

## **MILPITAS TENANT PROTECTION ORDINANCE**

In light of rapidly rising rents in the City of Milpitas, the City Council hereby adopts this ordinance to protect residents from exorbitant rent increases and promote neighborhood stabilization.

### **1. FINDINGS AND PURPOSE**

- A) Whereas, there is a shortage of affordable housing in the City of Milpitas.
- B) Whereas, in Milpitas, the average rental cost of a two-bedroom, one-bathroom apartment increased by 6.06 percent between 2017 and 2018. The current cost of a two-bedroom, one-bathroom apartment is \$2,997.
- C) Whereas, 44 percent of renters in Milpitas are cost-burdened and pay 30 percent or more of their income on housing. Low-income households are even more likely to be rent burdened with 27 percent of Hispanic households pay more than 50 percent of their income towards rent.
- D) Whereas, according to research by the Urban Displacement Project at the University of California, Berkeley, Santa Clara County and parts of Milpitas are at high risk of exclusion and gentrification.
- E) Whereas, tenants displaced as a result of their inability to pay increased rents must relocate; but as a result of housing shortages are unable to find decent, safe and sanitary housing at affordable rent levels. Aware of the difficulty in finding decent, housing, some tenants attempt to pay requested rent increases, but, as a consequence, must expend less on other necessities of life. This situation has a detrimental effect on substantial numbers of renters in the City, creating particular hardship for senior citizens, persons on fixed incomes and other vulnerable tenants often requiring these tenants to choose between paying rent and providing food and other basic necessities for their family.
- F) Whereas, housing insecurity and excessive rent increases could result in homelessness and displacement of low-income families.
- G) Whereas, the City does not currently regulate rental amounts, rent increases or evictions from residential rental housing.
- H) Whereas, rent stabilization and just cause eviction have been adopted in a dozen jurisdictions in California and has long been upheld as constitutional by the California Supreme Court.
- I) The City of Milpitas enacts this ordinance is to promote neighborhood stability, healthy housing, and affordability for renters in the City of Milpitas by controlling excessive rent increases and arbitrary evictions to the greatest extent allowable under California law, while ensuring landlords a fair return on their investment.

### **2. DEFINITIONS**

- A) Unless further defined elsewhere in this Article, the following words or phrases as used in this Article shall have the following meanings:

B) **Annual General Adjustment.** The Annual General Adjustment is the percentage by which the Rent for existing tenancies in Covered Rental Units may be increased each year, subject to the limitations of this Article.

C) **Base Rent.** The Base Rent is the reference point from which the lawful Rent shall be determined and adjusted in accordance with this Article.

1) Tenancies commencing on or before November 8, 2018. The Base Rent for tenancies that commenced on or before shall be the Rent in effect on the date the Ordinance is enacted.

2) Tenancies commencing after November 8, 2018. The Base Rent for tenancies that commenced after November 8, 2018 shall be the initial rental rate charged upon initial occupancy, provided that amount is not a violation of this Article or any provision of state law. The term “initial rental rate” means only the amount of Rent actually paid by the Tenant for the initial term of the tenancy.

D) **Covered Rental Units.** All Rental Units not specifically exempted by this Article.

E) **City Council.** The term “City Council” refers to the City Council of the City of Milpitas.

F) **Disabled.** The term “Disabled” is defined in Govt. Code Section 12955.3.

G) **Hearing Officer.** An official appointed by the Board to conduct an investigation or administrative hearing pursuant to this Article.

H) **Housing Department.** The term “Housing Department” refer to the Milpitas Housing Department.

I) **Housing Director.** The term “Housing Director” refers to the current City of Milpitas “Director of Building and Housing.”

J) **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, Utility Charges that are paid by the Landlord, refuse removal, furnishings, telephone, parking, the right to have a specified number of occupants, and any other benefit, privilege or facility connected with the use or occupancy of any Rental Unit. Housing 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.

