONSIDERATION OF ANNUAL GENERAL ADJUSTMENTS.** Any individual adjustment established pursuant to this section shall take into account the extent of any general adjustments the landlord has implemented or may implement and may be limited or conditioned accordingly. Appendix A of this Ordinance contains a list of the annual general adjustments authorized pursuant to the Prior Ordinance.

K. **AVERAGING EXPENSES.** In calculating operating expenses for any year, when an expense item for a particular year is not representative; or is not a reasonable projection of average past or future expenditures for that item, said expense shall be averaged with other expense levels for other years or amortized or adjusted by the CPI or may otherwise be adjusted to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses.

L. **REASONABLENESS OF OPERATING EXPENSES.** The landlord shall have the burden of proving that all operating expenses are reasonable. Whenever a particular expense exceeds the normal industry or other comparable standard, the landlord shall bear the burden of establishing the reasonableness of the expense. To the extent that the Board finds any such expense to be unreasonable, the Board shall adjust the expense to reflect the normal industry or other comparable standard.

M. **BASE YEAR IN THE EVENT OF A PRIOR DECISION.** In the event that a prior decision was made in regard to the allowable rent pursuant to this section, then the base year shall be the year that was used as the current year in the prior application.

N. CONSIDERATION OF MAINTENANCE AND SERVICES. If in their response to a landlord's fair return petition, the tenants raise issues regarding the maintenance or level of services on the property, then the Board shall consider evidence regarding these claims. If there have been significant reductions in maintenance and/or service levels in the five years preceding the application for a rent adjustment, then the Board shall take into account any loss of rental value due to these reductions in determining what rent increase may be granted pursuant to this Section.

SECTION 13. RENT ADJUSTMENTS FOR MAINTENANCE AND SERVICE REDUCTIONS

A. FAILURE TO MAINTAIN HABITABLE PREMISES. Failure to maintain the premises in a habitable condition consistent with building and housing codes is considered an increase in rent. The Board may order a rent reduction pursuant to a tenant petition based on a loss in rental value attributable to a failure to maintain the premises in a habitable condition.

B. DECREASE IN HOUSING SERVICES. A decrease in housing services or maintenance without a corresponding reduction in rent is considered an increase in rent. The Board may order a rent reduction pursuant to a tenant petition based on loss in rental value attributable to a reduction in maintenance or services.

C. TENANT'S PETITION. A tenant may petition the Board for a rent adjustment for maintenance and service reductions in accordance with the procedures set forth in Section 14 of this Ordinance. The tenant's petition must specify the housing services decreased and demonstrate that the landlord was provided with reasonable notice and opportunity to correct the conditions that provide the basis for the petition.

D. RESTORATION OF RENT DECREASE. Where a rent decrease has been ordered pursuant to this section, the amount of rent decreased (return of excess rent) may be restored in accordance with procedures set out in the regulations when the former housing services or maintenance levels are reinstated. The 10% limitation on annual rent increases set forth in Section 10 of this Ordinance, shall not be applicable to rent increases pursuant to this subsection.

SECTION 14. PROCEDURES FOR RENT ADJUSTMENT PETITIONS

A. REGULATIONS. Procedures for hearing rent adjustment petitions pursuant to Section 12 (Fair Return) or Section 13 (Service Reduction claims) or Section 18.B. (Landlord's Demand for or Retention of Excessive Rent) or any other provision of this Ordinance shall be governed by regulations adopted by the Board. The Board shall provide in such regulations for hearing of rent adjustment petitions by hearing examiners with the right of appeal to the Board.

B. NOTICE. The procedures shall ensure that each party has ample advance notice of the claims, theories, and documentation to be presented by the other party.

C. OPEN HEARINGS. All hearings pursuant to this section shall be open to all members of the public.

D. 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.

E. QUANTUM OF PROOF AND NOTICE OF DECISION. No individual maximum allowable rent adjustment shall be granted unless supported by a 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 to appeal to the Board and /or to seek judicial review of the decision pursuant to this section and Section 20 of this Ordinance.

