

Section 13.76.010

TITLE

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

(Ord. 5467-NS § 1, 1982: Ord. 5261-NS § 1, 1980.)

Section 13.76.020

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.

(Ord. 5467-NS § 2, 1982: Ord. 5261-NS § 2, 1980.)

Section 13.76.030

PURPOSE

The purposes of this chapter 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.

(Ord. 5467-NS § 3, 1982: Ord. 5261-NS § 3, 1980.)

Section 13.76.040

DEFINITIONS

A. "Board" refers to the elected Rent Stabilization Board established by this chapter and Article XVII of the Charter of the City of Berkeley.

B. "Commissioners" means the members of the board who are denominated commissioners.

C. "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" means 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" means 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 goods or services rendered to or for the benefit of the landlord under the rental agreement.

F. "Rental agreement" means 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" means 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-NS), 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" means a parcel of real property which is assessed and taxed as an undivided whole.

I. "Tenant" means 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" means 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" means 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" means 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" means the maximum allowable rent which a landlord may charge on any rental unit covered by this chapter.

N. "Base rent ceiling" means the maximum allowable rent established under Section 13.76.100 of this chapter.

O. "Fees" means for the purpose of this chapter, a charge fixed by law for services of public officers or for use of a privilege under control of government.

P. "Nonprofit, accredited institution of higher education" means a post secondary educational institution whose legal status under the California Education Code is verified by an annual validation receipt from the California State Department of Education, and which is accredited by the Western Association of Schools and Colleges or the Association of Theological Schools and which is exempt from taxation under Section 501 (c)(3) of the United States Internal Revenue Code and under Section 23701(d) of the Revenue and Taxation Code, and which, if otherwise required by law to do so, has obtained a valid unrevoked letter or ruling from the United States Internal Revenue Service or from the Franchise Tax Board which states that the organization so qualifies for exemption from taxation.

(Ord. 6833-NS § 1 (part), 2004: Ord. 5872-NS § 1, 1988: Ord. 5467-NS § 4, 1982: Ord. 5261-NS § 4, 1980)

Section 13.76.050

APPLICABILITY

This chapter shall apply to all real property that 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 chapter shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

B. Rental units which are rented primarily to transient guests for use or occupancy less than fourteen consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen days or less shall not by itself exempt any unit from coverage by this chapter.

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

D. Rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. 11403 et. seq.) or similar federally funded rent subsidy program. Except as may be preempted by state or federal law, the exemption of such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. However, the exemption from Sections 13.76.080, 13.76.110 and 13.76.120 shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Berkeley Housing Authority or successor agency. For units where the rent demanded exceeds the Payment Standard, the Payment Standard or an initial rent above the Payment Standard if approved by the Berkeley Housing Authority, as reported to the board by the Berkeley Housing Authority or successor agency, shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120.

E. Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for the aged.

F. Rental units in a residential property which is divided into a maximum of four 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 (13.76.050 F.) shall be limited to rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080I and 13.76.100C. applied to them.

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 13.76.050 F. and G., the term landlord shall be defined only as the owner of record holding at least 50% 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 chapter, 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 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

J. A rental unit which is rented by a nonprofit, accredited institution of higher education to a tenant or tenants who are student(s), faculty, or staff of the institution or of a member school of the Graduate Theological Union, provided, however, that the institution owned the unit as of January 1, 1988.

K. A rental unit in a residential property owned by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that is rented to a low income tenant and subject to a regulatory agreement with a governmental agency that controls the unit's rent levels. However, the exemption for such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings of this chapter and shall apply only for so long as the regulatory agreement is in effect. This exemption shall not apply to rental units at the property that are not subject to a regulatory agreement with a governmental agency or that are rented by a tenant who occupied the unit prior to the property's acquisition by the tax-exempt organization.

