ORDINANCE NO. 5261 -N.S.

ADOPTING A RENT STABILIZATION AND EVICTION FOR GOOD CAUSE PROGRAM.

BE IT ORDAINED by the People of the City of Berkeley as follows:

Section 1. TITLE.

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

Section 2. FINDINGS.

a. The Housing Element of the Berkeley Master Plan of 1977 states that:

(1) Berkeley residents have the right to decent housing in pleasant neighborhoods which meet standards of adequacy at a range of prices they can afford. (Goal 1)

(2) Existing housing should be maintained and improved. (Goal 2)

(3) Berkeley should have an adequate supply of housing throughout the City for persons with special needs. (Goal 3)

(4) All residents should have equal access to housing opportunities, financing and insurance on a non-discriminatory basis. (Goal 4)

b. On June 6, 1972, the electorate of the City of Berkeley passed a Rent Control Charter Amendment that was later voided by the California Supreme Court as being unconstitutional.

c. On June 5, 1973, the City Council declared the existence of a housing emergency in the City of Berkeley, based upon the Council's finding of a pattern of steadily rising rents, a shortage of decent housing and an increased deterioration of the existing housing stock in the City.

d. On November 7, 1978, the electorate of the City of Berkeley

passed a Renter Property Tax Relief Ordinance.

e. On October 25, 1979, the Berkeley City Council, Berkeley Housing Authority, the Berkeley Housing Advisory and Appeals Board, and members of the City's administrative staff held a public workshop regarding the current housing conditions in Berkeley.

f. On October 30, 1979, January 26, 1980 and February 21, 1980, the Berkeley City Council held public hearings at which members of the public expressed their views regarding current housing conditions in Berkeley and legislative proposals for rent stabilization and eviction controls.

g. The most significant provisions of the 1978 Renter Property Tax Relief Ordinance expired on December 30, 1979.

h. On November 27, 1979, the Berkeley City Council passed an ordinance establishing a Temporary Rent Stabilization Program, effective until June 30, 1980.

Section 3. PURPOSE.

The purposes of this Ordinance are to regulate residential rent increases in the City of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the City with regard to low and fixed income persons, minorities, students, handicapped, and the aged.

Section 4. DEFINITIONS.

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

b. COMMISSIONERS: The members of the Board are denominated Com-

missioners.

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, furnishing, telephone, 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.

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

e. RENT: The consideration, including any deposit, 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 goodsor 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 (including units covered by the Berkeley Live/Work Ordinance No. 5217-N.S.), located in the City of Berkeley, together with all housing services connected with 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, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or 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 CEILING: 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 officers or for use of a privilege under con-

trol of government.

Section 5. APPLICABILITY.

This Ordinance shall apply to all real property which is being rented or is available for rent for residential use in whole or in part, except for the following:

a. Rental units which are owned by any government agency. However, the exemption of units owned by the Berkeley Housing Authority from the terms of this Ordinance shall be limited to their exemption from the terms of Section 8, Rent Registration; Section 10, Establishment of Base Rent Ceiling and Posting; Section 11, Annual General Adjustment of Rent Ceilings; and Section 12, Individual Adjustments of Rent Ceilings, of this Ordinance.

b. Rental units which are rented primarily to transient guests for a period of less than fourteen (14) days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses.

c. Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.

d. Rental units leased by the Berkeley Housing Authority under the Section 23 program (42 U.S.C. Section 1421b) or rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f). However, except as may be preempted by state or federal law, the exemption of such rental units from the terms of this Ordinance shall be limited to Section 8, Rent Registration; Section 10, Establishment of Base Rent Ceiling and Posting; Section 11, Annual General Adjustment of Rent Ceilings and Section 12, Individual Adjustments of Rent Ceilings, of this Ordinance.

e. Rental units in any hospital, skilled nursing facility, health facility, asylum, or nonprofit home for the aged.

f. Rental units in a residential property which is divided into a maximum of four (4) units where one of such units is occupied by the landlord

as his/her principal residence. Any exemption of rental units established under this subsection (5.f.) shall be limited to rental units that would have been exempt under the provisions of this Ordinance had this Ordinance been in effect on December 31, 1979.

g. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord also occupies a unit in the same property as his/her principal residence.

h. For the purposes of Subsections 5.f. and 5.g., the term landlord shall be defined only as the owner of record holding at least fifty (50) percent interest in the property.

i. 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 Ceiling and Posting; Section 11, Annual General Adjustment of Rent Ceilings; and Section 12, Individual Adjustments of Rent Ceilings, of this Ordinance.

Section 6. RENT STABILIZATION BOARD.

a. COMPOSITION: There shall be in the City of Berkeley a Rent Stabilization Board; the Board shall consist of nine (9) appointed Commissioners. The Board shall elect annually as chairperson one of its members to serve in that capacity.

b. ELIGIBILITY. Residents of the City of Berkeley are eligible to serve as Commissioners on the Board.

c. FULL DISCLOSURE OF HOLDINGS: All commissioners shall file with the City Clerk a verified statement listing all of their interests and dealings in

real property, including but not limited to ownership, sale, management, transfer or exchange, and interests in entities whose primary purpose is the ownership, sale, management, transfer or exchange of real property during the previous three years. Such statements shall be made available for public inspection.

d. APPOINTMENT OF COMMISSIONERS: Commissioners shall be appointed by members of the Berkeley City Council in accordance with the Fair Representation Ordinance (No. 4780-N.S.), within thirty (30) days after the adoption of this Ordinance.

e. TERM OF OFFICE: Commissioners' terms of office shall be in accordance with the Fair Representation Ordinance (City of Berkeley Ordinance No. 4780-N.S.).

f. POWERS 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.

(3) Publicize the manner in which the Base Rent Ceiling is established under Section 10.

(4) To make adjustments in the rent ceiling 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) Report annually to the City Council of the City of

Berkeley on the status of rental housing units covered by this Ordinance.

(9) Request the City Council to remove rent controls under Section 6.q.

(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 6.n. 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 Berkeley.

g. RULES AND REGULATIONS: The Board shall issue and follow such rules and regulations, including those which 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 Berkeley.

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.

The Board shall publicize this Ordinance so that all resi-

dents of Berkeley will have the opportunity to become informed about their legal rights and duties under this Ordinance. The Board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this Ordinance. The brochure shall be made available to the public.

h. MEETINGS: The Board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the Commissioners of the Board. The Board shall hold its initial meeting no later than July 15, 1980.

i. QUORUM: Five (5) Commissioners shall constitute a quorum for the Board.

j. VOTING: The affirmative vote of five (5) Commissioners of the Board is required for a decision, including all motions, rules, regulations, and orders of the Board.

k. COMPENSATION: The Rent Stabilization Board shall be a working Board. In order to compensate Commissioners for their time and work performed as required by this Ordinance, Commissioners shall receive five dollars per hour, but in no case shall compensation for any one Commissioner exceed three thousand dollars in the first twelve month period or in any subsequent annual period that the Board is in operation for services rendered. Procedures and regulations for accounting for hours worked and compensation shall be developed and adopted by the Board and filed with the City Clerk. Upon request by the Board the City Council may annually adjust the hourly compensation rate and the maximum annual sum received by the Commissioners.

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

m. VACANCIES: If a vacancy shall occur on the Board, a qualified person to fill such vacancy shall be appointed in accordance with this Ordinance and the Fair Representation Ordinance (No. 4780-N.S.).

n. FINANCING: The Board shall finance its reasonable and necessary expenses for its operation without the use of General Fund monies of the City of Berkeley except as stated in this subsection, by charging landlords an annual registration fee of twelve dollars ($12.00) per unit, per year in the first year of operation. After the first year, upon request by the Board the City Council 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 Berkeley'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 Berkeley shall appropriate as a loan to the Rent Stabilization Board sufficient funds for the reasonable and necessary expenses of the Board during the six month period following the adoption of this Ordinance, said funds to be repaid to the City by the Rent Stabilization Board within one year's period following the adoption of this Ordinance.

o. 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.