F. CONSOLIDATION. All landlord petitions pertaining to tenants in the same building or under the same ownership or management may be consolidated for hearing, and all petitions filed by tenants occupying the same building or under the same ownership or management may be consolidated for hearing, depending upon the similarity or dissimilarity of facts.

G. CONTENTS OF DECISION. A decision pursuant to Section 12 (Fair Return) shall include itemized findings as to the income and expense calculations that provided the basis for the decision, so as to provide the information that could be used to compare income and expenses considered in this application with income and expenses included in prior applications.

H. RECORDS. The City may require the parties to submit scanned pdf files of all documents that are part of the case.

I. FINALITY OF HEARING EXAMINER'S DECISION. The Hearing Examiner shall render a decision within 30 days of the conclusion of the hearing. The decision of the Hearing Examiner shall be the final decision of the Board in the event of no appeal to the Board and shall become effective when the time to appeal has expired. If the decision of the Hearing Examiner is appealed, the decision of the Hearing Examiner shall be stayed pending issuance of a final and effective Board decision.

J. APPEAL OF HEARING OFFICER'S DECISION. 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 Board Members. An appeal to the Board shall be filed no later than 15 calendar 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. 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 permitting new evidence.

K. TIME FOR DECISION. Final Board action on any individual petition shall occur within 120 days following the date of filing of the individual maximum allowable rent adjustment petition, unless the conduct of the petitioner or other good cause is responsible for the delay.

L. 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 maximum allowable rent adjustment without the petition first being heard by a Hearing Examiner.

M. FINALITY OF BOARD'S DECISION. Decisions of the Board are final. No administrative appeal may be taken from a decision of the Board. A person aggrieved by a decision of the Board may challenge the decision in court only.

N. PROCEDURES FOR OTHER HEARINGS. The procedures established in this Section shall apply to rent adjustment petitions pursuant to Section 12 or Section 13 of this Ordinance. The Board shall adopt regulations to establish procedures for hearing of other disputes between landlords and tenants under this Ordinance, including the use of hearing examiners and rights to appeal.

SECTION 15. USE AND CONFIDENTIALITY OF INFORMATION SUBMITTED TO BOARD

A. USE OF INFORMATION AND FORMS. 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 for the enforcement of City Ordinances other than this Ordinance.

B. RULES AND REGULATIONS. The Board shall adopt rules and regulations providing for the confidentiality of information submitted to the Board when such confidentiality is deemed necessary by the Board.

SECTION 16. JUST CAUSE REQUIRED FOR EVICTION

This section shall apply to single family dwellings as well as multi-unit dwellings, but not to units that are fully exempt pursuant to Section 5.A of this Ordinance.

A. GROUNDS FOR LANDLORD'S RECOVERY OF POSSESSION. No landlord shall be entitled to recover possession of a rental unit unless the landlord shows the existence of one of the following grounds.

1. After being provided with written notice of the identity and mailing address of the landlord, and the amount of rent due, 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 failed to cure a violation of any of the material terms of the rental agreement within a reasonable time after receiving written notice from the landlord of the alleged violation, but only if:
 - a. the demand to cure is based on terms that are legal and have been accepted in writing by the tenant or made part of the rental agreement; and

b. such terms have been accepted by the tenant or made part of the rental agreement after the initial creation of the tenancy, but only if:

i. 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, and

ii. the tenant's violation is not of:

(1) the obligation to surrender possession on proper notice as required by law, or

(2) the obligation to limit occupancy when the additional tenant who joins the occupants is (A) a dependent child who joins the existing tenancy of a tenant of record or the sole adult tenant, or (B) the spouse, domestic partner, parents, children, brother or sister of the tenant of record, as long as the number of tenants in the unit does not exceed that permitted by the Uniform Housing Code. The landlord has the right to approve or disapprove a prospective additional tenant who is not a dependent child or the spouse, domestic partner, parents, children, brother or sister of the tenant of record, provided that the approval is not unreasonably withheld.

3. The tenant, after written notice to cease and a reasonable time to cure, commits or permits to exist a nuisance in, or causes substantial damage to the premises, appurtenances, or common areas of the building or rental complex containing the rental unit beyond normal wear and tear, and refuses, after written notice, to pay the reasonable costs of repairing such damage and cease engaging in the conduct identified in the notice to cease.