L. Rental units in a facility owned or leased by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that has the primary purpose of operating a treatment, recovery, therapy, sanctuary or shelter program for qualified clients, where such rental units are provided incident to the client's participation in the primary program and where the client has been informed in writing of the temporary or transitional nature of the housing at the inception of his or her participation in the program. However, except as may be preempted by the Transitional Housing Participant Misconduct Act (California Health and Safety Code Sections 50580 et. seq.) or other state or federal law, such rental units shall not be exempted from the terms of Section 13.76.130, Good Cause Required for Eviction. For purposes of Section 13.76.130.A.2, the client's continued eligibility for participation in the treatment, recovery, therapy, sanctuary or shelter program shall be deemed a material term of the client's rental agreement with the program's operator.

(Ord. 6833-NS § 2 (part), 2004: Ord. 6354-NS § 1, 1996: Ord. 5872-NS § 2, 1988: Ord. 5467-NS § 5, 1982: Ord. 5261-NS § 5, 1980)

Section 13.76.060

RENT STABILIZATION BOARD

A. Composition. There shall be in the city of Berkeley an elected rent stabilization board; the board shall consist of nine commissioners. The board shall elect annually as chairperson one of its members to serve in that capacity.

B. Eligibility. Residents who are duly qualified electors of the city of Berkeley are eligible to serve as commissioners on the board.

C. Full disclosure of holdings. Candidates for the position of commissioner shall fulfill the requirements as set forth in the City Charter in Article III, Section 6 1/2.

In addition, when filing nomination papers, candidates shall submit a verified statement of their interests and dealings in real property, including but not limited to its ownership, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in its ownership, sale or management during the previous three years.

D. Election of commissioners. Commissioners shall be elected at the statewide general election held in November of even numbered years.

E. Terms of office. Commissioners' terms of office shall be as set forth in Article XVII of the Berkeley City Charter.

F. Powers and duties. The elected rent stabilization board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions. 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 13.76.080.
3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.
4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.
5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this chapter.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set 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 chapter.
9. Request the City Council to remove rent controls under Section 13.76.060Q.
10. Administer oaths and affirmations and subpoena witnesses and relevant

documents.

11. Establish rules and regulations for settling civil claims under Section 13.76.150.

12. Seek injunctive relief under Section 13.76.150.

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 chapter.

15. Hold public hearings.

16. Charge and collect registration fees, including penalties for late payments.

17. Other powers necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter.

18. Except as provided in Section 13.76.060N of this chapter, 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 Chapter, as will further the purposes of this Chapter. 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 Chapter so that all residents of Berkeley will have the opportunity to become informed about their legal rights and duties under this Chapter. The board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this Chapter. 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 commissioners shall constitute a quorum for the board.

J. Voting: The affirmative vote of five 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. Commissioners shall be paid compensation and benefits in an amount set by the board in order to compensate commissioners for their time and work performed as required by this chapter and the city charter.

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 selected in accordance with the procedures set forth in Article V of the City Charter.

N. Financing: The board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the board. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the board. The board is also empowered to request and receive funding, when and if necessary, from the city of Berkeley and/or any other available source for its reasonable and necessary expenses.

O. Staff: The board shall be a working board and shall employ such staff as may be necessary to perform its functions efficiently and as provided by Berkeley Ordinance.

P. Registration: The board shall require the registration of all rental units covered by this chapter as provided for in Section 13.76.080. 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 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 chapter, to exempt rental units covered by this chapter from Sections 13.76.080, 13.76.100, 13.76.110 and 13.76.120 of this chapter. 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 Q coverage shall be reimposed if the city council finds that the average annual vacancy rate has thereafter fallen below five percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection Q the board shall hold at least two public hearings.

R. Conflict of Interest: Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes. 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 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

(Ord. 6008-NS § 6, 1982: Ord. 5467-NS § 6, 1982: Ord. 5261-NS § 6, 1980.)

Section 13.76.070

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 held by the landlord, in a fiduciary capacity for the benefit of the tenant and shall accrue simple interest at the rate equal to the average rates of interest paid on six-month certificates of deposit by insured commercial banks until such time as the payment or deposit is returned to the tenant or entitled to be used by the landlord as provided in Civil Code Section 1950.5. The interest accrued by said payment or deposit through October 31st of each

year shall be returned to the tenant annually in December of each year, either through a rent rebate or cash payment, and shall be at a rate equal to the 12-month average of the average rates of interest paid on six-month certificates of deposit by insured commercial banks as published by the Federal Reserve Board on the first business day of each month for the prior 12 months ending on November 1st, rounded to the nearest tenth. On or before November 15th of each year, the board shall give public notice of the rate to be effective for the following December. Upon the tenant's departure from the premises, the balance of any interest accrued since the last October 31st shall be paid at the average monthly rate from the last November 1st to the date of departure and shall be returned to the tenant along with the appropriate part of the principal and any prior unpaid interest. The board shall compute and publicize the interest rate applicable under this section on an ongoing basis.