K) **Individual Rent Adjustment.** An adjustment to the otherwise lawful Rent authorized by a Hearing Officer pursuant to this Article.

L) **Landlord.** An owner, lessor, sublessor or any other person entitled to receive Rent for the use and occupancy of any Rental Unit, or an agent, representative, predecessor, or successor of any of the foregoing.

M) **Petition.** A petition for Individual Rent Adjustment pursuant to this Article.

N) **Property.** All Rental Units on a parcel or lot or contiguous parcels or contiguous lots under common ownership.

O) **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, who choose to be so designated. This shall also include any other at-large organization that represents the interest of Tenants.

P) **Relocation Assistance.** A relocation payment and the right of first refusal to reoccupy a rental unit.

Q) **Relocation Payment.**

A. The Housing Department will create an annual schedule that indicates amounts for relocation payments that must be paid according to the provision of this ordinance. A relocation payment shall be separate from any security deposit the landlord must refund. This relocation payment schedule as determined by the Housing Department must factor:

- a. An amount equal to an average of three month's fair market rent for the equivalent size of the tenant's actual unit.
- b. An amount for Moving Costs;
- c. An amount equivalent to an average Security Deposit for a unit of similar size to the tenants;
- d. For any tenants who are elderly or disabled, an additional payment to cover additional costs that may be incurred by the tenant.

B. In addition to the relocation payment required above, if a tenant is required to vacate a unit with less than thirty days' notice because it is unsafe, the landlord must also include the immediate payment of one additional month's rent for a unit of comparable size or the provision of alternative, safe, legal housing for thirty days after the tenant vacates whichever the tenant prefers.

R) **Rent.** All periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit and premises and attendant Housing Services, including all payment and consideration demanded or paid for parking, Utility Charges, pets, furniture, and/or subletting.

S) **Rental Housing Agreement.** An agreement, oral, written, or implied, between a Landlord and Tenant for use or occupancy of a Rental Unit and for Housing Services.

T) **Rental Unit.** Any building, structure, or part thereof, or land appurtenant thereto, or any other rental property rented or offered for rent for residential purposes, 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. This term shall also include mobile homes, whether rent is paid for the mobile home and the land upon which the mobile home is located, or rent is paid for the land alone. Further, it shall include recreational vehicles, as defined in California Civil Code Section 799.29 if located in a mobile home park or recreational vehicle park, whether rent is paid for the recreational vehicle and the land upon which it is located, or rent is paid for the land alone.

U) **Single-Family Home.** A detached building containing a single residential dwelling unit separately alienable from any other dwelling unit.

V) **Tenant.** A Tenant, subtenant, lessee, sublessee or any other person entitled under the terms of a Rental Housing Agreement or this Article to the use or occupancy of any Rental Unit.

W) **Utility Charges.** Any charges for gas, electricity, water, garbage, sewer, telephone, cable, internet, or other service relating to the use and occupancy of a Rental Unit.

### 3. **RENT INCREASES**

A) No landlord shall increase rent by more than the allowable increase, as defined below, per year of tenancy.

A) The allowable increase percentage shall be determined in July of each year commencing on September 1, and shall be calculated as follows:

(a) 100% of the change in the Consumer Price Index for the San Francisco-Oakland-Hayward, CA area of California (“CPI”) for the prior year, no less than 2% and no greater than 5% annually. The City shall publish the allowable increase percentage each year.

B) Allowable Rent increases pursuant to the Ordinance shall become effective only after the Landlord provides written notice to the Tenant in the manner prescribed by law, with at least thirty (30) days’ advance written notice, ninety (90) days if the tenant has resided in the unit for more than one year.

C) The following are exempt from the rent increase limitations of this Ordinance:

2) Government owned housing units;

3) Government subsidized housing units where the rent is controlled by federal, state, or local laws or regulation, for as long as the governmental regulation applies;

4) Transient and hotel occupancy as defined in Civil Code Section 1940(b).