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

q. DECONTROL: If the annual average vacancy rate for all rental units in the City of Berkeley exceeds five (5) percent over a six month period, the City Council is empowered, upon request by the Board, at its discretion and in order to achieve the purposes of this Ordinance, to exempt rental units covered

by this Ordinance from Sections 8, 10, 11, and 12 of this Ordinance. In determining the vacancy rate for the City of Berkeley the Board and the City Council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection (6.q.) coverage shall be reimposed if the City Council finds that the average annual vacancy rate has thereafter fallen below five (5) percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection (6.q.) the Board shall hold at least two public hearings.

r. CONFLICT OF INTEREST: Commissioners 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 Commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 12, where the Commissioner 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 agreement, including an advance payment of rent, shall be placed by the landlord, in an interest bearing account at an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation until such time as it is returned to the tenant or entitled to be used by the landlord. The interest earned by said payment or deposit on monies shall be returned along with the appropriate part of the principal to the tenant upon departure from the premises.

Section 8. RENT REGISTRATION.

a. The Board shall require all landlords subject to the provisions of this Ordinance to file with the Board by September 1, 1980 a rent registration statement for each rental unit covered by this Ordinance. An owner who has resided

in a single family dwelling for at least 365 consecutive calendar days need not file a rent registration statement under the provisions of this Ordinance if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.

b. Landlords shall provide in their initial rent registration statement the following information:

(1) The address of each rental unit;

(2) The name and address of the landlord(s) and the managing agent, if any;

(3) The date on which the landlord received legal title to or equitable interest in the rental unit;

(4) The housing services provided for the rental unit;

(5) The rent in effect on June 6, 1978;

(6) The rent in effect on December 30, 1979;

(7) The base rent ceiling;

(8) The lowest rent in effect between June 6, 1978, and the date of the adoption of this Ordinance.

(9) The amount of any deposits or other monies in addition to periodic rent demanded or received by the landlord in connection with the use or occupancy of the rental unit;

(10) Whether the rental unit was vacant or occupied on May 31, 1980.

c. All rent 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 information provided in the rent registration statement is true and correct.

d. The first annual registration fee of twelve dollars ($12.00) per unit shall be paid by the landlords to the Board no later than September 1,

1980. Subsequent annual registration fees set in accordance with Section 6.n. of this Ordinance shall be paid no later than September 1 of each year.

e. The Board shall provide forms for the registration information required by this Section and shall make other reasonable efforts to facilitate the fulfillment of the requirements set forth in this Section.

f. Every annual registration fee required by this Ordinance which is not paid on or before September 1 is declared delinquent, and the Board shall add to said registration fee and collect a penalty of one hundred (100) percent of the fee so delinquent in addition to the fee.

g. The amount of any registration fee and penalty imposed by the provisions of this Ordinance shall be deemed a debt to the City.

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 Berkeley for the enforcement of City of Berkeley 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 ceiling adjustment under Section 12 of this Ordinance when such confidentiality is deemed necessary by the Board.

Section 10. ESTABLISHMENT OF BASE RENT CEILING AND POSTING.

a. Base Rent Ceiling. Upon adoption of this Ordinance, no landlord shall charge rent for any rental unit covered by the terms of this Ordinance affecting rents in an amount greater than the lawful rent which was actually due and payable on, or last preceding, May 31, 1980, under the periodic term of the rental agreement, in accordance with the provisions of the Temporary Rent Stabilization Ordinance, No. 5212-N.S., except as permitted by the Board under Sections 11 and 12 of this Ordinance. Such lawful rent in effect on May 31, 1980,

is the base rent ceiling and 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 May 31, 1980, the base rent ceiling shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding that date. For such rental units where no periodic rent was in effect on May 31, 1980, or during the six months preceding that date, the base rent ceiling shall be a good faith estimate of the median rent in effect for comparable units in the City of Berkeley on May 31, 1980.

b. Posting. The Board may establish reasonable rules and regulations for the posting of rent ceiling and other relevant information to further the purposes of this Ordinance.