(Ord. 6833-NS § 3 (part), 2004: Ord. 5467-NS § 7, 1982: Ord. 5261-NS § 7, 1980)

Section 13.76.080

RENT REGISTRATION

A. The board shall require all landlords subject to the provisions of this chapter to file with the board by September 1, 1980 a rent registration statement for each rental unit covered by this chapter. An owner who has resided in a single family dwelling for at least three hundred sixty five consecutive calendar days need not file a rent registration statement under the provisions of this chapter 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 chapter;
- (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;

(11) Rent in effect on December 31, 1981.

C. All rent registration statements provided by landlords in accordance with this chapter 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 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 13.76.060N of this chapter shall be paid no later than July 1 of each. Because fees charged in years prior to 1991 were due on September 1, but paid for board expenses from each preceding July 1, the fee due 1991 shall be calculated to pay for twelve months of board expenses.

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 chapter which is not paid on or before July 1 is declared delinquent, and the board shall add to said registration fee and collect a penalty of one hundred percent of the fee so delinquent in addition to the fee. Every six months that the fee and penalty remain delinquent, the penalty shall be increased by one hundred percent of the original fee. The board may waive the penalty if payment is made within thirty days of the original due date

A landlord may request the board to waive all or part of the penalty if he/she can show good cause for the delinquent payment.

G. The amount of any registration fee and penalty imposed by the provisions of this chapter shall be deemed a debt to the city.

H. Within thirty days after the filing of a rent registration statement, the board shall provide a true and correct copy of said statement to the occupant of the respective unit.

I. Landlords of formerly exempt units shall register within sixty days of coming under coverage of this chapter. The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

J. No landlord shall be deemed to be in compliance with this section with respect to a given unit until the landlord has completed registration for all covered units in the same property. Registration shall be deemed complete when all required information has been provided and all outstanding fees and penalties have been paid.

K. Registration fees shall not be passed along to the tenants without the express, prior approval of the board. Under no circumstances shall penalties be passed along to tenants.

(Ord. 6008-NS § 1, 1990: Ord. 5872-NS § 3, 1988: Ord. 5467-NS § 8, 1982: Ord. 5261-NS § 8, 1980.)

Section 13.76.090

USE AND CONFIDENTIALITY OF INFORMATION SUBMITTED TO BOARD

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 13.76.120 of this chapter when such confidentiality is deemed necessary by the board and where otherwise permitted by state law.

(Ord. 6833-NS § 4 (part), 2004: Ord. 5467-NS § 9, 1982: Ord. 5261-NS § 9, 1980)

Section 13.76.100

ESTABLISHMENT OF BASE RENT CEILING AND POSTING

A. Base Rent Ceiling. Upon adoption of this chapter, no landlord shall charge rent for any rental unit covered by the terms of this chapter 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 13.76.110 and 13.76.120 of this chapter. 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 13.76.110 and 13.76.120. 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 and no other rent has been certified or determined by the board after hearing, the base rent ceiling shall be the first periodic rent charged following 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 chapter.

C. Previously Exempt Units. For rental units specified in Section 13.76.050.F., the base rent ceiling shall be the rent in effect on December 31, 1981. For such rental units where no rent was in effect on December 31, 1981, 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 December 31, 1981, or during the six months preceding that date and no other rent has been certified or determined by the board after hearing, the base rent ceiling shall be the first periodic rent charged following December 31, 1981.