4. Upon expiration of a prior rental agreement the tenant has refused to agree to a new rental agreement which contains provisions that are substantially identical to the prior rental agreement, and complies 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, quiet, comfort, or safety of the landlord or other tenants of the building or rental complex containing the rental unit. Such disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the landlord or other tenants of the building or rental complex containing the rental unit.

6. The tenant has, after written notice to cease and a reasonable time to cure, 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 and the approval of the Board, 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, provided that:

a. the repairs costs not less than the product of ten times the amount of the monthly rent times the number of rental units upon which such work is performed. For purposes of this section, the monthly rent shall be the average of the preceding 12 month period;

b. the repairs necessitate the eviction of the tenant because the work will render the rental unit uninhabitable for a period of not less than 30 calendar days;

c. the landlord gives advance notice to the tenant of the right of first refusal to any comparable vacant rental units at comparable rent owned by the landlord or to reoccupy the unit upon completion of the repairs at the same rent charged to the tenant before the tenant vacated the unit; and

d. 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, seeks in good faith to recover possession of the rental unit to remove the rental unit permanently from rental housing use through demolition.

9. The landlord seeks in good faith to recover possession of the rental unit to remove the rental unit permanently from rental housing use under the Ellis Act and, having complied in full with the Ellis Act and its local implementing ordinances, does so without ulterior reasons and with honest intent.

10. The landlord seeks to recover possession in good faith, without ulterior reasons and with honest intent:

a. For the landlord's use or occupancy as his or her principal residence for a period of at least 12 continuous months;

b. For the use or occupancy of the landlord's parents, children, brother or sister, or the landlord's spouse or domestic partner, as their principal place of residency for a period of at least 12 continuous months, in the same building in which the landlord resides as his or her principal place of residency, or in a building in which the landlord is simultaneously seeking possession of a rental unit under this subsection.

c. For purposes of this subsection, the term "landlord" shall be defined as an owner of record of at least 50 % interest in the property.

d. A landlord may not recover possession under this subsection if a comparable rental unit owned by the landlord is already vacant and is available, or if such a unit becomes vacant and available before the recovery of possession of the unit. If a comparable unit does become vacant and available before the recovery of possession, the landlord shall rescind the notice to vacate and dismiss any action

filed to recover possession of the premises. Provided further, if a noncomparable unit becomes available before the recovery of possession, the landlord shall offer that unit to the tenant at a rent based on the rent that the tenant is paying, with upward or downward adjustments allowed based upon the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Board. It shall be evidence of a lack of good faith if a landlord times the service of the notice, or the filing of an action to recover possession, so as to avoid moving into a comparable unit, or to avoid offering a tenant a replacement unit.

e. There shall be a rebuttable presumption that the landlord has not acted in good faith if the landlord or relative for whom the tenant was evicted does not move into the rental unit within two months and occupy the unit as that person's principal residence for a minimum of 12 continuous months.

f. Once a landlord has successfully recovered possession of a rental unit pursuant to this subsection, then no other current or future landlords may recover possession of any other rental unit in the building under this subsection. It is the intention of this subsection that only one specific unit per building may be used for such occupancy under this subsection and that once a unit is used for such occupancy, all future occupancies under this subsection must be of that same unit, provided that a landlord may file a petition with the Board, or at the landlord's option, commence eviction proceedings, claiming that disability or other similar hardship prevents him or her from occupying a unit which was previously occupied by the landlord.

11. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into under Subsection 16.A.7 following expiration of the term of the temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for reoccupancy by tenant.

12. The landlord seeks in good faith to recover possession of the rental unit to comply with a government agency's order to vacate, or any other order that necessitates the vacating of the building or rental unit as a result of a violation of the City's ordinances or any other provision of law.

13. The landlord seeks in good faith to recover possession of the rental unit to comply with a contractual agreement or government regulation relating to the qualifications of tenancy with a governmental entity, where the tenant is no longer qualified.