Section 11. ANNUAL GENERAL ADJUSTMENT OF RENT CEILINGS.

a. Once each year, the Board shall consider setting and adjusting the rent ceiling for all rental units covered by this Ordinance in general and/or particular categories of rental units covered by this Ordinance deemed appropriate by the Board. The Board shall hold at least two public hearings prior to making any annual general adjustment of the rent ceilings. The first such public hearing shall be conducted no later than October 31, 1980, and the first annual general adjustment shall be made no later than December 31, 1980.

b. In making annual general adjustments of the rent ceiling, the Board shall:

(1) Adjust the rent ceiling upward by granting those landlords who pay for utilities a utility adjustment for increases in the City of Berkeley for utilities.

(2) Adjust the rent ceiling upward by granting landlords a property tax, maintenance and operating expense increase adjustment (exclusive of utilities) for increases in the City of Berkeley for property taxes and maintenance and operating expenses.

3) Adjust the rent ceiling dov rd by requiring landlords to decrease rents for any decreases in the City of Berkeley for property taxes.

In adjusting rents under this subsection, the Board shall adopt a formula or formulas of general application. This formula will be based upon a survey or other available data indicating increases or decreases in the expenses in the City of Berkeley set forth in this subsection. For maintenance and operating expense adjustments, the Board may also use survey data from surrounding communities where appropriate. The Board shall make no more than one annual adjustment of rent ceilings per rental unit per year.

c. 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) days written notice of such rent increase and the notice period expires.

d. 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.

e. 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 for such unit in the rental agreement, the lower rent specified under this Ordinance shall be the maximum allowable rent.

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

(1) Has continued to fail to comply, after order of the Board, with any provisions of this Ordinance and/or orders or regulations issued thereunder, or

(2) Has failed to bring the rental unit into compliance with the implied warranty of habitability.

Section 12. INDIVIDUAL ADJUSTMENTS OF RENT CEILINGS.

a. Petitions. Upon receipt of a petition by a landlord and/or tenant, the rent ceiling of individual controlled rental units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this Section. The petition shall be on the form provided by the Board. The Board may set a reasonable per unit fee based upon the expenses of processing the petition to be paid by the petitioner at the time of filing. No petition shall be filed before September 1, 1980. 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 for a rental unit if an individual hearing has been held and decision made with regard to the rent ceiling for such unit within the previous six months.

b. Hearing Procedure. The Board shall enact rules and regulations governing hearings and appeals of individual adjustments of rent ceilings 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 affirmations.

(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 examinermay require either party to an individual rent ceiling adjustment hearing to provide it with any books, records and papers 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 adjustment or in additional submissions 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, recognized tenant organization representatives or any other 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. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of fact and law upon which said decision is based. At the same time, parties to the proceedings shall also be notified of their right to and the time limit for any 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) Commissioners. 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 a hearing. An appeal to the Board shall be filed no later than thirty (30) 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 examiner's 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 rent adjustment 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. In making individual adjustments of the rent ceiling, the Board or the hearing examiner shall consider the purposes of this Ordinance and shall specifically consider all relevant factors, including (but not limited to):

(1) Increases or decreases in property taxes;

(2) Unavoidable increases or any decreases in maintenance and operating expenses;

(3) The cost of planned or completed capital improvements to the rental unit (as distinguished from ordinary repair, replacement and maintenance) where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvement;

(4) Increases or decreases in the number of tenants occupying the rental unit, living space, furniture, furnishings, equipment, or other housing services provided, or occupancy rules;

(5) Substantial deterioration of the controlled rental unit other than as a result of normal wear and tear;

(6) Failure on the part 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;

(7) The pattern of recent rent increases or decreases;

(8) The landlord's rate of return on investment. In determining such return, all relevant factors, including but not limited to the following shall be considered: the landlord's actual cash down payment, method of financing the property, and any federal or state tax benefits accruing to landlord as a result of ownership of the property.

(9) Whether or not the property was acquired or is held as a long-term or short-term investment; and

(10) Whether or not the landlord has received rent in violation of the terms of this Ordinance or has otherwise failed to comply with the Ordinance.