(Ord. 6833-NS § 5 (part), 2004: Ord. 5467-NS § 10, 1982: Ord. 5261-NS § 10, 1980)

Section 13.76.110

ANNUAL GENERAL ADJUSTMENT OF RENT CEILINGS

A. Effective January 1 of each year, the rent ceiling for all rental units covered by this chapter for which the landlord did not establish an initial rent during the prior calendar year shall be adjusted by 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve month period ending the previous June 30. In determining the allowable percentage rent increase, numbers of .04 and below shall be rounded down to the nearest tenth decimal place and numbers of .05 and

above shall be rounded up to the nearest tenth decimal place. In no event, however, shall the allowable annual adjustment be less than zero (0%) or greater than seven percent (7%). The board shall publish and publicize the annual general adjustment on or about October 31st of each year.

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

C. If the maximum allowable rent specified under this chapter 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 chapter for a rental unit is less than the rent specified for such unit in the rental agreement, the lower rent specified under this chapter shall be the maximum allowable rent.

D. 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 chapter and/or orders or regulations issued thereunder, or
2. Has failed to bring the rental unit into compliance with the implied warranty of habitability, or
3. Has failed to make repairs as ordered by the housing inspection services of the City of Berkeley, or 4. Has failed to completely register by July 1, except as provided in Subsection E. below.

E. The amount of an upward general adjustment for which a landlord shall be eligible shall decrease by ten percent (10%) per month for each month beyond October 1 for which the landlord fails to register.

F. A landlord who is ineligible to raise rents under an upward general adjustment for an entire calendar year shall not be eligible to raise rents under that particular general adjustment in future years.

(Ord. 6832-NS § 1, 2004; Ord. 6008-NS § 1, 1990; Ord. 5467-NS § 11, 1982; Ord. 5261-NS § 11, 1980)

Section 13.76.120

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 examiner may 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 person designated by said parties.

7. **Hearing Record.** 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 13.76.180 of this chapter.

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 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 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 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 hearing examiner shall consider the purposes of this chapter 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 chapter or has otherwise failed to comply with the chapter.

It is intent of this chapter 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 13.76.120 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 chapter.

E. Except for cases of individual hardship as set forth in Subsection 13.76.120 I. of this chapter, 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 (13.76.120 E.) shall only apply to rental units acquired after the date of adoption of

this chapter.

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 chapter and/or orders or regulations issued thereunder by the board, or
2. Has failed to bring the rental unit into compliance with the 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 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 days after the effective date set by the board for the downward adjustment.

I. No provision of this chapter 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.

(Ord. 5467-NS § 12, 1982; Ord. 5261-NS § 12, 1980.)

Section 13.76.130

Good cause required for eviction.

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

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days.
2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement. Notwithstanding any contrary provision in this chapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

- a. The landlord has unreasonably withheld consent to the subtenancy;
and

- b. The tenant remains an actual occupant of the rental unit; and
- c. The number of tenants and subtenants actually occupying the rental unit does not exceed the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater.
- d. Withholding of consent by the landlord shall be deemed to be unreasonable where:

- (i) The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy;

- (ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information; and

- (iii) The proposed new subtenant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and

- (iv) The landlord has not articulated in writing a well-founded reason for refusing consent.

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 or the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.

6. The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.

7a. 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.

- b. Where such repairs can be completed in a period of 60 or fewer days, and the tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises

during the period required to complete the repairs, the landlord may not recover possession pursuant to this subsection (13.76.130A.7.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.

c. Where the landlord owns any other residential rental units in the City of Berkeley, and any such unit is vacant and available at the time of service of the written notice terminating the tenancy, or at any time thereafter until the earlier of the tenant's vacating the premises or the entry of a judgment by a court of competent jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this subsection (13.76.130A.7.), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:

(i) To enter into a rental agreement (to be designated as a "temporary rental agreement") on any available rental unit which the tenant may choose, at a rent not to exceed the lesser of the lawful rent which may be charged for such available rental unit or the lawful rent in effect, at the time of the notice of termination of tenancy, on the unit being vacated, said rental agreement to be for a term of the lesser of ninety days or until completion of repairs on the rental unit being vacated by tenant; or

(ii) To enter into a new rental agreement or lease for such available rental unit at a rent not to exceed the lawful rent which may be charged for such available rental unit.

d. Where the landlord recovers possession under this subsection (13.76.130A.7.), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be a 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 re-occupy the premises pursuant to this subsection.

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.

9a. The landlord seeks in good faith with honest intent and without ulterior motive to recover possession for his/her own use and occupancy as his/her principal residence for a period of at least 36 consecutive months; or

b. For the use and occupancy as the principal residence by the landlord's spouse or by the landlord's child, or parent for a period of at least 36 consecutive months.

c. For the purposes of this subsection (13.76.130A.9.), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating the tenant's tenancy, and at all times thereafter to and including the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction

awarding possession of the premises to the landlord, holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record. A landlord who endeavors to recover possession under this subsection shall, at the time of giving notice terminating the tenant's tenancy, notify the tenant in writing of the landlord's ownership interest in any residential properties in the City of Berkeley where such interest, in any form whatsoever, is ten percent (10%) or greater and, within ten days of giving notice, file a copy of the notification of such ownership interest with the Rent Board.

d. The landlord may not recover possession under this subsection (13.76.130A.9.) if a comparable unit, owned by the landlord in the City of Berkeley, was, at the time of the landlord's decision to seek to recover possession of the rental unit, already vacant and available, or if a comparable unit, owned by the landlord in the City of Berkeley, thereafter becomes vacant at any time until the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available within ninety days prior to the date of a notice terminating the tenant's tenancy shall create a presumption that such unit was vacant and available at the time of the landlord's decision to seek to recover possession of the premises. "Presumption" means that the court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

e. The landlord shall offer any non-comparable unit owned by the landlord to the tenant if a non-comparable unit becomes available before the recovery of possession of the tenant's unit at a rate based on the rent the tenant is paying with an upward or downward adjustment based on the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board.

f. Where a landlord recovers possession of a unit under Subsection 13.76.130A.9, the landlord is required to provide relocation assistance to any low-income tenants who have resided in the unit for one year or more in the amount of \$4500. For the purposes of this subsection (13.76.130A.9f) "low-income tenants" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5. The procedures for payment of this relocation assistance are set forth below in Subsection 13.76.130A.9n(i) through (iv).

g. It shall be evidence that the landlord has acted in bad faith if the landlord or the landlord's qualified relative for whom the tenant was evicted does not move into the rental unit within three months from the date of the tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least 36 consecutive months.

h. Once a landlord has successfully recovered possession of a rental unit pursuant to this subsection (13.76.130A.9), then no other current or future landlords may recover possession of any other rental unit on the

property pursuant to Subsection 13.76.130A.9a. It is the intention of this subsection that only one specific unit per property may be used for such occupancy under Subsection 13.76.130A.9a and that once a unit is used for such occupancy, all future occupancies under Subsection 13.76.130A.9a must be of that same unit.

i. A landlord may not recover possession of a unit from a tenant under Section 13.76.130A.9 if any tenant in the rental unit:

(i) Is 60 years of age or older and has been residing on the property for five years or more; or

(ii) Is disabled and has been residing on the property for five years or more. For the purposes of this subsection (13.76.130A.9i) a person is "disabled" if he/she has a physical or mental impairment that substantially limits one or more of a person's major life activities within the meaning of the California Fair Housing and Employment Act (Government Code § 12955.3.); or

(iii) Has resided on the property for five years or more and the landlord has a ten percent (10%) or greater ownership interest, in any form whatsoever, in five or more residential rental units in the City of Berkeley.

j. A tenant who claims to be a member of one of the classes protected by Subsection 13.76.130A.9i must submit a statement, with supporting evidence, to the landlord. A tenant's failure to submit a statement at any point prior to the trial date of an unlawful detainer action for possession of the tenant's unit shall be deemed an admission that the tenant is not protected by Subsection 13.76.130A.9i. A landlord may challenge a tenant's claim of protected status by raising it as an issue at trial in an unlawful detainer action for possession of the tenant's unit.

k. The provisions of Subsection 13.76.130A.9i shall not apply to the following situations:

(i) Where a person is a landlord of three or fewer residential rental units in the City of Berkeley and has no greater than a nine percent (9%) ownership interest in any other residential rental unit in the City of Berkeley; or