14. The tenant holding at the end of the term of the oral or written agreement is a subtenant not approved by the landlord

B. NOTICE TO SPECIFY GOOD CAUSE FOR EVICTION. A landlord's failure to specify good cause as listed above 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. **LANDLORD'S COMPLIANCE WITH WARRANTY OF HABITABILITY.** 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 16.A.7 and 16.A.8, a landlord shall allege, as to each rental unit on the property, substantial compliance with the implied warranty of habitability 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 and compliance as of the date of the commencement of the action for possession with Section 10 (Annual Adjustments) and Section 8 (Rent Registration) of this Ordinance. The landlord shall also notify the court of any pending or standing Hearing Examiner or Board decisions affecting the tenancy in question.

D. **FILING NOTICES WITH BOARD.** The landlord shall file with the Board a copy of any notice of termination, notice to quit, and/or summons and complaints in unlawful detainer within five calendar days after the tenant has been served with such notice or summons and complaints.

SECTION 17. RETALIATION AND HARASSMENT PROHIBITED

A. **RETALIATION.** 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 dominant motive 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 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. The Board may address retaliation issues further in its rules and regulations.

B. **HARASSMENT.** 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 interfere with the tenant's quiet enjoyment of the rental unit and common areas as part of an attempt to increase the rent above the maximum allowable rent permitted under this Ordinance, either by obtaining such excessive rent from the tenant or by creating a vacancy and increasing the rent to a new tenant. Such harassment 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. The Board may address harassment issues further in its rules and regulations.

SECTION 18. REMEDIES

In addition to the remedies provided by law, landlords and tenants covered by this Ordinance shall have the following remedies for violations of the Ordinance.

A. LANDLORD'S FAILURE TO REGISTER.

1. If a landlord fails to register a rental unit in accordance with Section 8 of this Ordinance, a tenant may petition the Board for appropriate relief. If the Board, after giving the landlord proper notice of the petition 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 landlord registers the rental unit in compliance with this Ordinance. If the landlord registers the rental unit in compliance with this Ordinance and provides written notice of compliance to the Board and the tenant, the Board shall determine the rent owed to the landlord for the period during which the landlord was not in compliance and give written notice of its determination to the landlord and tenant. The tenant shall pay the withheld rent to the landlord in accordance with the Board's determination within five business days after receiving the notice from the Board. No landlord who has failed to register a rental unit in violation of this Ordinance shall increase rent for the unregistered rental unit until such unit is brought into compliance with this Ordinance.

2. In any action by a landlord to recover possession based on nonpayment of rent, the landlord's failure to register the rental unit in violation of this Ordinance shall be a defense to the action.

3. If a landlord fails to register a rental unit in accordance with Section 8 of this Ordinance, a tenant of the rental unit may seek injunctive relief on behalf of her/himself to restrain the landlord from demanding or receiving any rent for the rental unit until the landlord registers the rental unit in compliance with this Ordinance.

B. LANDLORD'S DEMAND FOR OR RETENTION OF EXCESSIVE RENT. When a landlord demands or retains rent in excess of the maximum rent allowed under this Ordinance, a tenant may petition the Board for a rent adjustment or file suit against a landlord for actual damages. In such a suit, upon a tenant's proof that a landlord has willfully or intentionally demanded or retained rent in excess of the maximum rent allowed under this Ordinance, the tenant shall be entitled to an award of damages in an amount of \$5,000 or the damages allowed under California Civil Code Section 1947.11, whichever is greater.

C. LANDLORD'S VIOLATION OF OWNER MOVE-IN. Where a tenant vacates a rental unit based on a notice to quit from the landlord under Section 16.10, if the tenant shows in the appropriate court that the landlord or the landlord's relative has not occupied the rental unit as their principal residence within two months after the tenant vacates the unit or maintained residence in the unit for at least twelve continuous months, the tenant shall be entitled to regain possession of the rental unit. If the tenant shows that the landlord or relative willfully or intentionally misrepresented that the landlord or a relative intended to take possession of the rental unit as their principal residence within two months after the tenant vacates the rental unit or maintain residence in the unit for at least twelve continuous months, in addition to regaining possession of the rental unit the tenant shall be entitled to an award of damages in an amount of \$5,000 or the damages allowed under California Civil Code Section 1947.10, whichever is greater.

