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Attorneys for Plaintiffs

(ENDORSED)  
**FILED**  
JAN 20 1984  
MARVIN CHURCH, County Clerk  
SHEILA STRAND  
DEPUTY CLERK

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

EDRICK HAGGANS; HORWATH ASSOCIATES, )  
a California general partnership; and )  
JAMES STEINER, )  
Plaintiffs, )

v. )

CITY OF EAST PALO ALTO; BARBARA A. )  
MOUTON, RUBEN ABRICA and OMOWALE )  
SATTERWHITE in their official )  
capacities as Members of the City )  
Council of the City of East Palo )  
Alto; RUTHIE RENEE GLOVER, ROY L. )  
ADGER, DAVID L. COX, REV. ROBERT E. )  
REYNOLDS, RAYMOND ASKEW; CARLOS )  
ROMERO, GREGORY M. McELVEEN and )  
MARGOT HOLMES in their official )  
capacities as Members and Alter- )  
nate Members of the Rent Stabili- )  
zation Board of the City of East )  
Palo Alto; and JAMES E. BLAKEY, )  
JR. in his official capacities as )  
a member of the City Council and )  
of the Rent Stabilization Board )  
of the City of East Palo Alto, )  
Defendants. )

NO. 281772  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF.

1 Plaintiffs allege as follows:

2 FIRST CAUSE OF ACTION

3 1. Plaintiffs are:

4 (a) EDRICK HAGGANS, an individual resident taxpayer  
5 of the CITY OF EAST PALO ALTO.

6 (b) HORWATH ASSOCIATES, a California general part-  
7 nership, which owns apartment houses with 124 units in the CITY  
8 OF EAST PALO ALTO and is a non-resident taxpayer.

9 (c) JAMES STEINER, an individual non-resident taxpayer  
10 to the CITY OF EAST PALO ALTO who owns an apartment house with  
11 32 units in the CITY OF EAST PALO ALTO.

12 2. Defendant CITY OF EAST PALO ALTO of San Mateo County  
13 California is a general law city as defined in California Govern-  
14 ment Code § 34102; it has the powers granted to general law cities  
15 by the Constitution of the State of California and the laws enacted  
16 pursuant thereto. Among such powers is the authority to enact  
17 ordinances governing matters of a municipal nature within the  
18 CITY's jurisdiction. Among the powers reserved under the Con-  
19 stitution to the electors of defendant CITY is the right of  
20 referendum as to ordinances of defendant CITY.

21 3. Defendants BARBARA A. MOUTON, RUBEN ABRICA and OMOWALE  
22 SATTERWHITE are members of the City Council of the CITY OF EAST  
23 PALO ALTO and are sued only in their capacities as elected  
24 officers of the defendant CITY. Defendants RUTHIE RENEE GLOVER,  
25 ROY L. ADGER, DAVID L. COX, REV. ROBERT E. REYNOLDS, RAYMOND  
26 ASKEW and CARLOS ROMERO are members and defendants GREGORY M.

1 McELVEEN and MARGOT HOLMES are alternate members of the Rent  
2 Stabilization Board of the CITY OF EAST PALO ALTO and such person  
3 are sued only in their capacities as appointed officers of the  
4 defendant CITY. Defendant JAMES E. BLAKEY, JR. is a member of  
5 both the City Council and the Rent Stabilization Board and is  
6 sued in both, but only those, capacities as an elected and  
7 appointed officer of the defendant CITY.

8 4. On November 23, 1983, the City Council of defendant  
9 CITY passed and adopted Ordinance No. 17-83 entitled the "Rent  
10 Stabilization and Eviction for Good Cause Ordinance." A copy of  
11 Ordinance No. 17-83 is annexed hereto as Exhibit "A" and incor-  
12 porated herein by reference.

13 5. On December 22, 1983, Russell V. Averhart, Interim City  
14 Clerk of defendant CITY, executed a written receipt acknowledging  
15 the presentation of a petition entitled "Petition For Referendum  
16 Against An Ordinance Passed By The City of East Palo Alto, State  
17 of California" bearing the signatures of more than 1,500 persons  
18 purporting to be citizens and qualified electors of the defendant  
19 CITY. A copy of the petition form is annexed hereto as Exhibit  
20 "B" and incorporated herein by reference. A copy of the written  
21 acknowledgment by the Interim City Clerk is annexed hereto as  
22 Exhibit "C" and incorporated herein by reference.

23 6. Thereafter, in accordance with the requirements of law  
24 pertaining to the referendum process, it was determined:

25 (a) By the Interim City Clerk that the number of  
26 signatures, prima facie, annexed to the petition was equal to

1 or in excess of the minimum number of signatures required by law  
2 and that the petition should be filed; and

3 (b) By the Interim City Clerk, after examination of the  
4 petition and verification of its signatures in the manner required  
5 by law, that the petition was signed by the requisite number of  
6 voters; and

7 (c) By the City Council not to entirely repeal Ordinance  
8 No. 17-83, but instead to submit Ordinance No. 17-83 to  
9 the voters of the City at a special election called for April 10,  
10 1984.

11 7. After receipt and filing of the referendum petition,  
12 as alleged, the City Council of defendant CITY nevertheless pur-  
13 ported to pass and adopt, on December 22, 1983, Ordinance No.  
14 30-83 entitled "Temporary Rent Stabilization And Eviction For  
15 Good Cause Ordinance." A copy of Ordinance No. 30-83 is annexed  
16 hereto as Exhibit "D" and incorporated herein by reference.  
17 Defendants MOUTON, ABRICA, SATTERWHITE and BLAKEY all voted in  
18 favor of this action.

19 8. Pursuant to the mandate of Section 6 of Ordinance No.  
20 30-83, the City Council of the defendant CITY did thereafter  
21 appoint defendants GLOVER, ADGER, COX, BLAKEY, REYNOLDS, ASKEW,  
22 ROMERO, McELVEEN and HOLMES as regular and alternate members of  
23 the defendant CITY's Rent Stabilization Board.

24 9. An actual controversy has arisen and now exists between  
25 plaintiffs and defendants relative to their respective rights and  
26 duties in that plaintiffs contend that:

1 (a) By virtue of the pendency of the referendum as to  
2 Ordinance No. 17-83, the City Council was without authority or  
3 power to adopt an ordinance essentially the same as Ordinance  
4 No. 17-83;

5 (b) Ordinance No. 30-83 is in all material respects  
6 essentially the same as Ordinance No. 17-83; and

7 (c) Ordinance No. 30-83 is unconstitutional, invalid  
8 and unenforceable in that it was adopted in violation of the  
9 California Constitution, Article II, Section 11 and Government  
10 Code §§ 4050, et seq.

11 10. Plaintiffs request a judicial declaration as to the  
12 validity of Ordinance No. 30-83. A judicial declaration is  
13 necessary and appropriate to avoid irreparable harm to the parties  
14 and others as follows:

15 (a) Unless declaratory relief is granted, the defen-  
16 dant CITY will expend, and already has expended, public funds  
17 and assets, including taxes collected from plaintiffs and other  
18 CITY taxpayers to carry out and enforce the provisions of an  
19 invalid and unlawful ordinance. Those expenditures are illegal  
20 and constitute a waste of public funds and assets.

21 (b) Unless declaratory relief is granted, plaintiffs  
22 HORWATH ASSOCIATES and JAMES STEINER and other landlords owning  
23 residential rental properties within the CITY will be, among  
24 other things:

25 (i) Precluded from collecting rents to  
26 which they are otherwise entitled;

1 (ii) Denied the right to recover possession  
2 of their property as otherwise permitted by law;

3 (iii) Subjected to unlawful civil and criminal  
4 proceedings by tenants and officers of the defendant  
5 CITY; and

6 (iv) Required to suffer substantial depreciation  
7 of their properties.

8 Plaintiffs have no plain, adequate or speedy remedies at law for  
9 these injuries.

10  
11 SECOND CAUSE OF ACTION

12 1. Plaintiffs incorporate herein by reference all of the  
13 allegations contained in Paragraphs 1 through 10 of the First  
14 Cause of Action above.

15 2. By reason of the matters alleged herein, defendants and  
16 the defendant CITY's other officers, employees and agents are  
17 doing and threatening to do all of the following in furtherance  
18 of Ordinance No. 30-83:

19 (a) Establishing a Rent Stabilization Board to carry  
20 out the powers and duties set forth in Subsections F, G, H, I,  
21 J, L and M of Section 6.

22 (b) Authorizing the expenditure of public funds of  
23 the defendant CITY to pay traveling and other expenses of the  
24 members of the Rent Stabilization Board and to otherwise carry  
25 out and enforce the ordinance;

26 (c) Establishing a base rent ceiling on rental units

1 covered by the terms of the Ordinance and limiting maximum rent  
2 increases to 8% of the rent in effect on July 1, 1983;

3 (d) Precluding otherwise lawful evictions of tenants  
4 by landlords except in the cases specifically permitted by Sec-  
5 tion 10;

6 (e) Creating tenants' remedies contrary to the con-  
7 tractual rights of landlords and not otherwise available under  
8 current law which permit, among other things: withholding of  
9 rents by tenants; initiation of civil proceedings by tenants and  
10 the CITY to obtain injunctive relief to enforce the ordinance;  
11 initiation of civil proceedings by tenants to (i) recover a  
12 monetary award of up to \$750 in addition to actual damages or,  
13 in some cases, treble actual damages, and (ii) to regain posses-  
14 sion of premises after having once been evicted; and imposition  
15 of criminal penalties, including fines and imprisonment in jail,  
16 for violations of the ordinance.

17 3. As alleged above, defendants' wrongful conduct, unless  
18 and until enjoined and restrained by order of this Court, will  
19 cause great and irreparable injury to plaintiffs.

20 4. As alleged above, plaintiffs have no plain, adequate  
21 or speedy remedy at law for the injuries which they are suffering  
22 and will suffer by reason of defendant's enforcement of Ordinance  
23 No. 30-83.

24 WHEREFORE plaintiffs pray judgment as follows:

25 1. For a declaratory judgment determining that Ordinance  
26 No. 30-83 is unconstitutional, invalid and unenforceable;

1           2. For an order requiring defendants to show cause, if any  
2 they have, why they should not be enjoined as hereinafter set  
3 forth, during the pendency of this action.

4           3. For a preliminary injunction and a permanent injunction  
5 enjoining defendant CITY and the other named defendants, and  
6 any other elected or appointed officers, agents and employees of  
7 defendant CITY, and all persons acting under, in concert with or  
8 for any of them, from enforcing or permitting the enforcement of  
9 the provisions of Ordinance No. 30-83 for the purposes of:

10           (a) Establishing or continuing in effect a Rent  
11 Stabilization Board or causing or permitting any other person  
12 or persons to perform on behalf of defendants, or any of them,  
13 any of the functions assigned to the Rent Stabilization Board by  
14 Ordinance No. 30-83;

15           (b) Establishing or enforcing any limitations with  
16 respect to maximum rent increases;

17           (c) Establishing or enforcing any limitations on the  
18 rights of landlords to recover possession of rental units; or

19           (d) Establishing or enforcing any civil and criminal  
20 remedies for alleged violations of Ordinance No. 30-83 including  
21 or like those specified in Sections 12 and 16 of the ordinance;

22           4. For plaintiffs' attorneys' fees incurred herein pur-  
23 suant to Code of Civil Procedure § 1021.5;

24           5. For plaintiffs' costs of suit incurred herein; and

25           6. For such other and further relief as to the Court may

26 //



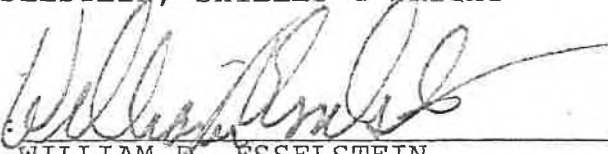
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be deemed just and proper.