5) Single family homes, condominiums, and homes constructed on or after 1995 to the extent that regulation of rents is prohibited by the Costa Hawkins Rental Housing Act. If Costa Hawkins is repealed these housing units would be subject to this Ordinance.

D) Pursuant to state law, this Ordinance does not regulate the initial rent at which a unit is offered, unless such regulation is permitted by a repeal of the Costa Hawkins Rental Housing Act or any other change in state law, in which case the rent increase limits shall apply.

E) No Rent increase shall be effective if the Landlord:

6) Has failed to substantially comply with all provisions of this Article and all rules and regulations promulgated by the Housing Department; or

7) Has failed to maintain the Rental Unit in compliance with Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10; or

8) Has failed to make repairs ordered by a Hearing Officer, the Housing Department, or the City.

#### **4. EVICTIONS**

A) No landlord shall serve a notice to terminate tenancy (however denominated), file an unlawful detainer or otherwise evict a tenant unless the landlord has good cause for eviction. Grounds for eviction must be set forth in the notice to terminate tenancy. The following are the only permissible grounds for eviction under this ordinance:

1) **Failure to pay rent:** The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under provisions of state or local law.

2) **Material Breach of Lease:** Substantial breach of a material term of the rental agreement, other than the obligation to surrender possession on proper notice as required by law.

(a) **Protections for Families.** Notwithstanding any contrary provision in this Section, a Landlord shall not take any action to terminate a tenancy as a result of the addition to the Rental Unit of a Tenant's child, parent, grandchild, grandparent, brother, or sister, or the spouse or domestic partner (as defined in California Family Code Section 297) or other non-married partner of such relatives, or as a result of the addition of the spouse or domestic partner of a Tenant, so long as the number of occupants does not exceed the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by California Health & Safety Code 17922. The Housing Department may promulgate regulations that will further protect families and promote stability for school-aged children.

3) **Nuisance:** Nuisance, waste or illegal conduct that substantially interferes with the health, safety, or quiet enjoyment of the landlord or neighbors

4) **Failure to Give Access.** The Tenant has continued to refuse, after the Landlord has served the Tenant with a Written Notice to Cease and without good cause, to grant the Landlord reasonable access to the Rental Unit as required by state or local law. A landlord must make a showing that the tenant acted in bad faith to proceed with an eviction for a tenant's failure to grant access to a unit.

5) **Necessary and Substantial Repairs Requiring Temporary Vacancy.** The Landlord, after having obtained all necessary permits from the City, and having provided written notice to the Tenant pursuant to state law, seeks in good faith to undertake substantial repairs that are necessary to bring the Rental Unit into compliance with applicable codes and laws affecting the health and safety of tenants of the building, provided that:

(a) The repairs necessitate that the Tenant vacate the Rental Unit because the work will render the rental unit uninhabitable for a period of not less than thirty (30) days;

(b) The Landlord gives advance notice to the Tenant of the Tenant's right to elect between:

(1) The right of first refusal to any comparable vacant Rental Unit owned by the Landlord at the same Rent, if such comparable vacant unit exists; or

(2) The first right of return to reoccupy the unit upon completion of the repairs at the same Rent charged to the Tenant before the Tenant temporarily vacated the Rental Unit.

6) **Owner Move-In.** The Landlord seeks, after providing written notice to the Tenant pursuant to state law, to recover possession of the Rental Unit in good faith for use and occupancy as a Primary Residence by the Landlord, or the Landlord's spouse, domestic partner, children, parents or grandparents.

(a) As used in this Subsection "Landlord," shall only include a Landlord that is a natural person and has at least a fifty percent (50%) recorded ownership interest in the Property.

(b) No eviction may take place under this Subsection if the same Landlord or enumerated relative already occupies a unit on the Property, or if a vacancy already exists on the Property.

(c) Any notice terminating tenancy pursuant to this Subsection shall contain the name, address and relationship to the Landlord of the person intended to occupy the Rental Unit.

(d) The Landlord or enumerated relative must intend in good faith to move into the Rental Unit within sixty (60) days after the Tenant vacates and to occupy the Rental Unit as a Primary Residence for at least thirty-six (36) consecutive months. The Housing Department may adopt regulations governing the determination of good faith, including, but not limited to, requiring a signed declaration of in good faith for use and occupancy as a Primary Residence by the Landlord, or the Landlord's spouse, domestic partner, children, parents or grandparent.

(e) If the Landlord or relative specified on the notice terminating tenancy fails to occupy the Rental Unit within sixty (60) days after the Tenant vacates, the Landlord shall:

(1) Offer the Rental Unit to the Tenant who vacated it at the same Rent in effect when the Tenant vacated; and

(2) Pay to said Tenant all reasonable expenses incurred in moving to and from the Rental Unit.

(f) Landlord may not evict a Tenant pursuant to this Subsection if the Tenant (1) has resided in the Rental Unit for at least five (5) years and is either at least sixty-two (62) years old or Disabled; or (2) is certified as being terminally ill by the Tenant's treating physician.

Notwithstanding the above, a Landlord may evict a Tenant who qualifies for the exemption herein if the Landlord or enumerated relative who will occupy the Rental Unit also meets the criteria for this exemption and no other units are available.

7) **Withdrawal of the Unit Permanently from Rental Market.** The Landlord seeks in good faith to recover possession to withdraw all Rental Units of an entire Property from the rental market. The Landlord first must have filed the requisite documents with the Housing Department initiating the procedure for withdrawing Rental Units from rent or lease under Government Code Section 7060 et. seq. and all regulations passed by the Housing Department, with the intention of completing the withdrawal process and going out of the rental business. Tenants shall be entitled to a minimum of 120-day notice or one (1) year in the case Tenants are defined as senior or Disabled under Government Code Section 12955.3. Notice times may be increased by regulations if state law allows for additional time.

8) **Demolition.** The Landlord, having obtained all necessary permits from the City, and having provided written notice to the Tenant pursuant to state law, seeks in good faith to recover possession of the Rental Unit to remove the Rental Unit permanently from rental housing use through demolition.

B) **Filing Termination Notices with Housing Department.** The Landlord shall file with the Housing Department a copy of any notice terminating tenancy within three (3) days after serving the notice on the Tenant.

C) **Failure to comply.** A Landlord's failure to comply with any requirement of this Article, including without limitation the failure to serve any of the required notices on the Housing Department pursuant to Subsection (g) herein, is a complete affirmative defense in an unlawful detainer or other action brought by the Landlord to recover possession of the Rental Unit.

## **5. RELOCATION PAYMENTS.**

A) A landlord seeking to recover possession under causes 5-8 above shall make relocation payments to each tenant provided to the tenant at the time service of the notice to quit.

B) In addition, each tenant who is 60 years of age or older or who is disabled within the meaning of Section 12955.3 of the California Government Code, and each household with at least one tenant and at least one child under the age of 18 years, shall be entitled to receive an additional payment within fifteen (15) calendar days of the landlord's receipt of written notice from the tenant of entitlement to the relocation payment along with supporting evidence. This amount shall be included in the schedule promulgated annually by the Housing Department.

C) The landlord shall notify then tenants of their rights under this section at the time of service of the notice to quit. Within 30 days after notification to the landlord of a claim of entitlement to additional relocation expenses because of disability, age, or having children in the household, the landlord shall give written notice to the Housing Department of the claim for additional relocation assistance and whether or not the landlord disputes the claim.

## **6. ADMINISTRATION**

A) The Milpitas Housing Department will administer this Ordinance, which shall include the following powers and duties:

1) Set Rents at fair and equitable levels to achieve the purposes of this Article and determine and publicize the Annual General Adjustment pursuant to this Article.