(ii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by Subsection 13.76.130A.9i and the landlord's qualified relative who is seeking possession of a unit subject to Subsection 13.76.130A.9b is 60 years of age or older or is disabled as defined in Section 13.76.130A.9i(ii) above; or

(iii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by Subsection 13.76.130A.9i, the landlord has owned the unit for which possession is being sought subject to Subsection 13.76.130A.9a for five years or more and is 60 years of age or older or is disabled as defined in Subsection

13.76.130A.9i(ii).

l. The provisions established by Subsection 13.76.130A.9i include, but are not limited to, any rental unit where a notice to vacate/quit has been served as of the date this amendment takes effect but where the rental unit has not yet been vacated or an unlawful detainer judgment has not been issued.

m. Where a landlord recovers possession under Subsection 13.76.130A.9, the tenant must be given the right of first refusal to re-occupy the unit upon its next vacancy.

n. When a landlord is required to provide a relocation assistance payment subject to Subsection 13.76.130A.9f above, the payment shall be divided equally among all low-income tenants occupying the rental unit at the time of service of the notice to terminate tenancy. Only those persons who have a written or oral agreement with the owner for possession of the rental unit or who have paid rent to the landlord shall be deemed low-income tenants for purposes of Subsection 13.76.130A.9f.

(i) In order to claim entitlement to relocation assistance under Subsection 13.76.130A.9f, a tenant must notify the landlord and the City or its designated agent in writing that he/she is claiming "low-income tenant" status within the meaning of Subsection 13.76.130A.9f within 30 days from receipt of the notice of termination of tenancy. The landlord shall deposit the full relocation payment with the City or its designated agent to be held in escrow for any tenants who claim low-income status within ten days after such notice claiming low-income status is mailed. Thereafter, the City or its designated agent shall distribute amounts held in escrow as follows: 1. If no written challenge is made to the tenant's claim of low-income status within ten days after the notice claiming such status is mailed, the City shall release the relocation assistance to the tenant. 2. If the City receives conflicting information or assertions which indicate that there is a dispute or uncertainty concerning the tenant's qualification or status as low-income, the City shall continue to retain the disputed relocation assistance funds in escrow. The City then shall release the relocation assistance funds to either the tenant or the landlord upon receipt of either a written agreement by both the landlord and the affected tenant or an order of a court of competent jurisdiction.

(ii) The landlord may rescind the notice of termination of tenancy prior to any release of relocation payment to the low-income tenants by serving written notice stating such rescission on the tenants. In such instance, the relocation payment shall be released to the landlord. Subsequent to the release of any relocation payment to the low-income tenants, the landlord may rescind the notice of termination of tenancy only upon the written agreement of the tenants to remain in possession of the rental unit. If the low-income tenants remain in possession of the rental units after service of a landlord's written notice of rescission of the eviction, the low-income tenants shall provide an accounting to the landlord of

the amount of the relocation payment expended for moving costs, return to the landlord that portion of the relocation payment not expended for moving costs, and assign to the landlord all rights to recover the amount of relocation payment paid to third parties. If a rescission occurs under this subsection, the tenant(s) shall continue the tenancy on the same terms as before the notice was served.

(iii) Where a landlord has served a notice of termination of tenancy on a tenant prior to the date that this amendment takes effect and the notice of termination of tenancy has not expired, the landlord shall deposit the full relocation payment with the City or its designated agent to be held in escrow for the low-income tenants if the tenants have not vacated the rental unit as of the effective date of this amendment, and the landlord shall pay the full relocation payment to the low-income tenants if the low-income tenants have vacated the rental unit as of the effective date of this amendment. Said deposit in escrow or payment to the low-income tenants shall be made within ten days of the effective date of this amendment.

(iv) Failure of the landlord to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the landlord's termination of tenancy notice pursuant to this subsection (13.76.130A.9). In addition, if the low-income tenants of a rental unit have vacated the unit as a result of a notice of termination of tenancy pursuant to this subsection (13.76.130A.9), and the landlord fails to make any payment specified herein, the landlord shall be liable to the low-income tenants for three times the amount of the payment as well as reasonable attorney fees.

o. A tenant who prevails in an action brought under this subsection (13.76.130A.9), in addition to any damages and/or costs awarded by the court, shall be entitled to recover all reasonable attorney's fees incurred in bringing or defending the action.

p. At least twice annually, Rent Board staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered pursuant to this subsection within the prior 36 months.

q. If any provision or clause of this subsection (13.76.130A.9) 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 provisions or clauses, and to this end the provisions and applications of this subsection are severable.