DATED: January 18, 1984

ROBERTSON, ALEXANDER, LUTHER,  
ESSELSTEIN, SHIELLS & WRIGHT

By:



WILLIAM F. ESSELSTEIN  
Attorneys for Plaintiffs

ORDINANCE NO. 17-83

AN ORDINANCE TO STABILIZE RENTS FOR RESIDENTIAL HOUSING  
AND ESTABLISH GOOD CAUSE EVICTIONS.

The City Council of the City of East Palo Alto does  
ordain as follows:

Section 1. TITLE

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

Section 2. FINDINGS

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

B. Using the U.S. Census definition of overcrowding as more than one person per room in a household, the City Council finds that East Palo Alto's overcrowding rate as compared to the rate of overcrowding in San Mateo County, clearly indicates a serious overcrowding problem.

C. Defining vacancy rate as the ratio of units offered for rent to the total number of habitable units, the available data showed that as compared to the county-wide vacancy rate, the vacancy rate for East Palo Alto is seriously low.

D. The City Council finds that East Palo Alto's annualized rate of rent increase exceeds the variable range of increase and the Consumer Price Index, and is therefore excessive.

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

rent levels.

F. The moratorium on rent increases expired after 90 days and was extended an additional 90 days. It will expire on December 27, 1983.

G. It is found and declared that unless this Rent Stabilization and Good Cause Eviction Ordinance is passed by the Council, many tenants will be displaced because of their inability to pay such substantial and unreasonable rent increases, and as a result of the shortage of rental units, will be unable to find substitute, decent, safe and sanitary housing at affordable rent levels.

### Section 3. PURPOSE

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

### Section 4. DEFINITIONS

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

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

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

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

any of the foregoing.

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

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

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

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

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

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

K. HEALTH FACILITY: Any facility, place or building which is organized, maintained and operated for the diagnosis, care and

treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24 hour stay or longer.

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

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

N. BASE RENT CEILING: The maximum allowable rent established under Section 10 of this Ordinance.

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

#### Section 5. APPLICABILITY

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

A. Rental units which are owned by landlords who own a maximum of four rental units in East Palo Alto;

B. For the purposes of Subsection 5.A., the term landlord shall be defined only as the owner of record holding a substantial interest in the property.

C. Rental units which are owned and leased by any government agency including the San Mateo County Housing Authority under the Section 8 program.

D. Rental units which are rented primarily to transient guests for a period of use or occupancy of less than fourteen (14) consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen (14) days or less shall not by itself exempt any unit from coverage by this Ordinance.

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

F. Newly constructed rental units which are completed and

offered for rent for the first time after the effective date of this Ordinance, provided that such new units were not created as a result of rehabilitation or conversion as opposed to new construction. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 8, Rent Registration; Section 10, Establishment of Base Rent Ceiling and Posting; Section 11, Annual General Adjustment of Rent Ceilings; and Section 12, Individual Adjustments of Rent Ceilings, of this Ordinance.

G. Properties that have been rehabilitated in accordance with the provisions of Federal Tax Code Section 174k.

H. Rental units in nonprofit or limited equity housing cooperatives, owned and controlled by a majority of the residents.

I. The scope of all of the above exemptions shall be interpreted in a manner consistent with the other provisions of this ordinance.

#### Section 6. RENT STABILIZATION BOARD

A. COMPOSITION: There shall be in the City of East Palo Alto a Rent Stabilization Board; the Board shall consist of seven (7) appointed Board Members. The Board shall elect annually as chairperson one of its members to serve in that capacity. The Board shall be composed of three tenants, two landlords and two homeowners who do not own rental property in East Palo Alto.

B. ELIGIBILITY: Full-time residents of the City of East Palo Alto are eligible to serve as Board Members on the Board.

C. FULL DISCLOSURE OF HOLDINGS: All Board Members shall file with the City Clerk a verified statement listing all of their interests and dealings in real property, including but not limited to ownership, sale, management, transfer or exchange, and interests in entities whose primary purpose is the ownership, sale, management, transfer or exchange of real property during the previous three years. Such statements shall be made available for public inspection.

D. APPOINTMENT OF BOARD MEMBERS: Board Members shall be appointed by the East Palo Alto City Council within thirty (30) days after the adoption of this Ordinance.

E. TERM OF OFFICE: Board Members shall be appointed to two

(2) year staggered terms.

F. POWERS AND DUTIES: The Board shall have the following powers and duties:

1. Set the rent ceilings for all rental units.
2. Require registration of all rental units under Section 8 of this Ordinance.
3. Publicize the manner in which the Base Rent Ceiling is established under Section 10.
4. To make adjustments in the rent ceiling in accordance with Section 11 and 12.
5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this Ordinance.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set forth below.
7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
8. Report quarterly to the City Council of the City of East Palo Alto on the status of rental housing units covered by this Ordinance.
9. Request the City Council to remove rent controls under Section 6.Q.
10. Administer oaths and affirmations and subpoena witnesses and relevant documents.
11. Establish rules and regulations for settling civil claims under Section 15.
12. Seek injunctive relief under Section 15.
13. Pursue civil remedies in courts of appropriate jurisdiction.
14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this Ordinance.
15. Hold public hearings.
16. Other powers necessary to carry out the purposes of this Ordinance which are not inconsistent with the terms of this Ordinance.
17. Except as provided in Section 6.N. of this Ordinance, the Board shall finance its reasonable and necessary expenses for its operation without the use of General Fund monies of the City of East Palo Alto.

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

Board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the City of East Palo Alto. A copy of the Board's rules and regulations shall be sent to every owner of rental property in East Palo Alto and shall be posted in a location easily accessible to all tenants. The rules and regulations shall also be posted in three general locations throughout the city of East Palo Alto.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the Board shall be kept in the Board's office and shall be available to the public for inspection and copying.

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

H. MEETINGS: The Board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the Members of the Board. The Board shall hold its initial meeting no later than January 7, 1984.

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

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

K. COMPENSATION: The Rent Stabilization Board shall be a working Board. In order to compensate Board Members for their time and work performed as required by this Ordinance, Board Members shall receive fifty dollars (\$50) per meeting attended, but in no case shall compensation for any one Board Member exceed fifteen hundred dollars (\$1500) in the first twelve month period or in any subsequent annual period that the Board is in operation for services rendered. Upon request by the Board the City Council may annually adjust the compensation rate and the maximum annual sum received by the Board



Members.

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

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

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

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

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

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

Q. CONFLICT OF INTEREST: Board Members shall not necessarily be disqualified from exercising any of their powers and duties on the

grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a Board Member shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 12, where the Board Member is either the landlord of the property or a tenant residing in the property that is involved in the petition.

#### Section 7. SECURITY DEPOSITS

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

#### Section 8. RENT REGISTRATION

A. The Board shall require all landlords subject to the provisions of this Ordinance to file with the Board by July 1, 1984, a rent registration statement for each rental unit covered by this Ordinance.

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 from July 1, 1982 through June 30, 1983;

6. The rent in effect on April 1, 1983;
7. The base rent ceiling;
8. 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;
9. Whether the rental unit was vacant or occupied on July 1, 1983;
10. Any other information deemed relevant by the Board.

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

D. The first annual registration fee of thirty dollars (\$30) per unit shall be paid by the landlords to the Board no later than July 1, 1984. Subsequent annual registration fees set in accordance with Section 6.N. of this Ordinance shall be paid no later than July 1 of each year. A certificate of exemption will be issued for each rental unit that is exempt from payment of the registration fee.

E. The Board shall provide forms for the registration information required by this Section and mail them to all property owners as listed on the county tax assessor's role. The Board shall make other reasonable efforts to facilitate the fulfillment of the requirements set forth in this Section.

F. Every annual registration fee required by this Ordinance which is not paid on or before July 1 is declared delinquent, and the Board shall add to said registration fee and collect a penalty of one hundred (100) percent of the fee so delinquent in addition to the fee. Every ninety (90) days that the fee and penalty remain delinquent, the penalty shall be increased by one hundred (100) percent of the original fee. The Board may waive the penalty if payment is made within thirty (30) days of the original due date.

A landlord may request the Board to waive the penalty if he/she shows good cause for the delinquent payment.

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

H. Within thirty (30) days after the filing of a rent regis-

tration 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 (60) days of coming under coverage of this Ordinance. 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. Fifty (50) percent of the registration fee shall be passed along to the tenants. Under no circumstances shall penalties be passed along to tenants.

Section 9. USE AND CONFIDENTIALITY OF INFORMATION  
SUBMITTED TO BOARD.

A. All information and forms required by this Ordinance and submitted to the Board shall not be used by any other governmental unit of the City of East Palo Alto for the enforcement of City of East Palo Alto Ordinances other than this Ordinance.

B. The Board shall adopt rules and regulations providing for the confidentiality of information submitted to the Board in support of a petition for an individual rent ceiling adjustment under Section 12 of this Ordinance when such confidentiality is deemed necessary by the Board.

Section 10. ESTABLISHMENT OF BASE RENT CEILING AND POSTING

A. Base Rent Ceiling. Upon adoption of this Ordinance, no landlord shall charge rent for any rental unit covered by the terms of this Ordinance affecting rents, in any amount greater than the lawful base rent ceiling as prescribed by the terms of this Ordinance, except as permitted by the Board under Sections 11 and 12 of this Ordinance. The base rent ceiling is the lawful rent actually due and payable on April 1, 1983 under the periodic terms of the rental agreement. The base rent ceiling is a reference point from which the rent

ceiling shall be adjusted in accordance with Sections 11 and 12. For such rental units where no rent was in effect on April 1, 1983 the base rent shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding April 1, 1983. For such rental units where no periodic rent was in effect on April 1, 1983 or during the six months preceding that date, the base rent ceiling shall be a good faith estimate of the median rent in effect for comparable units in the City of East Palo Alto on April 1, 1983.

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

Section 11. ANNUAL GENERAL ADJUSTMENT OF RENT CEILINGS

A. Annual General Adjustment. Once each year all landlords shall be permitted to charge rents in excess of that which they were lawfully charging the previous year based upon 100 percent of the percent change in the residential rental component of the Consumer Price Index for the year period ending in the month of November immediately preceding the rent adjustment date.

1. As used herein, the term "Consumer Price Index" (CPI) shall mean that portion of the Consumer Price Index published by the United States Department of Labor for the San Francisco/Oakland Metropolitan Area, designated as "Shelter; Rent Residential, 1967 = 100".
2. In February, annually, the Board shall compute the annual general adjustment permitted. The Board will then notify each properly registered landlord of the percentage rental increase allowed, such that said notice will be received by said landlord no later than April 1, 1984 and March 1 of each subsequent year. Should the landlord desire to take advantage of the annual rent adjustment and/or any individual rent adjustment permitted her/him, he/she shall serve, in the manner prescribed by law, each tenant affected with written notice thereof thirty (30) days in advance of the first day for which such adjusted rent may be charged or collected.
3. Computation of rent increases allowable under this

section shall be according to the following formula:

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

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

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

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

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

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

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

D. If the maximum allowable rent specified under this

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

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

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

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

3. Has failed to make repairs as ordered by the Housing Inspection Services of the City of East Palo Alto, or

4. Has failed to completely register by July 1.

#### Section 12. INDIVIDUAL ADJUSTMENTS OF RENT CEILINGS

A. Petitions. Upon receipt of a petition by a landlord and/or tenant, the rent ceiling of individual controlled rental units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this Ordinance. The petition shall be on a form provided by the Board and shall be submitted to the Board by the petitioner. The petition shall identify any persons who may have positions adverse to the request and all such parties shall be notified of the existence and the content of the petition at the petitioners expense. Any such party may file an objection to the petition. Each petition shall be accompanied by a filing fee of an amount set by the Board per unit affected by the proposed adjustment. The Board shall provide for waiver of fees for petitions in forma pauperis. No petition shall be filed before July 1, 1984. If no objection to the petition is filed, the petition shall be accepted without hearing and the filing fee returned. If there is an objection to the petition, the Board shall hear the matter, and must decide to either grant or deny the petition in whole or in part. The prevailing party shall have its fee

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

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 persons designated by said parties.