Notwithstanding any other provision of this Article, the Board shall have the authority to adopt regulations authorizing Rent increases and/or adjustments required by state or federal law.

2) Adopt rules and regulations for administration and enforcement of this Ordinance.

3) Appoint Hearing Officers to conduct hearings on Petitions for Individual Rent Adjustment pursuant to this Article.

- 4) Administer oaths and affirmations and subpoena witnesses and relevant documents.
  - 5) Administer the withdrawal process for the removal of Rental Units from the rental housing market pursuant to Subsection 1705(a)(8) herein.
  - 6) Hold public hearings.
  - 7) Conduct studies, surveys, investigations, and hearings, and obtain information to further the purposes of this Article.
  - 8) Report periodically to the City Council on the status of Covered Rental Units.
  - 9) Publicize through reasonable and appropriate means the provisions of this Article, including without limitation the rights and responsibilities of Landlords and Tenants.
  - 10) Establish a schedule of penalties that may be imposed for noncompliance with this Article or with rules and regulations promulgated under this Article.
  - 11) Pursue civil remedies as provided by this Article in courts of appropriate jurisdiction, subject to City Council approval.
  - 12) Any other duties necessary to administer and enforce this Article.
- B) A landlord must register with the Housing Department on an annual basis.
  - 1) **Rental Housing Fee.** All Landlords shall pay a Rental Housing Fee on an annual basis. The City Council shall approve the amount of the Rental Housing Fee, as determined by the Housing Department. The amount of the Rental Housing Fee may differ between Rental Units subject to the entirety of this Article and those that are Partially Exempt. The Housing Department may request, and the City Council may adjust the amount of the Rental Housing Fee at its discretion to ensure full funding of its reasonable and necessary expenses, in accordance with all applicable law.
  - 2) **City to Advance Initial Funds.** During the initial implementation of this Article, the City Council shall advance all necessary funds to ensure the effective implementation of this Article, until the Housing Department has collected Rental Housing Fees sufficient to support the implementation of this Article.

**7. PETITIONS FOR INDIVIDUAL RENT ADJUSTMENT--BASES**

- A) A Landlord or a Tenant may file a Petition with the Housing Department seeking adjustment, either upward or downward, of the Rent for any given tenancy in accordance with the standards set forth in this Section. A Petition shall be on a form provided by the Housing Department and, if made by the Landlord, shall include a declaration by the Landlord that the Rental Unit complies with all requirements of this Article.
- B) Petition for Upward Adjustment—Fair Rate of Return: To effectuate the purposes of this Article and the requirements of law, a Landlord may file a Petition for an upward adjustment of the Rent to ensure a fair and reasonable rate of return. The Housing Department shall promulgate regulations to further govern Petitions filed pursuant to this Subsection in accordance with law and the purposes of this Article.



(a) Prerequisites. No upward adjustment of Rent shall be authorized by a Hearing Officer or the Housing Department under this Subsection if the Landlord:

a) Has continued to fail to comply, after order of the Housing Department, Code Enforcement, or other authority, with any provisions of this Article or orders or regulations issued thereunder; or

b) Has failed to maintain the Rental Unit in compliance with Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10.

(b) Fair Rate of Return – Factors. In making any upward adjustment to the Rent based upon a Landlord’s Petition to ensure a fair rate of return, the Hearing Officer or Housing Department shall consider relevant factors, including but not limited to, the following:

a) Increases or decreases in property taxes;

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

c) The cost of planned or completed capital improvements to the Rental Unit (as distinguished from ordinary repair, replacement, and maintenance), but only where such capital improvements are necessary to bring the Property into compliance or maintain compliance with applicable local codes affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvements;

d) 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;

e) Substantial deterioration of the Rental Unit other than as a result of normal wear and tear;

f) Failure on the part of the Landlord to provide adequate Housing Services, or to comply substantially with applicable state rental housing laws, local housing codes, health and safety codes, or the Rental Housing Agreement; and

g) The pattern of recent Rent increases or decreases in the Rental Unit during the occupancy of the current Tenant.

2) Fair Rate of Return – Factors Excluded. In making any upward adjustment to the Rent based upon a Landlord’s Petition to ensure a fair rate of return, the Hearing Officer or Housing Department shall not consider the following factors as justifying an upward adjustment:

(1) Costs of debt servicing (including but not limited to principal, interest, and fees) for any debt obtained after September 16, 2016, other than debt incurred to finance the cost of improvements;

(2) Any penalties, fees, or interest assessed or awarded for violation of this or any other law with respect to the Rental Unit;

(3) The costs of capital improvements that are not necessary to bring the property into compliance or maintain compliance with applicable local codes affecting health and safety;

(4) Cost increases, capital improvements, banked Annual General Adjustments, or other circumstances that arose before the current tenancy began; and

(5) Income taxes.

C) **Effective Date of Individual Rent Adjustment.** Rent increases authorized pursuant to this Subsection shall become effective only after the Landlord provides the Tenant written notice of such Rent increase pursuant to state law.

D) **Petition for Downward Adjustment**— A Tenant may file a Petition with the Housing Department to Adjust the Rent Downward for the following provisions:

1) **Failure to Maintain Habitable Premises:** Failure to maintain a Rental Unit in compliance with governing health and safety and building codes, including but not limited to Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10, constitutes an increase in Rent. A Tenant may file a Petition with the Housing Department to adjust the Rent downward based on a loss in rental value attributable to the Landlord’s failure to maintain the Rental Unit in habitable condition.

(1) A Tenant Petition filed pursuant to this Subsection must specify the conditions alleged to constitute the failure to maintain the Rental Unit in habitable condition and demonstrate that the Landlord was provided with reasonable notice and opportunity to correct the conditions that form the basis for the Petition.

2) **Petition for Downward Adjustment—Decrease in Housing Services or Maintenance.** A decrease in Housing Services or maintenance, or deterioration of the Rental Unit beyond ordinary wear and tear, without a corresponding reduction in Rent, is considered an increase in Rent. A Tenant may file a Petition to adjust the Rent downward based on a loss in rental value attributable to a decrease in Housing Services or maintenance or deterioration of the Rental Unit. The Petition must specify the circumstances allege to constitute a decrease in Housing Services or maintenance, and demonstrate that the Landlord was provided with reasonable notice and an opportunity to correct.

3) **Petition for Downward Adjustment—Unlawful Rent:** If a Landlord demands or retains Rent in excess of the lawful Rent pursuant to this Article, a Tenant may file a Petition to adjust the Rent to its lawful level.

E) The Housing Department shall promulgate regulations regarding procedures for Petitions filed under this Article. Petitions shall be governed by such regulations and by the provisions of this Section.

(a) **Hearing Officer.** A Hearing Officer appointed by the Housing Department shall conduct a hearing to act upon the Petition and shall have the power to administer oaths and affirmations, and to render a final decision on the merits of the Petition, subject to the provisions of this Article.

(b) **Notice.** The Housing Department 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 provide a copy thereof.

(c) **Time of Hearing.** Each party to a Petition shall receive sufficient advance notice of the bases, theories, and relevant documents to be presented by the other party(ies), and of the time, date, and place of any hearing regarding the Petition.

(d) **Developing the Record.** The Hearing Officer may require either party to a Petition to provide any books, records, and papers deemed pertinent. If the Hearing Officer finds good cause to believe that a building or other inspection would assist in resolving the issues raised by the Petition, the Hearing Officer may conduct an inspection and/or request the City to conduct an inspection. The Tenant may request the Hearing Officer to order such an inspection prior to the date of the hearing. All documents required under this Subsection shall be made available to the parties involved prior to the hearing.

(e) **Open Hearings.** All hearings conducted pursuant to this Section shall be open to the public.

(f) **Right of Assistance.** All parties to a hearing conducted pursuant to this Section 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.

(g) **Hearing Record.** The Housing Department shall make available for inspection and copying any official record that 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 reasonable cost of copying. All hearings shall be audio or video recorded, as ordered by the Hearing Officer, and any party to the Petition may receive a copy of the recording upon payment of a reasonable cost.

(h) **Quantum of Proof and Notice of Decision.** No Petition for Individual Rent Adjustment, whether upward or downward, shall be granted unless supported by the preponderance of the evidence submitted prior to and 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 proceeding shall also be notified of their right to appeal to the Housing Department and/or to judicial review.

F) **Appeal.** Any person aggrieved by the decision of the Hearing Officer may appeal to the full Housing Director for review. On appeal, the Housing Director shall affirm, reverse, or modify the decision of the Hearing Officer. The decision on appeal shall be based on the hearing record, and the Housing Director shall neither hear nor find facts in addition to those presented to the Hearing Officer.

G) **Finality of Decision.** The decision of the Hearing Officer shall be the final decision, unless an aggrieved party has timely sought an appeal to the Housing Director. The decision of the Housing Director on appeal shall be final unless an aggrieved party has timely sought judicial review pursuant to law.

H) **Time for Decision.** A final decision on any Petition shall be made within a reasonable time. Decisions decreasing Rent shall remain in effect until the Landlord has corrected the defect warranting the decrease. The Board shall, by regulation, establish procedures for making prompt compliance determinations.

I) **Right to Fair Return Guaranteed.** No provision of this Article shall be applied so as to prohibit the Board from granting an Individual Rent Adjustment that is demonstrated by the Landlord to be necessary to provide the Landlord with a fair rate of return.

## **8. LANDLORD NONCOMPLIANCE & ENFORCEMENT**

A) **Defense to Eviction.** Landlords must establish compliance with this Ordinance in any action to recover possession of a rental unit. Violation of this Ordinance shall be a complete defense to eviction.

B) **Private Right of Action.** Whenever a landlord endeavors to recover possession or recovers possession of a rental unit in violation of this Ordinance, charges a tenant a rent which exceeds the limitations set forth in this Ordinance, retaliates against a tenant for the exercise of any rights under this Ordinance, or attempts to prevent a tenant from acquiring any rights herein, the tenant or City may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages, (including damages for mental or emotional distress), and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of the limitations of this Ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.

C) **Retaliation.** No landlord may cause a tenant to quit involuntarily or threaten to bring any action to recover possession, or decrease any services, or increase the rent, or take any other action where the landlord's dominant motive is retaliation for the tenant's exercise of any rights under the law. Such retaliation shall be a defense to any action to recover possession. In an action to recover possession of a rental unit, proof of the exercise by the tenant of rights under the law within six months prior to the alleged act of retaliation shall create a rebuttable presumption that the landlord's act was retaliatory.

D) **Nonexclusive Remedy.** The rights and remedies provided by this Ordinance are in addition to any rights available to the tenant under contract, statutory, or case law.

E) **Misdemeanor.** It shall be unlawful for a landlord or for any person who willfully assists a landlord to recover possession of a rental unit unless, prior to recovery of possession of the unit the landlord satisfies all requirements for recovery of the unit under this Ordinance. It shall further be unlawful for a landlord to charge any rent which exceeds the limitations of this chapter. Any person who endeavors to recover possession or charges excessive rents in violation of this Ordinance shall be guilty of a misdemeanor.

## **9. SEVERABILITY.**

A) If any provision of clause of this Ordinance or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other chapter provisions, and clauses of

this chapter are declared to be severable.

**10. NON-WAIVER**

A) Any waiver by a tenant of rights under this Ordinance shall be void as contrary to public policy.