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.

11. The tenant fails to vacate a rental unit occupied under the terms of a temporary

rental agreement entered into pursuant to the provisions of Subsection 13.76.130A.7.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of 90 days).

B. A landlord's failure to specify good cause as listed above in Subsections 1. through 11. of Section 13.76.130A. 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 chapter.

C. In any action to recover possession of a rental unit covered by the terms of this chapter, except an action to recover possession under Subsection 13.76.130A.7., 13.76.130.A.8, or 13.76.130.A.11., a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this chapter.

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

(Ord. 6833-NS § 6 (part), 2004: Ord. 6602-NS § 1, 2000: Ord. 6007-NS § 1, 1990: Ord. 5467-NS § 13, 1982: Ord. 5261-NS § 13, 1980)

Section 13.76.140

RETALIATION PROHIBITED

No landlord may threaten to bring, or bring, an action to recover possession, cause the tenant to quit the unit involuntarily, serve any notice to quit or notice of termination of tenancy, decrease any services or increase the rent where the landlord's intent is retaliation against the tenant for the tenant's assertion or exercise of rights under this chapter. 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 chapter 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 its nonexistence is proven by a preponderance of the evidence. A tenant may assert retaliation affirmatively or as a defense to the landlord's action without the aid of the presumption regardless of the period of time which has elapsed between the tenant's assertion or exercise of rights under this chapter and the alleged act of retaliation.

(Ord. 5467-NS § 14, 1982: Ord. 5261-NS § 14, 1980.)

Section 13.76.150

REMEDIES

A. For Violation of Rent Ceilings or Failure to Register. If a landlord fails to register in accordance with Section 13.76.080 of this chapter, or if a landlord demands, accepts, receives or retains any payment in excess of the maximum allowable rent permitted by this chapter, a tenant may take any or all of the following actions until compliance is achieved:

1. A tenant may petition the board for appropriate relief. If the board, after the landlord has proper notice and after a hearing, determines that a landlord has willfully and knowingly failed to register a unit covered by this chapter or violated the provisions of Sections 13.76.100, 13.76.110 and 13.76.120 of this chapter, 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 chapter. 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 chapter 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 chapter. 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 chapter.

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 chapter. 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 chapter, the tenant shall receive a judgment of up to seven hundred and fifty dollars in addition to any actual damages.

B. For Violation of Eviction Proceedings. If it is shown in the appropriate court that the event which the landlord claims as grounds to recover possession under Subsection 13.76.130 a.7., Subsection 13.76.130 A.8., Subsection 13.76.130 A.9., or Subsection 13.76.130A.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 the 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 chapter.

D. The board may seek injunctive relief to restrain or enjoin any violation of this chapter 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 days from the date of the first occurrence of a violation of this chapter, 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.

(Ord. 5467-NS § 15, 1982: Ord. 5261-NS § 15, 1980.)

Section 13.76.160

PARTIAL INVALIDITY

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

(Ord. 5467-NS § 16, 1982: Ord. 5261-NS § 16, 1980.)

Section 13.76.170

NONWAIVERABILITY

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

(Ord. 5467-NS § 17, 1982: Ord. 5261-NS § 17, 1980.)

Section 13.76.180

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.

(Ord. 5467-NS § 18, 1982: Ord. 5261-NS § 18, 1980.)

Section 13.76.190

CRIMINAL PENALTIES

Any landlord who is found by a court of competent jurisdiction to be guilty of a willful violation of Section 13.76.130 of this chapter shall be subject to up to a \$500 fine and/or 90 days in jail for a first offense and up to a \$1000 fine and/or six months in jail for any subsequent offenses.

(Ord. 6833-NS § 7 (part), 2004: Ord. 5467-NS § 19, 1982)