7. Hearing Board. The Board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be obtainable for the cost of copying. The record of the hearing shall include: all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted in the proceedings; a statement of all materials officially noticed; all recommended decisions, orders and/or rulings; all final decisions, orders and/or rulings, and the reasons for each final decision, order and/or ruling. Any party may have the proceeding tape recorded or otherwise transcribed at his or her own expense.

8. Quantum of Proof and Notice of Decision. No individual rent ceiling adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing. The burden of proof for costs shall be on the landlord. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of fact and law upon which said decision is based. At the same time, parties to the proceedings shall also be notified of their right to and the time limit for any appeal allowed by the Board and/or to judicial review of the decision pursuant to this Section and Section 18 of this Ordinance.

9. Consolidation. All landlord petitions pertaining to tenants in the same building shall be consolidated for hearing, and all petitions filed by tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not

to consolidate such petitions.

10. Appeal. Any person aggrieved by the decision of the hearing examiner may appeal to the Board or to any appeals panel of the Board established by the Board, so long as such panel has at least three (3) Board Members. On appeal the Board or panel shall affirm, reverse, remand, or modify the decision of the hearing examiner. The Board or panel may conduct a new (de novo) hearing or may act on the basis of the record before the hearing examiner without holding a hearing. An appeal to the Board shall be filed no later than ten (10) days after receipt of the notice of the decision of the hearing examiner. The Board may set a reasonable appeal fee to be paid by the appellant at the time of filing the appeal.

11. Finality of Decision. The decision of the hearing examiner shall be the final decision of the Board in the event of no appeal to the Board. The decision of the hearing examiner shall not be stayed pending appeal; however, in the event that the Board or panel reverses or modifies the decision of the hearing examiner, the Board shall order the appropriate party to make retroactive payments to restore the parties to the position they would have occupied had the hearing 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 petition within ninety (90) days following the date of filing of the individual rent ceiling adjustment petition, unless the conduct of the petitioner or other good cause is responsible for the delay.

13. Board Action in Lieu of Reference to Hearing Examiner. The Board, on its own motion or on the request of any landlord or tenant may hold a hearing on an individual petition for a rent ceiling adjustment without the petition first being heard by a hearing examiner.

C. Standard for Decision on Individual Adjustment.

1. Purpose. It is the intent of this individual adjustment section to establish rents at a level which will provide landlords a fair return by providing the landlords the right to main-

tain net operating income.

2. Definitions.

For purposes of individual rent adjustment proceedings, the following definitions shall be used:

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

following:

- (1) Real property taxes.
- (2) Utility costs.
- (3) Management expenses (contracted or performed), including necessary and reasonable advertising, accounting, insurance, and other managerial expenses, and Allowable Legal Expense Management expenses are presumed to be 5% of Gross Income, unless established otherwise.
- (4) Normal repair and maintenance expense including painting, normal cleaning, fumigation, landscaping, and repair of all standard services, including electrical, plumbing, carpentry, furnished appliances, drapes, carpets, and furniture.
- (5) Owner-performed labor, which shall be compensated at the following hourly rates upon documentation being provided showing the date, time, and nature of the work performed:

General Maintenance \$7.00/hr.

Skilled labor \$13.00/hr.

Notwithstanding the above, a landlord may receive greater or lesser compensation for self-labor if it can be shown that the amounts set forth above are substantially unfair in a given case.

There shall be a maximum allowance under this paragraph of 5% of Gross Income, unless the landlord shows greater services for the benefit of

tenants.

- (6) License and registration fees required by law to the extent same are not otherwise paid by tenants.
- (7) Capital Expenses with a total cost of less than \$100 per year per benefited unit, and the amortized portion of other Capital Expenses otherwise allowed by this Ordinance.
- (8) One hundred and ten percent (110%) of 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 amortized over the lifetime of the particular capital improvement up to 120 months.
- (9) Increased costs of debt service due to either or both: (a) Increases in interest payments associated with refinancing of balloon payment notes between January and July 1, 1983, where the proceeds of such notes are used for the purchase or improvement of property in East Palo Alto, provided that the total debt does not exceed 70% of the purchase price of the property. Only increased interest required to refinance outstanding

principle shall be considered. Such costs shall be allocated over the units in a building in proportion to the rents on the units therein. Increases in periodic costs may be passed through in full. One-time costs shall be amortized over the lifetime of the financing involved.

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

ii. Operating Expenses shall not include:

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

d. Allowable Legal Expenses shall include:

Attorney's fees and costs incurred in connection with successful good faith attempts to recover rents owing and successful good faith unlawful

detainer actions not in derogation of applicable law, to the extent same are not recovered from tenants. Attorney's fees and costs incurred in proceedings before the Board, or in connection with civil actions against the Board are not allowable as Operating Expenses.

iii. Presumption of Fair Base Year Net Operating Income

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

iv. Rebutting the Presumption:

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

- (1) The landlord's operating and maintenance expenses in the base year were unusually high or low in comparison to other years. In such instances adjustments may be made in calculating such expenses so the base year Operating Expenses reflect average expenses for the property over a reasonable period of time. The Board or Hearing Examiner shall consider the following

factors:

(a) The landlord made substantial capital improvements during 1983, which were not reflected in the rent levels on the base date;

(b) Substantial repairs were made due to damage caused by natural disaster or vandalism;

(c) Maintenance and repair was below accepted standards so as to cause significant deterioration in the quality of housing services;

(d) Other expenses were unreasonably high or low notwithstanding the following of prudent business practice. In making this determination, the fact that property taxes prior to 1983 may have been higher than in the base year shall not be considered.

(e) The base period rent was not established in an arms-length transaction.

(2) The rent on the base date was disproportionate due to one of the enumerated factors below. In such instances, adjustments may be made in calculating Gross Rents consistent with the purposes of this Section

(a) The rent on the base date was established by a lease or other formal rental agreement which provided for substantially higher rent at other periods during the term of the lease;

(b) The rent on the base date was substantially higher or lower than



at other times of the year by reason of seasonal demand or seasonal variations in rent;

(c) The rent on the base date was substantially higher or lower than preceding months by reason of premiums being charged or rebates being given for reasons unique to particular units or limited to the period determining the base rent.

- (3) It shall be presumed that where Net Operating Income is less than 50% of Gross Income in the base year, after making adjustments as permitted by subsections (1) and (2) of this Section, the landlord was receiving less than a fair return on property. In such a case, for purposes of determining Base Year Net Operating Income, Gross Income shall be adjusted upward to twice the amount of adjusted Base Year Operating Expenses.

v. Determination of Base Year Net Operating Base:

- (1) To determine the Net Operating Income during the base year, there shall be deducted from the annualized Gross Income being realized on April 1, 1983, a sum equal to the actual Operating Expenses for calendar year 1983 unless the landlord demonstrates to the satisfaction of the Board of Hearing Examiner that some other 12 consecutive month period is justified

by reasons independent of the purpose of this paragraph. In all cases, April 1, 1983, shall fall within the 12 month period utilized herein, except as provided in Subsection (2) below.

(2) In the event that the landlord did not own the subject property on January 1, 1983, the Operating Expenses for 1983 shall be determined by one of the following manners, whichever the Board or Hearing Examiner determines to be more reliable in the particular case:

- (a) The previous owner's actual Operating Expenses as defined in Section 2c; or, where unavailable,
- (b) Actual Operating Expenses for the first calendar year of ownership, discounted to 1983 by the schedule in Section vi below.

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

vii. Allowable Rent Increases:

Upon filing of an individual petition by a landlord, the Board may permit rent increases, unless otherwise prescribed by law, such that the landlord's Net Operating

Income will be increased at the rate of 100 percent (100%) of the increase in the Consumer Price Index (CPI), designated as "Shelter; Rent Residential 1967 = 100", over the Base Year. The increase in the CPI shall be calculated by dividing the most recently reported monthly figure at the time of filing of the petition by the monthly figure for November, 1983.

viii. Relationship to General Adjustment:

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

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

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

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

G. No provision of this Ordinance shall be applied so as to prohibit the Board from granting an individual rent adjustment that is

demonstrated necessary by the landlord to provide the landlord with a fair return.

Section 13. GOOD CAUSE REQUIRED FOR EVICTION

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

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law, and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days.

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement.

3. The tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.

4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.

5. The tenant has continued, following written notice

to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises.

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

7. The landlord, after having obtained all necessary permits from the City of East Palo Alto, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building 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.

a. Where the landlord recovers possession under this subsection 13.A. 7(a) and 8, the tenant must be given the right of first refusal to any comparable vacant rental units owned by the landlord or to re-occupy the unit upon completion of the required work. In the event 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 East Palo Alto, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.

9. The landlord seeks in good faith to recover possession for his or her own use or and occupancy as his or her principal residence, or for the use and occupancy as a principal residence by the landlord's spouse or by the landlord's child, or parent, grandparents or grandchildren. For the purposes of this subsection the term landlord shall be defined as the owner of record.

10. The tenant fails to vacate a rental unit occupied

under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 13.A.7(a), following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by 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 ninety (90) days).

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

B. In any action to recover possession of a rental unit covered by the terms of this Ordinance, except an action to recover possession under subsections 13.A.7 and 13.A.8, a landlord shall allege, 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 10 (Rent Ceiling) and 8 (Rent Registration) of this Ordinance.

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

#### Section 14. RETALIATION PROHIBITED

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

an action to recover possession, or it may serve as the basis for an affirmative action by the tenant for actual and punitive damages and injunctive relief. In an action by or against a tenant, evidence of the assertion or exercise by the tenant of rights under this Ordinance within six months prior to the alleged act of retaliation shall create a presumption that the landlord's act was retaliatory. "Presumption" means that the Court must find the existence of the fact presumed unless and until 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 Ordinance and the alleged act of retaliation.

#### Section 15. REMEDIES

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

1. A tenant may petition the Board for appropriate relief. If the Board, after the landlord has proper notice and after a hearing, determines that a landlord has wilfully and knowingly failed to register a rental unit covered by this Ordinance or violated the provisions of Section 10, 11 and 12 of this Ordinance, the Board may authorize the tenant of such rental unit to withhold all or a portion of the rent for the unit until such time as the rental unit is brought into compliance with this Ordinance. After a rental unit is brought into compliance, the Board shall determine what portion, if any, of the withheld rent is owed to the landlord for the period in which the rental unit was not in compliance. Whether or not the Board allows such withholding, no landlord who has failed to comply with the Ordinance shall at any time increase rents for a rental unit until such unit is brought into compliance. The withholding provisions of this section shall take effect only if the California Supreme Court

upholds the provisions in the case presently before the Court.

2. A tenant may withhold up to the full amount of his or her periodic rent which is charged or demanded by the landlord under the provisions of this Ordinance. In any action to recover possession based on nonpayment of rent, possession shall not be granted where the tenant has withheld rent in good faith under this Section.

3. A tenant may seek injunctive relief on behalf of herself or himself to restrain the landlord from demanding or receiving any rent on the unit until the landlord has complied with the terms of this Ordinance.

4. A tenant may file a damage suit against the landlord for actual damages when the landlord receives or retains any rent in excess of the maximum rent allowed under this Ordinance. Upon further proof of a bad faith claim by the landlord or the landlord's retention of rent in excess of the maximum rent allowed by this Ordinance, the tenant shall receive a judgment of up to five hundred (\$500) 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.A.7, Subsection 13.A.8, or Subsection 13.A.9, is not initiated within two-months after the tenant vacates the unit, or it is shown the landlord's claim was false or in bad faith, the tenant shall be entitled to regain possession and to actual damages. If the landlord's conduct was willful, the tenant shall be entitled to damages in an amount of \$500 or three times the actual damages sustained, whichever is greater.

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

D. If a tenant fails to bring a civil or administrative action within one hundred and twenty (120) days from the date of the first occurrence of a violation of this Ordinance, the Board shall either settle the claim arising from the violation or bring such action. Thereafter, the tenant on whose behalf the Board acted may not bring an action against the landlord in regard to the same violation for which



the Board has made a settlement or brought an action. In the event the Board settles the claim it shall be entitled to retain from any payments made by the landlord, the costs incurred in settlement, and the tenant aggrieved by the violation shall be entitled to the remainder.

Section 16. PARTIAL INVALIDITY

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

Section 17. NONWAIVERABILITY

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

Section 18. JUDICIAL REVIEW

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

Section 19. CRIMINAL PENALTIES

Any landlord who is found by a court of competent jurisdiction to be guilty of a willful violation of this Ordinance shall be subject to up to a five hundred dollar (\$500) fine and/or ninety (90) days in jail for a first offense and up to a three thousand dollar (\$3,000) fine and/or one year in jail for any subsequent offenses.

Section 20. EFFECTIVE PERIOD OF ORDINANCE

The provisions of this Ordinance shall cease to be effective after two (2) years from the date of adoption unless extended or amended by the City Council, provided the provisions of this Ordinance shall be considered as still remaining in full force and effect thereafter for the purpose of maintaining or defending any civil or criminal proceeding with respect to any right, liability or offense that may have arisen under the provisions of this Ordinance during its operative period. Provided further that the provisions of this Ordinance shall be reviewed annually by the City Council following receipt of an annual report and recommendations by the Board.

PASSED, APPROVED AND ADOPTED this 23rd day of November, 1983, by the following vote:

AYES:                    Ruben Abrica  
                              James E. Blakey, Jr.  
                              Barbara A. Mouton  
                              Omwale Satterwhite  
                              \_\_\_\_\_

NOES:                    Gertrude Wilks  
                              \_\_\_\_\_

ABSENT:                None  
                              \_\_\_\_\_

*Barbara A. Mouton*  
Mayor

ATTEST:

*Ronald V. Arest*  
City Clerk



CITY OF EAST PALO ALTO

MEMBERS OF THE COUNCIL

BARBARA A. MOUTON
Mayor
JAMES E. BLAKEY, JR.
Vice-Mayor
RUBEN ABRICA
OMOWALE SATTERWHITE
GERTRUDE WILKS

MUNICIPAL SERVICES BUILDING • 2415 UNIVERSITY AVENUE, EAST PALO ALTO, CA 94303 (415) 324-1308

December 22, 1983

Bill Lyons
Kevin Pirtle
Edrick Haggans
c/o Private Property Rights Committee
1969 University Avenue
East Palo Alto, CA 94303

RE: PETITIONS RECEIVED ON RENT STABILIZATION ORDINANCE

Gentlemen;

This letter will acknowledge receipt of peitions on the
above-referenced item, and as itemized on the attached sheet.
I, Russell V. Averhart, Interim City Clerk, City of East Palo
Alto, will determine later this same day whether or not to
accept your petitions for filing on said ordinance.

Sincerely,
CITY OF EAST PALO ALTO

Received By: [Signature]
Russell V. Averhart, Interim City Clerk

Acknowledged By: [Signature]
Edrick Haggans, Chairman, EPA Private Property
Rights Committee

RVA:db

Attachments


EXHIBIT "B"

<u>SHEET #</u>	<u># OF SHEETS W/SIGNATURES</u>	<u>AFFIDAVIT ATTACHED</u>
1	16	YES
3	5	"
5	1	"
6	11	"
8	3	"
9	4	"
10	5	"
11	4	"
12	7	"
14	3	"
15	3	"
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18	1	"
20	4	"
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23	1	"
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29	2	"
31	4	"
32	4	"
33	3	"
37	1	"
45	2	"
46	6	"
47	3	"
48	4	"
49	1	"
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51	1	"
52	4	"
53	6	"
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56	6	"
57	6	"
58	3	"
59	4	"
60	2	"
61	7	"
62	1	"
64	1	"
65	6	"

By: Russell V. Averhart, Interim City Clerk *Russell V. Averhart*

By: Edrick Haggans, Chairman, EPAPPRC *Edrick Haggans*

<u>SHEET#</u>	<u># OF SHEETS W/SIGNATURES</u>	<u>AFFIDAVIT ATTACH</u> <u>E</u>
66	4	"
67	6	"
68	1	"
69A	1	"
70	1	"
72	2	"
75	2	"
76	5	"
77	6	"
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113	3	"
115	2	"
116	4	"
117	1	"

By: Russell V. Averhart, Interim City Clerk 

By: Edrick Haggans, Chairman, EPAPRC 

# PETITION FOR REFERENDUM AGAINST AN ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO, STATE OF CALIFORNIA

TO THE CITY COUNCIL AND THE CITY CLERK OF THE CITY OF EAST PALO ALTO:

We, the undersigned citizens of, and qualified electors of, the City of East Palo Alto, State of California, do respectfully order that certain ordinance of said City of East Palo Alto, being ordinance No. 17-83 and entitled "AN ORDINANCE TO STABILIZE RENTS FOR RESIDENTIAL HOUSING AND ESTABLISH GOOD CAUSE EVICTIONS," passed and adopted by the City Council of said City of East Palo Alto on the 23rd day of November 1983, a copy of which ordinance is attached hereto and by this reference made a part hereof, shall be referred to a vote of the qualified electors of said City of East Palo Alto for their approval or rejection at an election to be called and held in said City pursuant to applicable law.

DATE  
SIGNED

This column for  
official use only

	YOUR SIGNATURE AS REGISTERED TO VOTE	PRINT YOUR NAME	
	YOUR ADDRESS AS REGISTERED TO VOTE	CITY	ZIP
	YOUR SIGNATURE AS REGISTERED TO VOTE	PRINT YOUR NAME	
	YOUR ADDRESS AS REGISTERED TO VOTE	CITY	ZIP
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"C"

## ORDINANCE NO. 17-83

### AN ORDINANCE TO STABILIZE RENTS FOR RESIDENTIAL HOUSING AND ESTABLISH GOOD CAUSE EVICTIONS.

The City Council of the City of East Palo Alto does ordain as follows:

#### Section 1. TITLE

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

#### Section 2. FINDINGS

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

B. Using the U.S. Census definition of overcrowding as more than one person per room in a household, the City Council finds that East Palo Alto's overcrowding rate as compared to the rate of overcrowding in San Mateo County, clearly indicates a serious overcrowding problem.

C. Defining vacancy rate as the ratio of units offered for rent to the total number of habitable units, the available data showed that as compared to the county-wide vacancy rate, the vacancy rate for East Palo Alto is seriously low.

D. The City Council finds that East Palo Alto's annualized rate of rent increase exceeds the variable range of increase and the Consumer Price Index, and is therefore excessive.

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

F. The moratorium on rent increases expired after 90 days and was extended an additional 90 days. It will expire on December 27, 1983.

G. It is found and declared that unless this Rent Stabilization and Good Cause Eviction Ordinance is passed by the Council, many tenants will be displaced because of their inability to pay such substantial and unreasonable rent increases, and as a result of the shortage of rental units, will be unable to find substitute, decent, safe and sanitary housing at affordable rent levels.

#### Section 3. PURPOSE

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

#### Section 4. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

N. BASE RENT CEILING: The maximum allowable rent established under Section 10 of this Ordinance.

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

#### Section 5. APPLICABILITY

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

A. Rental units which are owned by landlords who own a maximum of four rental units in East Palo Alto;

B. For the purposes of Subsection 5.A., the term landlord shall be defined only as the owner of record holding a substantial interest in the property.

C. Rental units which are owned and leased by any government agency including the San Mateo County Housing Authority under the Section 8 program.

D. Rental units which are rented primarily to transient guests for a period of use or occupancy of less than fourteen (14) consecutive days in establishments such as hotels, motels, inns, tourist homes, dormitory and boarding houses. However, the payment of rent every fourteen (14) days or less shall not by itself exempt any unit from coverage by this Ordinance.

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

F. Newly constructed rental units which are completed and offered for rent for the first time after the effective date of this Ordinance, provided that such new units were not created as a result of rehabilitation or conversion as opposed to new construction. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 8, Rent Registration; Section 10, Establishment of Base Rent Ceiling and Posting; Section 11, Annual General Adjustment of Rent Ceilings; and Section 12, Individual Adjustments of Rent Ceilings, of this Ordinance.

G. Properties that have been rehabilitated in accordance with the provisions of Federal Tax Code Section 174K.

H. Rental units in nonprofit or limited equity housing cooperatives, owned and controlled by a majority of the residents.

I. The scope of all of the above exemptions shall be interpreted in a manner consistent with the other provisions of this ordinance.

#### Section 6. RENT STABILIZATION BOARD

A. COMPOSITION: There shall be in the City of East Palo Alto a Rent Stabilization Board, the Board shall consist of seven (7) appointed Board Members. The Board shall elect annually as chairperson one of its members to serve in that capacity. The Board shall be composed of three tenants, two landlords and two homeowners who do not own rental property in East Palo Alto.

B. ELIGIBILITY: Full-time residents of the City of East Palo Alto are eligible to serve as Board Members on the Board.

C. FULL DISCLOSURE OF HOLDINGS: All Board Members shall file with the City Clerk a verified statement listing all of their interests and dealings in real property, including but not limited to ownership, sale, management, transfer of exchange, and interests in entities whose primary purpose is the ownership, sale, management, transfer or exchange of real property during the previous three years. Such statements shall be made available for public inspection.

D. APPOINTMENT OF BOARD MEMBERS: Board Members shall be appointed by the East Palo Alto City Council within thirty (30) days after the adoption of this Ordinance.

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

F. POWERS AND DUTIES: The Board shall have the following powers and duties:

1. Set the rent ceilings for all rental units.
2. Require registration of all rental units under Section 8 of this Ordinance.
3. Publicize the manner in which the Base Rent Ceiling is established under Section 10.
4. To make adjustments in the rent ceiling in accordance with Section 11 and 12.
5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this Ordinance.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set forth below.
7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
8. Report quarterly to the City Council of the City of East Palo Alto on the status of rental housing units covered by this Ordinance.
9. Urge the City Council to remove rent controls under Section 6 G.
10. Administer oaths and affirmations and subpoena witnesses and relevant documents.
11. Establish rules and regulations for settling civil claims under Section 15.
12. Seek injunctive relief under Section 15.
13. Pursue civil remedies in courts of appropriate jurisdiction.
14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this Ordinance.
15. Hold public hearings.
16. Other powers necessary to carry out the purposes of this Ordinance which are not inconsistent with the terms of this Ordinance.
17. Except as provided in Section 6 H of this Ordinance, the Board shall finance its reasonable and necessary expenses for its operation without the use of General Fund monies of the City of East Palo Alto.

G. RULES AND REGULATIONS. The Board shall issue and know such rules and regulations, including those which are contained in this Ordinance, as will further the purposes of this Ordinance. The Board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the City of East Palo Alto. A copy of the Board's rules and regulations shall be sent to every owner of rental property in East Palo Alto and shall be posted in a location easily accessible to all tenants. The rules and regulations shall also be posted in three general locations throughout the City of East Palo Alto.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the Board shall be kept in the Board's office and shall be available to the public for inspection and copying. The Board shall publicize this Ordinance so that all residents of East Palo Alto will have the opportunity to become informed about their legal rights and duties under this Ordinance. The Board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this Ordinance. The brochure shall be made available to the public.

H. MEETINGS. The Board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the Members of the Board. The Board shall hold its initial meeting no later than January 7, 1984.

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

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

K. COMPENSATION: The Rent Stabilization Board shall be a working Board. In order to compensate Board Members for their time and work performed as required by this Ordinance, Board Members shall receive fifty dollars (\$50) per meeting attended, but in no case shall compensation for any one Board Member exceed fifteen hundred dollars (\$1500) in the first twelve month period or in any subsequent annual period that the Board is in operation for services rendered. Upon request by the Board the City Council may annually adjust the compensation rate and the maximum annual sum received by the Board Members.

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

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

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

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

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

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

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

#### Section 7. SECURITY DEPOSITS

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

#### Section 8. RENT REGISTRATION

A. The Board shall require all landlords subject to the provisions of this Ordinance to file with the Board by July 1, 1984, a rent registration statement for each rental unit covered by this Ordinance.

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 from July 1, 1982 through June 30, 1983;
6. The rent in effect on April 1, 1983;
7. The base rent ceiling;
8. 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;
9. Whether the rental unit was vacant or occupied on July 1, 1983;
10. Any other information deemed relevant by the Board.

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

D. The first annual registration fee of thirty dollars (\$30) per unit shall be paid by the landlords to the Board no later than July 1, 1984. Subsequent annual registration fees set in accordance with Section 8.N. of this Ordinance shall be paid no later than July 1 of each year. A certificate of exemption will be issued for each rental unit that is exempt from payment of the registration fee.

E. The Board shall provide forms for the registration information required by this Section and mail them to all property owners as listed on the county tax assessor's role. The Board shall make other reasonable efforts to facilitate the fulfillment of the requirements set forth in this Section.

F. Every annual registration fee required by this Ordinance which is not paid on or before July 1 is declared delinquent, and the Board shall add to said registration fee and collect a penalty of one hundred (100) percent of the fee so delinquent in addition to the fee. Every ninety (90) days that the fee and penalty remain delinquent, the penalty shall be increased by one hundred (100) of the original fee. The Board may waive the penalty if payment is made within thirty (30) days of the original due date.

A landlord may request the Board to waive the penalty if he/she shows good cause for the delinquent payment.

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

H. Within thirty (30) 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 (60) days of coming under coverage of this Ordinance. 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. Fifty (50) percent of the registration fee shall be passed along to the tenants. Under no circumstances shall penalties be passed along to tenants.

#### Section 9. USE AND CONFIDENTIALITY OF INFORMATION SUBMITTED TO BOARD

A. All information and forms required by this Ordinance and submitted to the Board shall not be used by any other governmental unit of the City of East Palo Alto for the enforcement of City of East Palo Alto Ordinances other than this Ordinance.

B. The Board shall adopt rules and regulations providing for the confidentiality of information submitted to the Board in support of a petition for an individual rent ceiling adjustment under Section 12 of this Ordinance when such confidentiality is deemed necessary by the Board.

#### Section 10. ESTABLISHMENT OF BASE RENT CEILING AND POSTING

A. Base Rent Ceiling. Upon adoption of this Ordinance, no landlord shall charge rent for any rental unit covered by the terms of this Ordinance affecting rents, in any amount greater than the lawful base rent ceiling as prescribed by the terms of this Ordinance, except as permitted by the Board under Sections 11 and 12 of this Ordinance. The base rent ceiling is the lawful rent actually due and payable on April 1, 1983 under the periodic terms of the rental agreement. The base rent ceiling is a reference point from which the rent ceiling shall be adjusted in accordance with Sections 11 and 12. For such rental units where no rent was in effect on April 1, 1983, the base rent shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding April 1, 1983. For such rental units where no periodic rent was in effect on April 1, 1983 or during the six months preceding that date, the base rent ceiling shall be a good faith estimate of the median rent in effect for comparable units in the City of East Palo Alto on April 1, 1983.

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

#### Section 11. ANNUAL GENERAL ADJUSTMENT OF RENT CEILINGS

A. Annual General Adjustment. Once each year all landlords shall be permitted to charge rents in excess of that which they were lawfully charging the previous year based upon 100 percent of the percent change in the residential rental component of the Consumer Price Index for the year period ending in the month of November immediately preceding the rent adjustment date.

1. As used herein the term "Consumer Price Index" (CPI) shall mean that portion of the Consumer Price Index published by the United States Department of Labor for the San Francisco-Oakland Metropolitan Area, designated as "Shelter, Rent Residential, 1967 = 100".

2. In February, annually, the Board shall compute the annual general adjustment permitted. The Board will then notify each properly registered landlord of the percentage rental increase allowed, such that said notice will be received by said landlord no later than April 1, 1984 and March 1 of each subsequent year. Should the landlord desire to take advantage of the annual rent adjustment and/or any individual rent adjustment permitted herein, he/she shall serve, in the manner prescribed by law, each tenant affected with written notice thereof thirty (30) days in advance of the first day for which such adjusted rent may be charged or collected.

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

Subtract the previous November index number from the latest November index number. The resulting figure is the index point difference.  
Divide the index point difference by the previous November index figure. The resulting figure is the applicable percentage change in the CPI for the year, expressed in decimal figures.  
Multiply the base rent, by the allowable percentage rent increase. The resulting figure is the maximum allowable rent, or rent ceiling, which is required to be granted to landlords under this Section, expressed in dollars.

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

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

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

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

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

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



1. Has continued to fail to comply, after order of the Board, with any provisions of this Ordinance and/or orders or regulations issued thereunder, or
2. Has failed to bring the rental unit into compliance with the implied warranty of habitability, or
3. Has failed to make repairs as ordered by the Housing Inspection Services of the City of East Palo Alto, or
4. Has failed to completely register by July 1.

#### Section 12. INDIVIDUAL ADJUSTMENTS OF RENT CEILINGS

A. Petitions. Upon receipt of a petition by a landlord and/or tenant, the rent ceiling of individual controlled rental units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this Ordinance. The petition shall be on a form provided by the Board and shall be submitted to the Board by the petitioner. The petition shall identify any persons who may have positions adverse to the request and all such parties shall be notified of the existence and the content of the petition at the petitioner's expense. Any such party may file an objection to the petition. Each petition shall be accompanied by a filing fee of an amount set by the Board per unit affected by the proposed adjustment. The Board shall provide for waiver of fees for petitions in forma pauperis. No petition shall be filed before July 1, 1984. If no objection to the petition is filed, the petition shall be accepted without hearing and the filing fee returned. If there is an objection to the petition, the Board shall hear the matter, and must decide to either grant or deny the petition in whole or in part. The prevailing party shall have its fee returned. Notwithstanding any other provision of this section, the Board or Hearing Examiner may refuse to hold a hearing and/or grant an individual rent ceiling adjustment as provided in this section for a rental unit if an individual hearing has been held and a decision has been made in regards to the rent ceiling for such unit(s) within the previous six months. Failure to supply information requested on the petition form shall be grounds for denial of the petition in question.

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 persons designated by said parties.
7. Hearing Board. The Board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be obtainable for the cost of copying. The record of the hearing shall include: all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted in the proceedings; a statement of all materials officially noticed; all recommended decisions, orders and/or rulings; all final decisions, orders and/or rulings; and the reasons for each final decision, order and/or ruling. Any party may have the proceeding tape recorded or otherwise transcribed at his or her own expense.
8. Quantum of Proof and Notice of Decision. No individual rent ceiling adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing. The burden of proof for costs shall be on the landlord. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of fact and law upon which said decision is based. At the same time, parties to the proceedings shall also be notified of their right to and the time limit for any appeal allowed by the Board and/or to judicial review of the decision pursuant to this Section and Section 18 of this Ordinance.
9. Consolidation. All landlord petitions pertaining to tenants in the same building shall be consolidated for hearing, and all petitions filed by tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.
10. Appeal. Any person aggrieved by the decision of the hearing examiner may appeal to the Board or to any appeals panel of the Board established by the Board, so long as such panel has at least three (3) Board Members. On appeal the Board or panel shall affirm, reverse, remand, or modify the decision of the hearing examiner. The Board or panel may conduct a new (de novo) hearing or may act on the basis of the record before the hearing examiner without holding a hearing. An appeal to the Board shall be filed no later than ten (10) days after receipt of the notice of the decision of the hearing examiner. The Board may set a reasonable appeal fee to be paid by the appellant at the time of filing the appeal.
11. Finality of Decision. The decision of the hearing examiner shall be the final decision for 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 petition within ninety (90) days following the date of filing of the individual rent ceiling adjustment petition, unless the conduct of the petitioner or other good cause is responsible for the delay.
13. Board Action in Lieu of Reference to Hearing Examiner. The Board, on its own motion or on the request of any landlord or tenant, may hold a hearing on an individual petition for a rent ceiling adjustment without the petition first being heard by a hearing examiner.

C. Standard for Decision on Individual Adjustment.

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

2. Definitions.

For purposes of individual rent adjustment proceedings, the following definitions shall be used:

a. Net Operating Income equals Gross Income less Operating Expenses.

b. Gross Income equals the following:

- i. Gross Rents, computed as gross rental income at 100% paid occupancy, plus
- ii. Interest from rental deposits, unless directly paid by the landlord to the tenants (interest shall be imputed at the rate of 5 1/2% of all deposits unless such deposits earn greater interest), plus
- iii. Income from laundry facilities, cleaning fees or services, garage and parking fees, plus
- iv. All other income or consideration received or receivable for or in connection with the use or occupancy of rental units and housing services
- v. Minus uncollected rents due to vacancy and bad debts to the extent that the same are beyond the landlord's control. Uncollected rents in excess of 3% of Gross Rents shall be presumed to be unreasonable unless established otherwise. Where uncollected rents must be estimated, the average of the preceding 3 years experience shall be used, or some other comparable method.

c. Operating Expenses.

i. Operating expenses shall include the following:

- (1) Real property taxes.
- (2) Utility costs
- (3) Management expenses (contracted or performed), including necessary and reasonable advertising, accounting, insurance, and other managerial expenses, and Allowable Legal Expenses. Management expenses are presumed to be 5% of Gross Income unless established otherwise.
- (4) Normal repair and maintenance expenses including painting, normal cleaning, fumigation, landscaping, and repair of all standard services, including electrical, plumbing, carpentry, furnished appliances, drapes, carpets, and furniture.
- (5) Owner-performed labor, which shall be compensated at the following hourly rates upon documentation being provided showing the date, time, and nature of the work performed:

General Maintenance	\$7.00/hr.
Skilled labor	\$13.00/hr.

Notwithstanding the above, a landlord may receive greater or lesser compensation for self-labor if it can be shown that the amounts set forth above are substantially unfair in a given case.

There shall be a maximum allowance under this paragraph of 5% of Gross Income, unless the landlord shows greater services for the benefit of tenants.

- (6) License and registration fees required by law to the extent same are not otherwise paid by tenants.
- (7) Capital Expenses with a total cost of less than \$100 per year per benefited unit, and the amortized portion of other Capital Expenses otherwise allowed by this Ordinance.
- (8) One hundred and ten percent (110%) of 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 amortized over the lifetime of the particular capital improvement up to 120 months.
- (9) Increased cost of debt service due to either or both: (a) Increases in interest payments associated with refinancing of balloon payment notes between January and July 1, 1983, where the proceeds of such notes are used for the purchase or improvement of property in East Palo Alto, provided that the total debt does not exceed 70% of the purchase price of the property. Only increased interest required to reimburse outstanding principal shall be considered. Such costs shall be allocated over the units in a building in proportion to the rents on the units therein. Increases in periodic costs may be passed through in full. One-time costs shall be amortized over the lifetime of the financing involved. (b) Interest rate increases on variable mortgages where such mortgages are described in (a) above, or were or are contracted for at the time of purchase of the security property, or existed prior to April 1, 1983.

Operating Expenses shall not include:

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

d. Allowable Legal Expenses shall include:

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

iii. Presumption of Fair Base Year Net Operating Income

Except as provided in paragraph 4, it shall be presumed that the Net Operating Income produced by a property during the base year provided a fair return. Landlords shall be entitled to maintain and increase their Net Operating Income from year to year in accordance with Section vi.

iv. Rebutting the Presumption

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

- (1) The landlord's operating and maintenance expenses in the base year were unusually high or low in comparison to other years. In such instances adjustments may be made in calculating such expenses so the base year Operating Expenses reflect average expenses for the property over a reasonable period of time. The Board or Hearing Examiner shall consider the following factors:
  - (a) The landlord made substantial capital improvements during 1983, which were not reflected in the rent levels on the base date;
  - (b) Substantial repairs were made due to damage caused by natural disaster or vandalism;
  - (c) Maintenance and repair was below accepted standards so as to cause significant deterioration in the quality of housing services;
  - (d) Other expenses were unreasonably high or low notwithstanding the following of prudent business practice. In making this determination, the fact that property taxes prior to 1983 may have been higher than in the base year shall not be considered.
  - (e) The base period rent was not established in an arms-length transaction.

- (2) The rent on the base date was disproportionate due to one of the enumerated factors below. In such instances, adjustments may be made in calculating Gross Rents consistent with the purposes of this Section.
  - (a) The rent on the base date was established by a lease or other formal rental agreement which provided for substantially higher rent at other periods during the term of the lease;
  - (b) The rent on the base date was substantially higher or lower than at other times of the year by reason of seasonal demand or seasonal variations in rent;
  - (c) The rent on the base date was substantially higher or lower than preceding months by reason of premiums being charged or rebates being given for reasons unique to particular units or limited to the period determining the base rent.
- (3) It shall be presumed that where Net Operating Income is less than 50% of Gross Income in the base year, after making adjustments as permitted by subsections (1) and (2) of this Section, the landlord was receiving less than a fair return on property. In such a case, for purposes of determining Base Year Net Operating Income, Gross Income shall be adjusted upward to twice the amount of adjusted Base Year Operating Expenses.

v. Determination of Base Year Net Operating Base:

- (1) To determine the Net Operating Income during the base year, there shall be deducted from the annualized Gross Income being realized on April 1, 1983, a sum equal to the actual Operating Expenses for calendar year 1983 unless the landlord demonstrates to the satisfaction of the Board or Hearing Examiner that some other 12 consecutive month period is justified by reasons independent of the purpose of this paragraph. In all cases, April 1, 1983, shall fall within the 12 month period utilized herein, except as provided in Subsection (2) below:
- (2) In the event that the landlord did not own the subject property on January 1, 1983, the Operating Expenses for 1983 shall be determined by one of the following manners, whichever the Board or Hearing Examiner determines to be more reliable in the particular case.
  - (a) The previous owner's actual Operating Expenses as defined in Section 2c; or, where unavailable, (b) Actual Operating Expenses for the first calendar year of ownership, discounted to 1983 by the schedule in Section vi below.

vi. Schedule of Increase in Operating Expense:

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

vii. Allowable Rent Increases:

Upon filing of an individual petition by a landlord, the Board may permit rent increases, unless otherwise prescribed by law, such that the landlord's Net Operating Income will be increased at the rate of 100 percent (100%) of the increase in the Consumer Price Index (CPI), designated as "Shelter, Rent Residential 1967 = 100", over the Base Year. The increase in the CPI shall be calculated by dividing the most recently reported monthly figure at the time of filing of the petition by the monthly figure for November, 1983.

viii. Relationship to General Adjustment:

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

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

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

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

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

**Section 12. GOOD CAUSE REQUIRED FOR EVICTION**

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

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law, and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days.
2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement.
3. The tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.
4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.
5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises.
6. The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.
7. The landlord, after having obtained all necessary permits from the City of East Palo Alto, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building 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.
  - a. Where the landlord recovers possession under this subsection 13.A.7(a) and 8, the tenant must be given the right of first refusal to any comparable vacant rental units owned by the landlord or to re-occupy the unit upon completion of the required work. In the event 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 East Palo Alto, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.
9. The landlord seeks in good faith to recover possession for his or her own use or occupancy as his or her principal residence, or for the use and occupancy as a principal residence by the landlord's spouse or by the landlord's child, or parent, grandparents or grandchildren. For the purposes of this subsection the term landlord shall be defined as the owner of record.
10. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 13.A.7(a), following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by 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 ninety (90) days).

A. A landlord's failure to specify good cause as listed above in subsections 1 through 10 of Section 12 A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this Ordinance.

B. In any action to recover possession of a rental unit covered by the terms of this Ordinance, except an action to recover possession under subsections 13.A.7 and 13.A.8, a landlord shall allege, as to each rental unit on the property, a 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 10 (Rent Ceiling) and 9 (Rent Registration) of this Ordinance.

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

**Section 14. RETALIATION PROHIBITED**

No landlord may threaten to bring, or bring, an action to recover possession, cause the tenant to quit the unit involuntarily, serve any notice to quit or notice of termination of tenancy, decrease any services or increase the rent where the landlord's intent is retaliation against the tenant for the tenant's assertion or exercise of rights under this Ordinance. Such retaliation shall be a defense to an action to recover possession, or it may serve as the basis for an affirmative action by the tenant for actual and punitive damages and injunctive relief. In an action by or against a tenant, evidence of the assertion or exercise by the tenant of rights under this Ordinance within six months prior to the alleged act of retaliation shall create a presumption that the landlord's act was retaliatory. "Presumption" means that the Court must find the existence of the fact presumed unless and until 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 Ordinance and the alleged act of retaliation.

**Section 15. REMEDIES**

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

1. If the Board, after the landlord has proper notice and after a hearing, determines that a landlord has willfully and knowingly failed to register a rental unit covered by this Ordinance or violated the provisions of Section 10, 11 and 12 of this Ordinance, the Board may authorize the tenant of such rental unit to withhold all or a portion of the rent for the unit until such time as the rental unit is brought into compliance with this Ordinance. After a rental unit is brought into compliance, the Board shall determine what portion, if any, of the withheld rent is owed to the landlord for the period in which the rental unit was not in compliance. Whether or not the Board allows such withholding, no landlord who has failed to comply with the Ordinance shall at any time increase rents for a rental unit until such unit is brought into compliance. The withholding provisions of this section shall take effect only if the California Supreme Court upholds the provisions in the case presently before the Court.
2. A tenant may withhold up to the full amount of his or her periodic rent which is charged or demanded by the landlord under the provisions of this Ordinance. In any action to recover possession based on nonpayment of rent, possession shall not be granted where the tenant has withheld rent in good faith under this Section.
3. A tenant may seek injunctive relief on behalf of himself or herself to restrain the landlord from demanding or receiving any rent on the unit until the landlord has complied with the terms of this Ordinance.

4. A tenant may file a damage suit against the landlord for actual damages when the landlord receives or retains any rent in excess of the maximum rent allowed under this Ordinance. Upon further proof of a bad faith claim by the landlord or the landlord's retention of rent in excess of the maximum rent allowed by this Ordinance, the tenant shall receive a judgment of up to five hundred (\$500) 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.A.7, Subsection 13.A.8, or Subsection 13.A.9, is not initiated within two-months after the tenant vacates the unit, or it is shown the landlord's claim was false or in bad faith, the tenant shall be entitled to regain possession and to actual damages. If the landlord's conduct was willful, the tenant shall be entitled to damages in an amount of \$500 or three times the actual damages sustained, whichever is greater.

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

D. If a tenant fails to bring a civil or administrative action within one hundred and twenty (120) days from the date of the first occurrence of a violation of this Ordinance, the Board shall either settle the claim arising from the violation or bring such action. Thereafter, the tenant on whose behalf the Board acted may not bring an action against the landlord in regard to the same violation for which

the Board has made a settlement or brought an action. In the event the Board settles the claim it shall be entitled to retain from any payments made by the landlord, the costs incurred in settlement, and the tenant aggrieved by the violation shall be entitled to the remainder.

Section 16. PARTIAL INVALIDITY

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

Section 17. NONWAIVERABILITY

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

Section 18. JUDICIAL REVIEW

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

Section 19. CRIMINAL PENALTIES

Any landlord who is found by a court of competent jurisdiction to be guilty of a willful violation of this Ordinance shall be subject to up to a five hundred dollar (\$500) fine and/or ninety (90) days in jail for a first offense and up to a three thousand dollar (\$3,000) fine and/or one year in jail for any subsequent offenses.

Section 20. EFFECTIVE PERIOD OF ORDINANCE

The provisions of this Ordinance shall cease to be effective after two (2) years from the date of adoption unless extended or amended by the City Council, provided the provisions of this Ordinance shall be considered as still remaining in full force and effect thereafter for the purpose of maintaining or defending any civil or criminal proceeding with respect to any right, liability or offense that may have arisen under the provisions of this Ordinance during its operative period. Provided further that the provisions of this Ordinance shall be reviewed annually by the City Council following receipt of an annual report and recommendations by the Board.

## TEMPORARY RENT STABILIZATION AND EVICTION FOR GOOD CAUSE ORDINANCE

The City Council of the City of East Palo Alto does ordain as follows:

Section 1. TITLE AND REPEAL

- A. Title. This ordinance shall be known as Temporary Rent Stabilization and Eviction for Good Cause Ordinance.
- B. Repeal. Ordinance No. 10-83, an ordinance establishing a moratorium in rent increases, is hereby repealed and substituted by this Ordinance.

Section 2. FINDINGS

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

B. Using the U.S. Census definition of overcrowding as more than one person per room in a household, the City Council finds that East Palo Alto's overcrowding rate as compared to the rate of overcrowding in San Mateo County, clearly indicates a serious overcrowding problem.

C. Defining vacancy rate as the ratio of units offered for rent to the total number of habitable units, the available data showed that as compared to the county-wide vacancy rate, the vacancy rate for East Palo Alto is seriously low.

D. The City Council finds that East Palo Alto's annualized rate of rent increase exceeds the variable range of increase in the Consumer Price Index, and is therefore excessive.

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

F. The moratorium on rent increases expired after 90 days and was extended an additional 90 days. It will expire on December 27, 1983.

G. Based on a report prepared by the Task Force which represented all sectors of the community, and also upon extended public hearing, the City Council on November 23, 1983, adopted a comprehensive rent stabilization ordinance, Ordinance No. 17-83. This ordinance, had it taken effect on December 23, 1983, would have provided protection against housing problems that affect the lives of a substantial portion of those East Palo Alto residents who reside in residential housing. Furthermore, this comprehensive ordinance which would have taken effect on December 23, 1983, just before the expiration of the rent moratorium ordinance, would have made the transition from a frozen market to a more stabilized market which would allow periodic rent increases.

H. In anticipation of the successful drive for the petition for referendum and also the expiration of the rent moratorium on December 27, 1983, landlords have begun to give notices to tenants which increased rent by substantial amounts, in some cases as much as 28% above the moratorium level.

I. The City Council, City staff and other City officials learned and have knowledge of the facts specified in paragraph H above from the receipt of numerous reports and complaints and testimony of some of the tenants at the Council meeting of December 19, 1983.

J. It is found and declared that unless this temporary Rent Stabilization and Eviction for Good Cause Ordinance is passed by the Council, many tenants may be displaced because of their inability to pay such substantial and unreasonable rent increases, but also as a result of the shortage of rental units, they will be unable to find substitute, decent, safe and sanitary housing at an affordable level.

Section 3. PURPOSE

The purpose of this Ordinance is to protect residential tenants in the City from unreasonable rent increases that would ensue in the wake of the expiration of the rent moratorium ordinance; to protect tenants from arbitrary, discriminatory or retaliatory evictions; and at the same time to assure landlords both a fair return and rental income sufficient to cover costs of maintenance and operating expenses as well as the costs of capital improvements to their rental property for the period this Ordinance stays in effect.

Section 4. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

N. BASE RENT CEILING: The maximum allowable rent established under Section 7 of this Ordinance.

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

#### Section 5. APPLICABILITY

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

A. Rental units which are owned by landlords who own less than four rental units in East Palo Alto.

B. For the purposes of Subsection 5.A., the term landlord shall be defined only as the owner of record holding a substantial interest in the property.

C. Rental units which are owned and leased by any government agency including the San Mateo County Housing Authority under the Section 8 program.

D. Rental units which are rented primarily to transient guests for a period of use or occupancy of less than fourteen (14) consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen (14) days or less shall not by itself exempt any unit from coverage by this Ordinance.

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

F. Newly constructed rental units which are completed and offered for rent for the first time after the effective date of this Ordinance, provided that such new units were not created as a result of rehabilitation or conversion as opposed to new construction.

G. Properties that have been rehabilitated in accordance with the provisions of Federal Tax Code Section 174k.

H. Rental units in nonprofit or limited equity housing cooperatives, owned and controlled by a majority of the residents.

I. The scope of all of the above exemptions shall be interpreted in a manner consistent with the other provisions of this ordinance.

#### Section 6. RENT STABILIZATION BOARD

A. COMPOSITION: There shall be in the City of East Palo Alto a Rent Stabilization Board; the Board shall consist of seven (7) appointed Board Members. The Board shall elect chairperson one of its members to serve in that capacity. The Board shall be composed of three tenants, two landlords and two homeowners who do not own rental property in East Palo Alto.

B. ELIGIBILITY: Full-time residents of the City of East Palo Alto are eligible to serve as Board Members on the Board.

C. FULL DISCLOSURE OF HOLDINGS: All Board Members shall file with the City Clerk a verified statement listing all of their interests and dealings in real property, including but not limited to ownership, sale, management, transfer or exchange, and interests in entities whose primary purpose is the ownership, sale, management, transfer or exchange of real property during the previous three years. Such statements shall be made available for public inspection.

D. APPOINTMENT OF BOARD MEMBERS: Board Members shall be appointed by the East Palo Alto City Council immediately after the adoption of this Ordinance.

E. TERM OF OFFICE: The Board members shall be appointed for the period in which this Ordinance shall stay in effect.

F. POWERS AND DUTIES: The Board shall have the following powers and duties:

1. To make adjustments in the rent ceiling in accordance with Section 8 and 9.
2. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this Ordinance.
3. To issue orders, rules and regulations, conduct hearings and charge fees as set forth below.
4. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
5. Report every two months to the City Council of the City of East Palo Alto on the status of rental housing units covered by this Ordinance.
6. Administer oaths and affirmations and subpoena witnesses and relevant documents.
7. Pursue civil remedies in courts of appropriate jurisdiction.
8. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this Ordinance.
9. Hold public hearings.

10. Other powers necessary to carry out the purposes of this Ordinance which are not inconsistent with the terms of this Ordinance.
11. Set fees for filing petitions for individual rent adjustment.

G. **RULES AND REGULATIONS:** The Board shall issue and follow such rules and regulations, including those which are contained in this Ordinance, as will further the purposes of this Ordinance. The Board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulations shall be sent to every owner of rental property in East Palo Alto and shall be posted in a location easily accessible to all tenants. The rules and regulations shall also be posted in three general locations throughout the City of East Palo Alto.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the Board shall be kept in the Board's office and shall be available to the public for inspection and copying.

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

H. **MEETINGS:** The Board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the Members of the Board. The Board shall hold its initial meeting no later than January 7, 1984.

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

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

K. **COMPENSATION:** The members of the Board shall receive no compensation but shall be allowed necessary actual travelling and other expenses when the interest of the city shall require, but in each case only if and when the City Council shall have first specifically authorized the purpose and expenditure involved.

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

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

#### Section 7. ESTABLISHMENT OF BASE RENT CEILING AND POSTING

A. **Base Rent Ceiling.** Upon adoption of this Ordinance, no landlord shall charge rent for any rental unit covered by the terms of this Ordinance affecting rents, in any amount greater than the lawful base rent ceiling as prescribed by the terms of this Ordinance, except as permitted by the Board under Section 8 and 9 of this Ordinance. The base rent ceiling is the lawful rent actually due and payable on July 1, 1983 under the periodic terms of the rental agreement. The base rent ceiling is a reference point from which the rent ceiling shall be adjusted in accordance with Sections 8 and 9.

#### Section 8. ALLOWABLE RENT INCREASE

The City Council believes that landlords are entitled to a rent increase for the period of July 1, 1983, when the rent moratorium ordinance came into effect, up to the expiration date of the present urgency ordinance, July 1, 1984. Noting the fact that the latest consumer price index issued by the U.S. Bureau of Labor Statistics shows that "all items" consumer price index for the San Francisco/ Bay Area for the period of October 1982 to October 1983 increased by 1.1%, the City Council determines that for the period in which the urgency ordinance remains in effect the maximum allowable increase shall be 8% of the rent in effect on July 1, 1983. No landlord shall increase the rent without giving thirty (30) days notice, to be given after the effective date of this Ordinance.

#### Section 9. INDIVIDUAL ADJUSTMENTS OF RENT

A. **Petitions.** Upon receipt of a petition by a landlord the rent ceiling of individually controlled rental units may be adjusted upward in accordance with the procedures set forth elsewhere in this ordinance. The petition shall be on a form provided by the Board and shall be submitted to the Board by the landlord. The petition shall identify any persons who may have positions adverse to the request and all such parties shall be notified of the existence and the content of the petition at the petitioners expense. Any such party may file an objection to the petition. Each petition shall be accompanied by a filing fee of an amount set by the Board per unit affected by the proposed adjustment. The Board shall provide for waiver of fees for petitions in forma pauperis. No petition shall be filed before February 15, 1984. If no objection to the petition is filed, the petition shall be accepted without hearing. If there is an objection to the petition, the Board shall hear the matter, and must decide to either grant or deny the petition in whole or in part. Failure to supply information requested on the petition form shall be grounds for denial of the petition in question.

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

C. **Quantum of Proof and Notice of Decision.** No individual rent ceiling adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing. The burden of proof for costs shall be on the landlord. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of fact and 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 15 of this Ordinance.

D. **Standard for Decision on Individual Adjustment:**

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

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

a. **Net Operating Income** equals Gross Income less Operating Expenses.

b. **Gross Income** equals the following:

i. **Gross Rents**, computed as gross rental income at 100% paid occupancy, plus

- ii. Interest from rental deposits, unless directly paid by the landlord to the tenants (interest shall be imputed at the rate of 5 1/2% of all deposits unless such deposits earn greater interest), plus
- iii. Income from laundry facilities, cleaning fees or services, garage and parking fees, plus
- iv. All other income or consideration received or receivable for or in connection with the use of rental units and housing services.
- v. Minus uncollected rents due to vacancy and bad debts to the extent that the same are beyond the landlord's control. Uncollected rents in excess of 3% of Gross Rents shall be presumed to be unreasonable unless established otherwise. Where uncollected rents must be estimated, the average of the preceding 3 years experience shall be used, or some other comparable method.

c. Operating Expenses.

i. Operating expenses shall include the following:

- 1. Real property taxes.
- 2. Utility costs.
- 3. Management expenses (contracted or performed), including necessary and reasonable advertising, accounting, insurance, and other managerial expenses, and Allowable Legal Expenses Management expenses are presumed to be 5% of Gross Income, unless established otherwise.
- 4. Normal repair and maintenance expenses including painting, normal cleaning, fumigation, landscaping, and repair of all standard services, including electrical, plumbing, carpentry, furnished appliances, drapes, carpets, and furniture.
- 5. Owner-performed labor, which shall be compensated at the following hourly rates upon documentation being provided showing the date, time, and nature of the work performed:

General Maintenance \$7:00/hr.

Skilled labor \$13.00/hr.

Notwithstanding the above, a landlord may receive greater or lesser compensation for self-labor if it can be shown that the amounts set forth above are substantially unfair in a given case.

There shall be a maximum allowance under this paragraph of 5% of Gross Income, unless the landlords shows greater services for the benefit of tenants.

- 6. License and registration fees required by law to the extent same are not otherwise paid by tenants.
- 7. Capital Expenses with a total cost of less than \$100 per year per benefited unit, and the amortized portion of other Capital Expenses otherwise allowed by this Ordinance.

(8) One hundred and ten percent (110%) of the cost of planned or completed capital improvements to the rental (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 amortized over the lifetime of the particular capital improvement up to 120 months.

(9) Increased costs of debt service due to either or both: (a) Increases in interest payments associated with refinancing of balloon payment notes between January and July 1, 1983, where the proceeds of such notes are used for the purchase or improvement of property in East Palo Alto, provided that the total debt does not exceed 70% of the purchase price of the property. Only increased interest required to refinance outstanding principle shall be considered. Such costs shall be allocated over the units in a building in proportion to the rents on the units therein. Increases in periodic costs may be passed through in full. One-time costs shall be amortized over the lifetime of the financing involved; (b) Interest rate increases on variable mortgages where such mortgages are described in (a) above, or were or are contracted for at the time of purchase of the security property, or existed prior to July 1, 1983.

ii. Operating Expenses shall not include:

- (1) Avoidable and unnecessary expense increases since July 1, 1983;
- (2) Mortgage principal and interest payments which are not allowed by this Ordinance under Section 3 below;
- (3) Any penalties, fees or interest assessed or awarded for violation of this or any other law;
- (4) Legal fees except as provided in Subsection d;
- (5) Depreciation of the property; and
- (6) Any expense for which the landlord has been reimbursed by any security deposit, insurance settlement, judgement for damages, settlement, or any other method.

d. Allowable Legal Expenses shall include:

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



111 Presumption of Fair Base Year Net Operating Income

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

iv. Rebutting the Presumption:

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

- (1) The landlord's operating and maintenance expenses in the base year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating such expenses so the base year Operating Expenses reflect average expenses for the property over a reasonable period of time. The Board shall consider the following factors:
  - (a) The landlord made substantial capital improvements during 1983, which were not reflected in the rent level on the base date;
  - (b) Substantial repairs were made due to damage caused by natural disaster or vandalism;
  - (c) Maintenance and repair was below accepted standards so as to cause significant deterioration in the quality of housing services;
  - (d) Other expenses were unreasonably high or low notwithstanding the following of prudent business practice. In making this determination, the fact that property taxes prior to 1983 may have been higher than in the base year shall not be considered.
  - (e) The base period rent was not established in an arms-length transaction.
- (2) The rent on the base date was disproportionate due to one of the enumerated factors below. In such instances, adjustments may be made in calculating Gross Rents consistent with the purposes of this Section.
  - (a) The rent on the base date was established by a lease or other formal rental agreement which provided for substantially higher rent at other periods during the term of the lease;
  - (b) The rent on the base date was substantially higher or lower than at other times of the year by reason of seasonal demand or seasonal variations in rent;

(c) The rent on the base date was substantially higher or lower than the preceeding months by reason of premiums being charged or rebates being given for reasons unique to particular units or limited to the period determining the base rent.

- (3) It shall be presumed that where Net Operating Income is less than 50% of Gross Income in the base year, after making adjustments as permitted by subsections (1) and (2) of this Section, the landlord was receiving less than a fair return on property. In such a case, for purposes of determining Base Year Net Operating Income, Gross Income shall be adjusted upward to twice the amount of adjusted Base Year Operating Expenses.

v. Determination of Base Year Year Net Operating Base:

- (1) To determine the Net Operating Income during the base year, there shall be deducted from the annualized Gross Income being realized on July 1, 1983, a sum equal to the actual Operating Expenses for calendar year 1983 unless the landlord demonstrates to the satisfaction of the Board that some other 12 consecutive month period is justified by reasons independent of the purpose of this paragraph. In all cases, July 1, 1983, shall fall within the 12 month period utilized herein, except as provided in Sub-section (2) below.
- (2) In the event that the landlord did not own the subject property on January 1, 1983, the Operating Expenses for 1983 shall be determined by one of the following manners, whichever the Board determines to be more reliable in the particular case:
  - (a) The previous owner's actual Operating Expenses as defined in Section 2c; or, where unavailable;
  - (b) Actual Operating Expenses for the first calendar year of ownership, discounted to 1983 by the schedule in Section vi below.

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

vii. Allowable Rent Increases:

Upon filing of an individual petition by a landlord, the Board may permit rent increases, unless otherwise prescribed by law, such that the landlord's Net Operating Income will be increased at the rate of 100 percent (100%) of the increase in the Consumer Price Index (CPI), designated as "all items". The increase in the CPI shall be calculated by dividing the most recently reported monthly figure at the time of filing of the petition by the monthly figure for November, 1983.

- viii. Relationship to allowable rent increase: Any individual Adjustment established pursuant to this section shall take into account the allowable rent increase the landlord may be implementing, or otherwise entitled to, at and during the time their Individual Adjustment is to be implemented, and the Individual Adjustment may be limited or conditioned accordingly.

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

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

#### Section 10. GOOD CAUSE REQUIRED FOR EVICTION

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

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law, and said failure has continued after service on the tenant of a written notice setting forth the amount of rent than 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.

3. The tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.

4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.

5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises.

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

7. The landlord, after having obtained all necessary permits from the City of East Palo Alto, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building 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.

a. Where the landlord recovers possession under this subsection 10.A. 7(a) and 8, the tenant must be given the right of first refusal to any comparable vacant rental units owned by the landlord or to re-occupy the unit upon completion of the required work. In the event 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 East Palo Alto, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.

9. The landlord seeks in good faith to recover possession for his or her own use or and occupancy as his or her principal residence, or for the use and occupancy as a principal residence by the landlord's spouse or by the landlord's child, or parent, grandparents or grandchildren. For the purposes of this subsection the term landlord shall be defined as the owner of record.

10. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 10.A.7(a), following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the 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 ninety (90) days).

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

B. In any action to recover possession of a rental unit covered by the terms of this Ordinance, except an action to recover possession under subsection 10.A.7 and 10.A.8, a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Section 7 (Rent Ceiling) of this Ordinance.

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

#### Section 11. RETALIATION PROHIBITED

No landlord may threaten to bring, or bring, an action to recover possession, cause the tenant to quit the unit involuntarily, serve any notice to quit or notice of termination of tenancy, decrease any services or increase the rent where the landlord's intent is retaliation against the tenant for the tenant's assertion or exercise of rights under this Ordinance. Such retaliation shall be a defense to an action to recover possession, or it may serve as the basis for an affirmative action by the tenant for actual and punitive damages and injunctive relieve. In an action by or against a tenant, evidence of the assertion or exercise by the tenant of rights under this Ordinance within six months prior to the alleged act of retaliation shall create a presumption that the landlord's act was retaliatory. "Presumption" means that the Court must find the existence of the fact presumed unless and until 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 Ordinance and the alleged act of retaliation.

## Section 12. REMEDIES

### A. For Violation of Rent Ceilings

If a landlord demands, accepts, receives or retains any payment in excess of the maximum allowable rent permitted by this Ordinance, a tenant may take any or all of the following actions until compliance is achieved:

1. A tenant may petition the Board for appropriate relief. If the Board, after the landlord has proper notice and after a hearing, determines that a landlord has wilfully and knowingly violated the provisions of Section 7, 8 or 9 of this Ordinance, the Board may authorize the tenant of such rental unit to withhold all or a portion of the rent for the unit until such time as the rental unit is brought into compliance with this Ordinance. After a rental unit is brought into compliance, the Board shall determine what portion, if any, of the withheld rent is owed to the landlord for the period in which the rental unit was not in compliance. Whether or not the Board allows such withholding, no landlord who has failed to comply with the Ordinance shall at any time increase rents for a rental unit until such unit is brought into compliance. The withholding provisions of this section shall take effect only if the California Supreme Court upholds the provisions in the case presently before the Court.

2. A tenant may withhold up to the full amount of his or her periodic rent which is charged or demanded by the landlord under the provisions of this Ordinance. In any action to recover possession based on nonpayment of rent, possession shall not be granted where the tenant has withheld rent in good faith under this Section.

3. A tenant may seek injunctive relief on behalf of herself or himself to restrain the landlord from demanding or receiving any rent on the unit until the landlord has complied with the terms of this Ordinance.

4. A tenant may file a damage suit against the landlord for actual damages when the landlord receives or retains any rent in excess of the maximum rent allowed under this Ordinance. Upon further proof of a bad faith claim by the landlord or the landlord's retention of rent in excess of the maximum rent allowed by this Ordinance, the tenant shall receive a judgement of up to seven hundred fifty (\$750) 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 10.A.7, Subsection 10.A.8, or Subsection 10.A.9, is not initiated with two-month after the tenant vacates the units, or it is shown that the landlord's claim was false or in bad faith, the tenant shall be entitled to regain possession and to actual damages. If the landlord's conduct was willful, the tenant shall be entitled to damages in an amount of \$750 or three times the actual damages sustained, whichever is greater.

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

D. If a tenant fails to bring a civil or administrative action within one hundred and twenty (120) days from the date of the first occurrence of a violation of this Ordinance, the Board shall either settle the claim arising from the violation or bring such action. Thereafter, the tenant on whose behalf the Board acted may not bring an action against the landlord in regard to the same violation for which the Board has made a settlement or brought an action. In the event the Board settles the claim it shall be entitled to retain from any payments made by the landlord, the costs incurred in settlement, and the tenant aggrieved by the violation shall be entitled to the remainder.

## Section 13. PARTIAL INVALIDITY

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

## Section 14. NONWAIVERABILITY

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

## Section 15. 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.

## Section 16. CRIMINAL PENALTIES

Any landlord who is found by a court of competent jurisdiction to be guilty of a willful violation of this Ordinance shall be subject to up to a five hundred dollar (\$500) fine and/or ninety (90) days in jail for a first offense and up to a three thousand dollar (\$3,000) fine and/or one year in jail for any subsequent offenses.

## Section 17. EFFECTIVE DATE AND PERIOD OF ORDINANCE

A. This ordinance shall take effect immediately as an urgency ordinance. The urgency is because of, in addition to the

1. Ordinance 10-83 which introduce rent moratorium will expire on December 27, 1983. If no action is taken by the City Council in stabilizing rent increases and regulating eviction, total deregulation of rent and eviction would immediately lead to widespread rent increases, arbitrary evictions and a recurrence of the problems and hardships at a higher magnitude than that one which existed prior to the adopting of the moratorium measure. This hardship endangers the public health and welfare of the City of East Palo Alto and especially the health and welfare of people with low and fixed incomes, students, and the aged.

2. If this urgency measure were not passed and if the referendum does not succeed, any future rent stabilization ordinance would be rendered meaningless as a result of substantial rent increases that would take place between the expiration of the rent moratorium and the date the ordinance becomes effective.

B. The provisions of this Ordinance shall remain effective until the result of the referendum challenging Ordinance No. 17-83 is known or until July 1, 1984, whichever comes first.

PASSED, APPROVED AND ADOPTED this 22nd day of December, 1982  
by the following vote:

AYES: ARRICA, BLAKEY, MOUTON, SATTERWHITE  
Councilmember

NAYS WILKS  
Councilmember

ABSENT: None  
Councilmember

Mayor of the City of East Palo Alto

ATTEST:

Clerk of the City of East Palo Alto

1 STATE OF CALIFORNIA, COUNTY OF SAN MATEO

2 one of  
3 I am the \_\_\_\_\_ Plaintiffs

4 \_\_\_\_\_  
5 in the above-entitled action or proceeding; I have read the fore-  
6 going \_\_\_\_\_ COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

7 \_\_\_\_\_  
8 and know the contents thereof; and I certify that the same is true  
9 of my own knowledge, except as to those matters which are therein  
10 stated upon my information or belief, and as to those matters I  
11 believe it to be true.

12 \_\_\_\_\_  
13 I declare, under penalty of perjury, that the foregoing is true and  
14 correct, and if called upon as a witness I could competently so  
15 testify.

16 \_\_\_\_\_  
17 Executed on January 18, 1984 at Palo Alto  
18 California.

19 \_\_\_\_\_  
20 Edrick Haggans  
21 EDRICK HAGGANS  
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ROBERTSON, ALEXANDER, LUTHER, ESSELSHEIN & SHIELDS  
A PUBLIC UTILITIES CORPORATION  
ATTORNEYS AT LAW  
770 MENLO AVENUE  
MENLO PARK, CALIFORNIA 94025  
TELEPHONE 324-0022

1 STATE OF CALIFORNIA, COUNTY OF SAN MATEO

2

3 I am the Managing General Partner of HORWATH ASSOCIATES, a  
4 California general partnership, one of the Plaintiffs

5 in the above-entitled action or proceeding; I have read the fore-  
6 going COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

7

8 and know the contents thereof; and I certify that the same is true  
9 of my own knowledge, except as to those matters which are therein  
10 stated upon my information or belief, and as to those matters I  
11 believe it to be true.

12

13 I declare, under penalty of perjury, that the foregoing is true and  
14 correct, and if called upon as a witness I could competently so  
15 testify.

16

17 Executed on January 18, 1984 at San Mateo,  
18 California.

HORWATH ASSOCIATES  
A California general partnership

By: Joseph S. Horwath  
JOSEPH S. HORWATH  
Managing General Partner

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ROBERTSON, ALEXANDER, LUTHER, ESSELSTEIN & SHIELDS  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
770 MENLO AVENUE  
MENLO PARK, CALIFORNIA 94025  
TELEPHONE 324-0622

(VERIFICATION - 446, 2015.5 C.C.P.)

STATE OF CALIFORNIA, COUNTY OF SAN MATEO


one of  
I am/the Plaintiffs

in the above-entitled action or proceeding; I have read the fore-  
going COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

and know the contents thereof; and I certify that the same is true  
of my own knowledge, except as to those matters which are therein  
stated upon my information or belief, and as to those matters I  
believe it to be true.

I declare, under penalty of perjury, that the foregoing is true and  
correct, and if called upon as a witness I could competently so  
testify.

Executed on January 18, 1984 at Redwood City,  
California.

  
JAMES STEINER

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