It is the intent of this Ordinance that individual upward adjustments in the rent ceilings on units be made only when the landlord demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment.

d. No individual upward adjustment of a rent ceiling shall be authorized by the Board by reason of increased interest or other expenses resulting from the landlord's refinancing the rental unit if, at the time the landlord refinanced, the landlord could reasonably have foreseen that such increased expenses could not be covered by the rent schedule then in existence, except where such refinancing is necessary for the landlord to make capital improvements which meet the criteria set forth in Section 12.c.(3). This paragraph shall only apply to that portion of the increased expenses resulting from the refinancing that were reasonably foreseeable at the time of the refinancing of the rental unit and shall only apply to rental units refinanced after the date of adoption of this Ordinance.

e. Except for cases of individual hardship as set forth in Sub-

section 12.i. of this Ordinance, no individual upward adjustment of a rent ceiling shall be authorized by the Board because of the landlord's increased interest or other expenses resulting from the sale of the property, if at the time the landlord acquired the property, the landlord could have reasonably foreseen that such increased expenses would not be covered by the rent schedule then in effect. This Subsection (12.e.) shall only apply to rental units acquired after the date of adoption of this Ordinance.

f. No upward adjustment of an individual rent ceiling shall be authorized by the Board under this Section if the landlord:

(1) Has continued to fail to comply, after order of the Board, with any provisions of this Ordinance and/or orders or regulations issued thereunder by the Board, or

(2) Has failed to bring the rental unit into compliance with th implied warranty of habitability.

g. 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 of such rent increase and the notice period expires.

h. 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.

i. 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 on investment.

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.

(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.

(3) The tenant has wilfully 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 Berkeley, 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 or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed

while the tenant resides on the premises. Where the landlord recovers possession under this subsection 13.a.(7), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work.

(8) The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of 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 her own use or 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 or the landlord's spouse's child, parent, brother, sister, grandparents or grandchildren. For the purposes of this subsection 13.a.(9), the term landlord shall be defined as the owner of record holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record. The landlord may not recover possession under this subsection 13.a.(9) if a comparable unit is already vacant and available in the property.

(10) A landlord or lessor seeks in good faith to recover possession of the rental unit for his/her occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as his/her principal residence and has the right to recover possession of the unit for his/her occupancy as a principal residence under an existing rental agreement with the current tenants.

b. A landlord's failure to specify good cause as listed above in subsections 1 through 10 of Section 13.a. 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 13.a.(7) and 13.a.(8), a landlord shall allege substantial

compliance with the implied warranty of habitability and compliance with Sections 10 (Rent Ceiling) and 8 (Rent Registration) of this Ordinance.

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, decrease any services or increase the rent where the landlord's intent is retaliation against a 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. In an action by or against a tenant, evidence of the assertion or exercise by the tenant of rights under this Ordinance within six months prior to the alleged act of retaliation shall create a presumption that the landlord's act was retaliatory. "Presumption" means that the Court must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence. A tenant may assert retaliation affirmatively or as a defense to the landlord's action without the aid of the presumption.

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 wilfully and knowingly failed to register a rental unit covered by this Ordinance or violated the provisions of Sections 10, 11 and 12 of 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 unit 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 herself or 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 seven hundred and fifty dollars ($750.00) in addition to any actual damages.

b. <u>For Violation of Eviction Proceedings</u>. If it is shown in the appropriate court that the event which the landlord claims as grounds to recover possession under Subsection 13.a.(7), Subsection 13.a.(8), Subsection 13.a.(9), or Subsection 13.a.(10) is not initiated within two months after the tenant vacates the unit, or it is shown 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 $750 or three times the actual damages sustained, whichever is greater.

c. The City Attorney may bring an action for injunctive relief on behalf of the City or on behalf of tenants seeking compliance by landlords with this Ordinance.

d. The Board may seek injunctive relief to restrain or enjoin any violation of this Ordinance or of the rules, regulations, orders and decisions of the Board.

e. 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 may 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 it incurred in settlement, and the tenant aggrieved by the violation shall be entitled to the remainder.

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

This ordinance was approved by the electors of the City of Berkeley at the Municipal Election held in the City of Berkeley on June 3, 1980.

In effect: June 29, 1980