D. INJUNCTIVE RELIEF. 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.

E. BOARD ENFORCEMENT ACTION. If a tenant fails to bring a civil or administrative action to enforce the tenant's rights under this Ordinance within 120 days after the date the Board became aware of the first occurrence of a violation of this Ordinance, the City Attorney may bring an enforcement action on the tenant's behalf. If the City Attorney brings an

enforcement action, the City Attorney shall provide the tenants the right to opt-in or out of the enforcement action. In the case of an opt-in, the City Attorney shall obtain from such tenants a consent and waiver to represent their rights in settlement negotiations involving violation of the Ordinance. Nothing in this subsection should be construed as imposing limitations on the tenant's right to private action.

F. ATTORNEY'S FEES. A prevailing tenant in a civil claim for damages based on a violation of Sections 16, 17, 18B or 18C shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.

SECTION 19. NON-WAIVER

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

SECTION 20. JUDICIAL REVIEW

Among other available legal remedies, any person aggrieved by a decision of the Board may seek judicial review of the decision in the Superior Court of the State of California under California Code of Civil Procedure Section 1094.5 within the time required for the filing of such actions under California law.

SECTION 21. 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 \$1,000 fine and/or 90 days in jail for a first offense and up to a \$1,000 fine and/or six months in jail for any subsequent offenses.

SECTION 22. POWERS RESERVED TO CITY COUNCIL

This Ordinance does not address and is not intended to govern relocation benefits to tenants for evictions that do not result from the tenant's breach of a lease agreement, restrictions on demolition of rental units and conditions for replacement housing, or civil fines for failure to comply with this Ordinance. The City's policy on these issues is reserved for the City Council and shall not be preempted by this Ordinance, either expressly or by implication.

SECTION 23. 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. The City declares that it would have enacted each section, paragraph and sentence notwithstanding the invalidity of any other section, paragraph, or sentence. Accordingly, the provisions or applications of this Ordinance are severable.

Attachment 2

**Proposed Resolution requesting Board of Supervisors of San Mateo
County to Consolidate a Municipal Election to be held on June 8, 2010
Municipal Election with the Countywide General Election
to be held on June 8, 2010**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN MATEO TO CONSOLIDATE A MUNICIPAL ELECTION TO BE HELD ON JUNE 8, 2010, WITH THE COUNTYWIDE GENERAL ELECTION HELD ON THE DATE PURSUANT TO SECTION 10403 OF THE ELECTIONS CODE

WHEREAS, under the provisions of state law and East Palo Alto municipal regulations relating to elections, there is to be held a General Municipal Election on Tuesday, June 8, 2010; and

WHEREAS, it is desirable that the Municipal Election be consolidated with the Countywide General election to be held on the same date and that within the city the precincts, polling places and election officers of the two elections be the same, and that the County election department of the County of San Mateo canvass the returns of the Municipal Election and that the election be held in all respects as if there were only one election;

NOW, THEREFORE, The City Council of the City of East Palo, California, does resolve, declare, determine and order as follows:

SECTION 1. That pursuant to the requirements of § 10403 of the Elections Code, the Board of Supervisors of the County of San Mateo is hereby requested to consent and agree to the consolidation of a General Election with the Countywide General election on Tuesday, June 8, 2010, for the purposes of submitting to the voters a proposed ballot measure to adopt the Rent Stabilization and Just Cause for Eviction Ordinance of the City of East Palo Alto.

SECTION 2. That the County election department is authorized to canvass the returns of the Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

SECTION 3. That the Board of Supervisors is requested to issue instructions to the County election department to take any and all steps necessary for the holding of the consolidated election.

SECTION 4. That the City of East Palo Alto recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

SECTION 5. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the County election department of the County of San Mateo.

SECTION 6. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

* * *

The resolution for the consolidation of the Municipal Election and the Countywide General Election was adopted at a meeting of the City Council held on March 2, 2010, upon the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

David Woods, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney