

ORDINANCE NO. 7,950-N.S.

AN ORDINANCE OF THE PEOPLE OF THE CITY OF BERKELEY AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO FURTHER PROTECT THE RIGHTS OF TENANTS TO BE SAFE FROM ARBITRARY AND EXCESSIVE RENT INCREASES AND EVICTIONS, AND TO ESTABLISH THE RIGHT TO ORGANIZE TENANT ASSOCIATIONS

The People of Berkeley do hereby ordain as follows:

Section 1. Title. This amendment to Chapter 13.76 shall be known and may be cited as the “Berkeley Tenant Protection and Right to Organize Act.”

Section 2. Amendment of Chapter 13.76. Chapter 13.76 of the Berkeley Municipal Code is amended to read as follows:

13.76.010 Title.

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

13.76.020 Findings.

A. On June 5, 1973, the City Council (hereinafter, “Council”) declared the existence of a housing emergency in the City of Berkeley (hereinafter, “the City”), based upon Council’s finding of a pattern of steadily rising rents, a shortage of decent housing and an increased deterioration of the existing housing stock in the City.

B. On November 27, 1979, the Council passed an ordinance establishing a temporary rent stabilization program, effective until June 30, 1980.

C. In 1980, the People of Berkeley passed the Rent Stabilization and Eviction for Good Cause Ordinance, establishing the registration of rental units, the regulation of rental increase amounts, and the requirement for a landlord to provide good cause prior to terminating a tenancy.

D. In 1995, the California Legislature enacted the Costa-Hawkins Rental Housing Act, which prohibited the ability of local governments to control the rental amount on a rental unit at the commencement of a new tenancy and to control the rental amount in single family homes or rental units with an initial Certificate of Occupancy issued after February

1, 1995. As a result of the Costa-Hawkins Rental Housing Act, many rental units became unaffordable to Berkeley residents.

E. The City continues to experience a severe housing shortage and an unprecedented increase in the number of residents experiencing housing hardships. According to data from the United States Census Bureau, in 2019, 53% of Berkeley renter households were “rent burdened,” paying more than 30% of their household income towards rent.

F. Due to the continuance of the housing emergency which existed when the voters of Berkeley first enacted this Chapter, the Berkeley Rent Stabilization Board (hereinafter, “Board”) finds that reasonable regulation of aspects of the landlord-tenant relationship is necessary to foster constructive communication, maintain an adequate supply of a variety of rental housing options, and protect the health, safety, and general welfare of the public.

G. Because the People of Berkeley have periodically updated this Chapter through various updates, the Board finds a need to enact non-substantive changes to this Chapter in 2024 in order to make the provisions of this Chapter more consistent with modern usage and clarity.

H. Pursuant to California Civil Code section 1946.2(g)(1)(B), the Board finds that this Chapter is more protective than the provisions of California Civil Code section 1946.2. The just cause for termination of a residential tenancy under this Chapter is consistent with California Civil Code section 1946.2; however, this Chapter further limits the reasons for termination of a residential tenancy, and provides for higher relocation assistance amounts in the event of a termination.

13.76.030 Purpose.

The purpose of this Chapter is to regulate residential rent increases in the City of Berkeley, to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, to facilitate the formation of tenant associations to balance the relationship between tenants and landlords, to help maintain the diversity of the Berkeley community, and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City’s housing crisis, preserve the public peace, health and safety, and advance the housing policies of the City with regard to low and fixed income persons, marginalized communities, students, persons with disabilities, and older adults.

13.76.040 Definitions.

- A. "Board" refers to the elected Rent Stabilization Board established by this chapter and Article XVII of the Charter of the City of Berkeley.
- B. "Commissioners" means the members of the Board who are denominated commissioners.
- C. "Housing services" include but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishing, telephone, parking and any other benefit, privilege or facility connected with the use or occupancy of any rental unit, including the right for tenants to organize as set forth in Section 13.76.135. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.
- D. "Landlord" means an owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.
- E. "Rent" means the consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.
- F. "Rental agreement" means an agreement, oral, written or implied, between a landlord and a tenant for use or occupancy of a rental unit and for housing services.
- G. "Rental unit" means any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-NS), located in the City of Berkeley, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.
- H. "Property" means a parcel of real property which is assessed and taxed as an undivided whole.

- I. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.
- J. "Partially-covered unit" means any rental that is subject to all sections of this Chapter except: Section 13.76.100: Establishment of base rent ceiling and posting; Section 13.76.110: Annual general adjustment of rent ceilings; and Section 13.76.120: Individual adjustments of rent ceilings.
- K. "Fully-exempt unit" means any rental unit that is not subject to any section of this Chapter.
- L. "Tenant Association" means any group of tenants, residing in rental units in the same building or in different buildings operated by the same management company, agent or landlord, which requests to be so designated as set forth in Section 13.76.135 of this Chapter.
- M. "Rent ceiling" means the maximum allowable rent which a landlord may charge on any rental unit covered by this Chapter.
- N. "Base rent ceiling" means the maximum allowable rent established under Section 13.76.100 of this Chapter.
- O. "Fees" means for the purpose of this Chapter, a charge fixed by law for services of public officers or for use of a privilege under control of government.

13.76.050 Applicability.

- A. All sections of this Chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following as provided in this section.
- B. The following rental units are Partially-covered units:
 - 1. *Newly Constructed Rental Units.* A rental unit created after June 30, 1980. For purposes of this partial exemption, the date a unit was created is based upon the date of the first certificate of occupancy issued for the subject unit.

However, in the event of the repeal or amendment of Civil Code Section 1954.52 such that “certificate of occupancy” is no longer the operative standard set forth under state law, the date a unit was created shall be determined by the final inspection approval by the City. A rental unit shall only be deemed newly constructed for fifteen years after the date of final inspection approval by the City.

Notwithstanding any provision in this Chapter and to the extent that state or local law permits, any residential rental units created as a result of demolition or replacement where such demolition or replacement is affected via the creation of a “housing development project” as defined in the Housing Crisis Act of 2019 (Senate Bill 330), shall not be exempt as “newly constructed rental units” and, unless otherwise exempt, shall be covered by all provisions of this Chapter.

2. *Separately Alienable Rental Units.* Rental units in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance), unless the tenancy commenced before January 1, 1996. This partial exemption shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.

3. *Government-Owned or Government-Subsidized Rental Units.* Rental units which a government agency or authority owns, operates, manages, or in which governmentally subsidized tenants reside to the extent that applicable Federal law, State law, or administrative regulation specifically exempts such units from local or municipal price control. Such rental units shall be subject to all provisions of this Chapter except those from which applicable Federal law, State law, or administrative regulation specifically exempts the rental units.

C. The following rental units are Fully-exempt units:

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

2. *Co-op Rental Units.* Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.

3. *Rental Units in Health Facilities.* Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for older persons.

For the purposes of this Subsection, the following definitions apply:

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

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

4. *Owner-Occupied Shared Rental Units.* A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord occupied a unit in the same property as his/her principal residence at the inception of the tenancy.

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

5. *Fraternities and Sororities.* A rental unit or room which is rented by an active member of a fraternity or sorority recognized by the University of California Berkeley, or a rental unit or room which is rented by an active member of a fraternity or sorority identified by Rent Board Resolution. To qualify for the exemption, the rental unit must be owned by the fraternity or sorority or by an entity

whose sole purpose is the maintenance and operation of the fraternity or sorority's rental units for the benefit of the members in order to provide housing to said members at cost.

6. *Accessory Dwelling Units.* Rental units in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance) and one lawfully established and fully permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence. This subsection (13.76.0S0N) shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling Units"), and shall only apply to tenancies created after November 7, 2018.

7. *Shelters and Transitional Housing.* Rental units in a facility owned or leased by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that has the primary purpose of operating a treatment, recovery, therapy, sanctuary or shelter program for qualified clients, where such rental units are provided incident to the client's participation in the primary program and where the client has been informed in writing of the temporary or transitional nature of the housing at the inception of his or her participation in the program.

However, except as may be preempted by the Transitional Housing Participant Misconduct Act (California Health and Safety Code Sections 50580 et. seq.) or other state or federal law, such rental units shall not be exempted from the requirements of Section 13.76.130, Good Cause Required for Eviction. For purposes of Section 13.76.130.A.2, the client's continued eligibility for participation in the treatment, recovery, therapy, sanctuary or shelter program shall be deemed a material term of the client's rental agreement with the program's operator.

8. *"Sabbatical" Exemption for Single-Family Homes.* A rental unit in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance) and owned by a property owner who:

a) owns only one residential unit in the City;

- b) occupied that residential unit for at least 365 consecutive days as their principal residence immediately prior to renting the unit;
- c) is absent from the unit for a period not to exceed 24 months; and
- d) such period is specified in the lease.

9. *Golden Duplex Exemption.* Rental units in a residential property which is divided into two units where one of the units was owner-occupied on December 31, 1979, and is currently occupied by the landlord as their principal residence.

Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080J and 13.76.100C. applied to them.

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

13.76.060 Rent Stabilization Board.

A. *Composition.* There shall be in the City an elected Rent Stabilization Board; the Board shall consist of nine Commissioners. The Board shall elect annually as chairperson one of its members to serve in that capacity.

B. *Eligibility.* Residents who are duly qualified electors of the City are eligible to serve as Commissioners on the Board.

C. *Full Disclosure of Holdings.* Candidates for the position of Commissioner shall fulfill the requirements as set forth in the City Charter in Article III, Section 6 1/2.

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

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

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

F. *Powers and Duties.* The elected Rent Stabilization Board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions. The Board shall have the following powers and duties:

1. Set the rent ceilings for all rental units.
2. Require registration of all rental units under Section 13.76.080.
3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.
4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.
5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this Chapter.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set below.
7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
8. Report annually to the city council of the city of Berkeley on the status of rental housing units covered by this Chapter.
9. Administer oaths and affirmations and subpoena witnesses and relevant documents.
10. Establish rules and regulations for settling civil claims under Section 13.76.150.
11. Seek injunctive relief under Section 13.76.150.
12. Pursue civil remedies in courts of appropriate jurisdiction.

13. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this Chapter.

14. Hold public hearings.

15. Charge and collect registration fees, including penalties for late payments and fines, as set by schedule, for failure to re-register a rental unit within fifteen (15) days of the commencement of a new tenancy.

16. Require that landlords of rental units subject to the requirement to register under Section 13.76.080 provide notice of the existence of this Chapter to each new tenant at the commencement of their tenancy.

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

18. Except as provided in Section 13.76.060N of this Chapter, the Board shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the City.

G. Rules and Regulations: The Board shall issue and follow such rules and regulations, including those which are contained in this Chapter, as will further the purposes of this Chapter. The Board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the City.

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

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

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

- I. *Quorum*: Five Commissioners shall constitute a quorum for the Board.
- J. *Voting*: The affirmative vote of five Commissioners of the Board is required for a decision, including all motions, rules, regulations, and orders of the Board.
- K. *Compensation*: The Rent Stabilization Board shall be a working Board. Commissioners shall be paid compensation and benefits in an amount set by the Board in order to compensate Commissioners for their time and work performed as required by this Chapter and the City Charter.
- L. *Dockets*: The Board shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.
- M. *Vacancies*: If a vacancy shall occur on the Board, a qualified person to fill such vacancy shall be selected in accordance with the procedures set forth in Article V of the City Charter.
- N. *Financing*: The Board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the Board. The registration fee for partially-exempt units shall reasonably approximate the cost of registration and counseling services for such units, and shall not include the cost of services from which such units are exempt. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the Board. The Board is also empowered to request and receive funding, when and if necessary, from the City and/or any other available source for its reasonable and necessary expenses, including expenses incurred at the request of the City.
- O. *Staff*: The Board shall be a working Board and shall employ such staff as may be necessary to perform its functions efficiently and as provided by Berkeley Ordinance.
- P. *Registration*: The Board shall require the registration of all rental units covered by this chapter as provided for in Section 13.76.080. The Board may also require landlords to provide current information supplementing their registration statements.
- Q. *Conflict of Interest*: Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their

status as a landlord or tenant. However, a commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

13.76.070 Security deposits.

Any payment or deposit of monies by the tenant, the primary function of which is to secure the performance of a rental agreement or any part of such agreement, including an advance payment of rent, shall be held by the landlord, in a fiduciary capacity for the benefit of the tenant and shall accrue simple interest at the rate equal to the average rates of interest paid on six-month certificates of deposit by banks doing business in the City until such time as the payment or deposit is returned to the tenant or entitled to be used by the landlord as provided in Civil Code Section 1950.5. The interest accrued by said payment or deposit through October 31st of each year shall be returned to the tenant annually in December of each year, either through a rent rebate or cash payment, and shall be at a rate equal to the 12-month average of the average rates of interest paid on six-month certificates of deposit by banks doing business in the City on the first business day of each month for the prior 12 months ending on November 1st, rounded to the nearest tenth. On or before November 15th of each year, the Board shall give public notice of the rate to be effective for the following December. Upon the tenant's departure from the premises, the balance of any interest accrued since the last October 31st shall be paid at the average monthly rate from the last November 1st to the date of departure and shall be returned to the tenant along with the appropriate part of the principal and any prior unpaid interest. The Board shall compute and publicize the interest rate applicable under this section on an ongoing basis.

13.76.080 Rent registration.

- A. The Board shall require all landlords to file a rent registration statement with the Board by September 1, 1980 for each rental unit covered by this Chapter, except for Fully-Exempt Units as set forth in Section 13.76.050.C.
- B. Landlords shall provide in their initial rent registration statement the following information:
 - (1) The address of each rental unit;
 - (2) The name and address of the landlord(s) and the managing agent, if any;

- (3) The date on which the landlord received legal title to or equitable interest in the rental unit;
- (4) The housing services provided for the rental unit;
- (5) The rent in effect on June 6, 1978;
- (6) The rent in effect on December 30, 1979;
- (7) The base rent ceiling;
- (8) The lowest rent in effect between June 6, 1978, and the date of the adoption of this Chapter;
- (9) The amount of any deposits or other monies in addition to periodic rent demanded or received by the landlord in connection with the use or occupancy of the rental unit;
- (10) Whether the rental unit was vacant or occupied on May 31, 1980;
- (11) Rent in effect on December 31, 1981.

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

D. *Notice at Commencement of Tenancy.* The landlord of any rental unit subject to this section must give the tenant a written notice on a form prescribed by the Board within 15 days of the commencement of the tenancy. The form shall include the following information:

- (1) The existence and scope of this Chapter;
- (2) The tenant's rights to petition against certain rent increases, if applicable;
- (3) Whether the landlord is permitted to set the initial rent and subsequent rents during the tenancy without limitation (such as pursuant to California Civil Code Sections 1947.12 and 1954.52); and
- (4) Any provisions of this Chapter which the landlord claims the rental unit to be exempt from.

If rental units subject to this Chapter are located in a property with an interior common area that all of the building's tenants have access to, the landlord must post a notice containing the information in subparagraph (1) and, if applicable to all units at the property, the information in subparagraphs (2) through (4).

All registration statements under this section shall include an affidavit signed by the landlord declaring under penalty of perjury that the landlord has provided this notice at the commencement of the current tenancy. A landlord that has failed to provide a notice pursuant to this subsection shall not be in compliance with this section.

E. *Vacancy Registration*. Any landlord who rents a unit to a new tenant after January 1, 1996, shall re-register the rental unit with the Board within fifteen (15) days of the commencement of a new tenancy on a form prescribed by the Board. Re-registering the unit shall include providing all current tenancy information as established by the Board's Regulations.

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

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

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

H. The amount of any registration fee, penalty, and fine imposed by the provisions of this chapter shall be deemed a debt to the Board.

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

J. Landlords of formerly exempt units shall register within 60 days of coming under coverage of this Chapter. The registration fee for this first-time registration shall be pro-

rated based upon the number of months remaining to the next July 1 annual registration deadline.

K. 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, any notice required by subsection 13.76.080.D has been provided to the Board, and all outstanding fees and penalties have been paid.

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

M. Landlords of Partially-Covered Units (set forth above in Section 13.76.050.B.) shall register within 60 days of coming under coverage of this Chapter. The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

13.76.090 Confidentiality of information submitted to Board.

The Board shall adopt rules and regulations providing for the confidentiality of information submitted to the Board in support of a petition for an individual rent ceiling adjustment under Section 13.76.120 of this Chapter when such confidentiality is deemed necessary by the Board and where otherwise permitted by state law.

13.76.100 Establishment of base rent ceiling and posting.

A. *Base Rent Ceiling.* Upon adoption of this Chapter, no landlord shall charge rent for any rental unit covered by the terms of this Chapter affecting rents in an amount greater than the lawful rent which was actually due and payable on, or last preceding, May 31, 1980, under the periodic term of the rental agreement, in accordance with the provisions of the Temporary Rent Stabilization Ordinance, No. 5212-N.S., except as permitted by the Board under Sections 13.76.110 and 13.76.120 of this Chapter. Such lawful rent in effect on May 31, 1980, is the base rent ceiling and is a reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120. For such rental units where no rent was in effect on May 31, 1980, the base rent ceiling shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding that date. For such rental units where no periodic rent was in effect on May 31, 1980, or during the six months preceding that date and no other rent has been certified

or determined by the Board after hearing, the base rent ceiling shall be the first periodic rent charged following May 31, 1980.

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

C. *Previously Exempt Units.* For rental units specified in Section 13.76.050.C.9, the base rent ceiling shall be the rent in effect on June 1, 1980. For such rental units where the landlord lawfully established a new initial rent any time after January 1, 1996, the most recently established initial rent shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120. Initial rent shall mean the first periodic rental rate established for the existing tenancy.

D. *Vacancy Rent Increases Preserved.* This subdivision shall apply to the extent that state law no longer mandates that a landlord may establish the initial rental rate for any tenancy in a unit that is otherwise subject to a residential rent control ordinance. For such rental units where the landlord lawfully established a new initial rent under the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et seq.), the Base Rent Ceiling shall be the most recent lawfully established periodic rent. For such rental units that were exempt from rent stabilization pursuant to the Costa-Hawkins Rental Housing Act, the Base Rent Ceiling shall be the most recent lawfully established periodic rent.

E. *Utilities.* A tenant may only be responsible for utilities if: 1) the utility charge is included in the base rent and does not increase during the tenancy; 2) the utility service is separately or individually metered and the lease agreement requires that the tenant registers the utility account in their own name; or 3) the utility service is in compliance with Board regulations, specifying other technologies, mechanisms, or policies that the Rent Board deems functionally similar to separate and individual metering.

This prohibition shall not apply to leases entered into before February 6, 2024 to the extent that the lease provides that the tenant shall pay for one or more utility. For all other tenancies, this prohibition shall apply regardless of whether the written lease allows for split utility charges or ration utility billing services. In the event a lease entered into after February 6, 2024 charges the tenant for utilities in violation of this section, the landlord may petition pursuant to Section 13.76.120 of this Chapter to adjust the rent ceiling to include the average cost of utilities for the unit.

13.76.110 Annual general adjustment of rent ceilings.

A. Effective January 1 of each year, the rent ceiling for all rental units covered by this Chapter for which the landlord did not establish an initial rent during the prior calendar year shall be adjusted by 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve month period ending the previous June 30. In determining the allowable percentage rent increase, numbers of .04 and below shall be rounded down to the nearest tenth decimal place and numbers of .05 and above shall be rounded up to the nearest tenth decimal place. In no event, however, shall the allowable annual adjustment be less than zero (0%) or greater than five percent (5%). The Board shall publish and publicize the annual general adjustment on or about October 31st of each year.

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

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

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

1. Has continued to fail to comply, after order of the Board, with any provisions of this Chapter and/or orders or regulations issued thereunder;
 2. Has failed to bring the rental unit into compliance with the implied warranty of habitability;
 3. Has failed to make repairs as ordered by the housing inspection services of the;
- or

4. Has failed to completely register by July 1, except as provided in Subsection E. below.

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

F. An owner who has previously been out of compliance with the ordinance, regulations, or applicable housing, health and safety codes, and has been denied Annual General Adjustments, may be granted them prospectively as set forth in Board regulations.

13.76.120 Individual adjustments of rent ceilings.

A. *Petitions.* Upon receipt of a petition by a landlord and/or tenant, the rent ceiling of individual controlled rental units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this Section. The petition shall be on the form provided by the Board. The Board may set a reasonable per unit fee based upon the expenses of processing the petition to be paid by the petitioner at the time of filing. Notwithstanding any other provision of this Section, the Board or hearing examiner may refuse to hold a hearing and/or grant an individual rent ceiling adjustment for a rental unit if an individual hearing has been held and decision made with regard to the rent ceiling for such unit, within the previous six months.

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

1. *Hearing Examiner.* A hearing examiner appointed by the Board shall conduct a hearing to act upon the petition for individual adjustments of rent ceilings and shall have the power to administer oaths and affirmations.
2. *Notice.* The Board shall notify the landlord if the petition was filed by the tenant, or the tenant, if the petition was filed by the landlord, of the receipt of such a petition and a copy thereof.

3. *Time of Hearing.* The hearing officer shall notify all parties as to the time, date and place of the hearing.
4. *Records.* The hearing examiner may require either party to an individual rent ceiling adjustment hearing to provide it with any books, records and papers deemed pertinent in addition to that information contained in registration statements. The hearing examiner shall conduct a current building inspection and/or request the City to conduct a current building inspection if the hearing examiner finds good cause to believe the Board's current information does not reflect the current condition of the controlled rental unit. The tenant may request the hearing examiner to order such an inspection prior to the date of the hearing. All documents required under this section shall be made available to the parties involved prior to the hearing at the office of the Board. In cases where information filed in a petition for an individual rent ceiling adjustment or in additional submissions filed at the request of the hearing examiner is inadequate or false, no action shall be taken on said petition until the deficiency is remedied.
5. *Open Hearings.* All individual rent ceiling adjustment hearings shall be open to the public.
6. *Right of Assistance.* All parties to a hearing may have assistance in presenting evidence and developing their position from attorneys, legal workers, Tenant Association, representatives or any other persons designated by said parties.
7. *Hearing Record.* The Board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be obtainable for the cost of copying. The record of the hearing shall include: all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted in the proceedings; a statement of all materials officially noticed; all recommended decisions, orders and/or rulings; all final decisions, orders and/or rulings, and the reasons for each final decision, order and/or ruling. Any party may have the proceeding tape recorded or otherwise transcribed at his or her own expense.
8. *Burden of Proof and Notice of Decision.* No individual rent ceiling adjustment shall be granted unless supported by the preponderance of the evidence submitted at

the hearing. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of fact and law upon which said decision is based. At the same time, parties to the proceedings shall also be notified of their right to and the time limit for any appeal allowed by the Board and/or to judicial review of the decision pursuant to this Section and Section 13.76.180 of this Chapter.

9. *Consolidation.* All landlord petitions pertaining to tenants in the same building shall be consolidated for hearing, and all petitions filed by tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.
10. *Appeal.* Any person aggrieved by the decision of the hearing examiner may appeal to the Board or to any appeals panel of the Board established by the Board, so long as such panel has at least three Commissioners. On appeal the Board or panel shall affirm, reverse, remand, or modify the decision of the hearing examiner. The Board or panel may conduct a new (de novo) hearing or may act on the basis of the record before the hearing examiner without holding a hearing. An appeal to the Board shall be filed no later than thirty days after receipt of the notice of the decision of the hearing examiner. The Board may set a reasonable appeal fee to be paid by the appellant at the time of filing the appeal.
11. *Finality of Decision.* The decision of the hearing examiner shall be the final decision of the Board in the event of no appeal to the Board. The decision of the hearing examiner shall not be stayed pending appeal; however, in the event that the Board or panel reverses or modifies the decision of the hearing examiner, the Board shall order the appropriate party to make retroactive payments to restore the parties to the position they would have occupied had the hearing examiner's decision been the same as that of the Board's.
12. *Time for Decision.* The rules and regulations adopted by the Board shall provide for final Board action on any individual rent adjustment petition within 120 days following the date of filing of the individual rent ceiling adjustment petition, unless the conduct of the petitioner or other good cause is responsible for the delay.
13. *Board Action in Lieu of Reference to Hearing Examiner.* The Board, on its own motion or on the request of any landlord or tenant, may hold a hearing on an individual petition for a rent ceiling adjustment without the petition first being heard by a hearing examiner.

C. In making individual adjustments of the rent ceiling, the Board or the hearing examiner shall consider the purposes of this Chapter and shall specifically consider all relevant factors, including (but not limited to):

1. Increases or decreases in property taxes;
2. Unavoidable increases or any decreases in maintenance and operating expenses;
3. The cost of completed capital improvements to the rental unit (as distinguished from ordinary repair, replacement and maintenance) where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvement;
4. Increases or decreases in the number of tenants occupying the rental unit, living space, furniture, furnishings, equipment, or other housing services provided, or occupancy rules;
5. Substantial deterioration of the controlled rental unit other than as a result of normal wear and tear;
6. Failure on the part of the landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health and safety codes, or the rental agreement;
7. Whether parties conferred in good faith relating to housing services and conditions, landlord-tenant relations, rent increases, and other issues of common interest or concern;
8. The pattern of recent rent increases or decreases;
9. The landlord's rate of return on investment. In determining such return, all relevant factors, including but not limited to the following shall be considered: the landlord's actual cash down payment, method of financing the property, and any federal or state tax benefits accruing to the landlord as a result of ownership of the property;
10. Whether or not the property was acquired or is held as a long-term or short-term investment; and

11. Whether or not the landlord has received rent in violation of the terms of this chapter or has otherwise failed to comply with the Chapter.

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

D. No individual upward adjustment of a rent ceiling shall be authorized by the Board by reason of increased interest or other expenses resulting from the landlord's refinancing the rental unit if, at the time the landlord refinanced, the landlord could reasonably have foreseen that such increased expenses could not be covered by the rent schedule then in existence, except where such refinancing is necessary for the landlord to make capital improvements which meet the criteria set forth in Section 13.76.120 C.3. This paragraph shall only apply to that portion of the increased expenses resulting from the refinancing that were reasonably foreseeable at the time of the refinancing of the rental unit and shall only apply to rental units refinanced after the date of adoption of this Chapter.

E. Except for cases of individual hardship as set forth in Subsection 13.76.120.I. of this Chapter, no individual upward adjustment of a rent ceiling shall be authorized by the Board because of the landlord's increased interest or other expenses resulting from the sale of the property, if at the time the landlord acquired the property, the landlord could have reasonably foreseen that such increased expenses would not be covered by the rent schedule then in effect. This Subsection (13.76.120 E.) shall only apply to rental units acquired after the date of adoption of this Chapter.

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

1. Has continued to fail to comply, after order of the Board, with any provisions of this Chapter and/or orders or regulations issued thereunder by the Board; or
2. Has failed to bring the rental unit into compliance with the implied warranty of habitability,

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

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

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

13.76.130 Just cause required for eviction.

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

1. *Non-payment of Rent.* 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. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in the City shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency. This subsection shall not constitute grounds where the amount of rent demanded is less than one month of fair market rent for a unit of equivalent size in the metro area Oakland-Fremont, CA HUD Metro FMR as determined by the U.S. Department of Housing and Urban Development for the fiscal year in which the rent is demanded.

2. *Substantial Violation of Material Lease Causing Actual Injury.* 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.

Material terms of the rental agreement only include those terms of the rental agreement which both parties have expressly agreed upon and do not include any changes of the terms of tenancy, other than the amount of rent owing for the premises, which the landlord has attempt to impose unilaterally under Civil Code Section 827.

In order to assert this ground for eviction, the landlord must demonstrate all of the following: that the tenant's lease violation caused substantial actual damage to the landlord; and that the tenant's behavior was unreasonable.

Actual injury must be a direct result of the tenant's breach of lease and is not limited to physical or personal injury. Substantial actual injury includes but is not limited to the harm caused by a tenant's failure to comply with income recertification mandated by state or federal statute or regulation for deed-restricted affordable housing units.

Notwithstanding any contrary provision in this Chapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this Subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

- (a) The landlord has unreasonably withheld consent to the subtenancy; and
- (b) The tenant remains an actual occupant of the rental unit; and
- (c) The number of tenants and subtenants actually occupying the rental unit does not exceed the number of occupants originally allowed by the rental agreement or the Board's regulations, whichever is greater.
- (d) Withholding of consent by the landlord shall be deemed to be unreasonable where:
 - i. The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy;
 - ii. The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or provided sufficient information to allow the landlord to conduct a standard background check,

including references and credit, income and other reasonable background information; and

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

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

Any notice to cease given pursuant to this Subsection must state allegations in sufficient detail so that a reasonable person would understand the alleged violation and resulting injury, including the specific term of the lease allegedly violated, the date of the alleged violation, and the injury that occurred as a result of the alleged violation.

3. *Substantial Damage to Premises.* 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. *Destruction of Peace.* The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises or the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.

5. *Refusal of Lawful Access to Unit.* The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.

6. *Substantial and Necessary Repairs.*

(a) The landlord, after having obtained all necessary permits from the City, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.

(b) Where such repairs can be completed in a period of 60 or fewer days, and the tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this Subsection (13.76.130A.6.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.

(c) Where the landlord owns any other residential rental units in the City, and any such unit is vacant and available at the time of premises or the entry of a judgment by a court of competent jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this Subsection (13.76.130A.6), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:

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

(d) Where the landlord recovers possession under this subsection 13.76.130A.(6), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this Subsection.

7. *Demolition Permit Issued by the City.* The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition

8. *Owner Move-in Evictions.*

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

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

(c) For the purposes of this Subsection (13.76.130A.8), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating tenancy, and at all times thereafter to and including the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord, holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record.

(d) All notices terminating tenancy pursuant to subsection 13.76.130A.7 shall include the following: the existence and potential availability of relocation assistance under subsection 13.76.130A.8.g; the existence of tenant protections for families with minor children as defined in Subsection 13.76.130A.8.k; the name and relationship of any qualified relative for purposes of Subsection 13.76.130A.8.b; and the landlord's ownership interest in any residential properties in the City where such interest, in any form whatsoever, is ten percent (10%) or greater. The landlord shall, within ten days of giving notice, file a copy of the notice terminating tenancy with the Board.

(e) The landlord may not recover possession under this Subsection (13.76.130A.8) if a comparable unit, owned by the landlord in the City, was, at the time of the landlord's decision to seek to recover possession of the rental unit, already vacant and available, or if a comparable unit, owned by the landlord in the City, thereafter becomes vacant at any time until the earlier of the tenant's

surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available within ninety days prior to the date of a notice terminating the tenant's tenancy shall create a presumption that such unit was vacant and available at the time of the landlord's decision to seek to recover possession of the premises. "Presumption" means that the court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

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

(g) Where a landlord recovers possession of a unit under Subsection 13.76.130A.8, the landlord is required to provide standard relocation assistance to tenant households where at least one occupant has resided in the unit for one year or more in the amount of \$15,000. The landlord is required to provide an additional \$5,000 relocation assistance to tenant households that qualify as low-income; or include disabled or elderly tenants; minor children; or tenancies which began prior to January 1, 1999. The relocation fees set forth above shall be increased in accordance with the rules set forth in Subsection 13.76.130A.7.h below. The procedures for payment of this relocation assistance are set forth below in Subsection 13.76.130A.7.p.(i) through (iv). The following definitions apply for any tenant households evicted for owner move-in under Subsection 13.76.130A.8:

i. "Low-income tenants" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5.

ii. A person is "disabled" if that person has a physical or mental impairment that limits one or more of a person's major life activities within the meaning

of the California Fair Housing and Employment Act (Government Code § 12926).

iii. "Elderly" is defined as sixty (60) years of age or older.

iv. "Minor child" means a person who is under 18 years of age.

v. "Tenancy began prior to January 1, 1999" is a tenancy where an "original occupant" (as defined by Board regulation) still permanently resides in the rental unit.

(h) Effective January 1 of each year beginning in 2018, the fees set forth above in Subsection 13.76.130A.8.g., shall be increased in an amount based on the Consumer Price Index - All Urban Consumers in the San Francisco-Oakland-San Jose Region averaged for the 12-month period ending June 30, of each year, as determined and published by United States Department of Labor. Any increase shall be published by the Board on or before October 31st of each year.

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

(j) Once a landlord has successfully recovered possession of a rental unit pursuant to Subsection 13.76.130A.8.a., then no other current or future landlords may recover possession of any other rental unit on the property pursuant to Subsection 13.76.130A.8.a. It is the intention of this subsection that only one specific unit per property may be used for such occupancy under Subsection 13.76.130A.8.a and that once a unit is used for such occupancy, all future occupancies under Subsection 13.76.130A.8.a must be of that same unit.

(k) A landlord may not recover possession of a unit from a tenant under Subsection 13.76.130A.8 if any tenant in the rental unit has a custodial or family relationship with a minor child who is residing in the unit, the tenant with the custodial or family relationship has resided in the unit for 12 months or

more, and the effective date of the notice of termination of tenancy falls during the school year. The term "school year" as used in this subsection means the first day of instruction for the Fall Semester through the first day of the month following the last day of instruction for the Spring Semester, as posted on the Berkeley Unified School District website for each year.

i. For purposes of Subsection 13.76.130A.8.k, the term "custodial relationship" means that the person is a legal guardian of the child, or has a caregiver's authorization affidavit for the child as defined by Section 6550 of the California Family Code, or that the person has provided full-time custodial care of the child pursuant to an agreement with the child's legal guardian or court-recognized caregiver and has been providing that care for at least one year or half of the child's lifetime, whichever is less. The term "family relationship" means that the person is the biological or adoptive parent, grandparent, brother, sister, aunt or uncle of the child, or the spouse or domestic partner of such relations.

(l) A landlord may not recover possession of a unit from a tenant under Subsection 13.76.130A.8 if any tenant in the rental unit:

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

ii. Is disabled and has been residing on the property for five years or more; or

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

(m) A tenant who claims to be a member of one of the classes protected by Subsection 13.76.130A.8.l must submit a statement, with supporting evidence, to the landlord. A tenant's failure to submit a statement at any point prior to the trial date of an unlawful detainer action for possession of the tenant's unit shall be deemed an admission that the tenant is not protected by Subsection 13.76.130A.8.l. A landlord may challenge a tenant's claim of protected status by raising it as an issue at trial in an unlawful detainer action for possession of the tenant's unit.

(n) The provisions of Subsection 13.76.130A.8.I shall not apply to the following situations:

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

ii. Where each residential rental unit in the City in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by Subsection 13.76.130A.8.I and the landlord's qualified relative who is seeking possession of a unit subject to Subsection 13.76.130A.8.b is 60 years of age or older or is disabled as defined in Subsection 13.76.130A.8.I.(ii) above; or

iii. Where each residential rental unit in the City in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by Subsection 13.76.130A.8.I, the landlord has owned the unit for which possession is being sought subject to Subsection 13.76.130A.8.a for five years or more and is 60 years of age or older or is disabled as defined in Subsection 13.76.130A.8.I.(ii).

(o) Where a landlord recovers possession under Subsection 13.76.130A.8, the tenant must be given the right of first refusal to re-occupy the unit upon its next vacancy.

(p) When a landlord is required to provide a relocation assistance payment subject to Subsection 13.76.130A.8.g, the payment shall be divided among the tenants occupying the rental unit at the time of service of the notice to terminate tenancy.

i. Within ten days of service of a notice terminating tenancy under Subsection 13.76.130A.8, the landlord shall deposit the standard relocation assistance (for households where an occupant has resided one year or more) with the City or its designated agent to be held in escrow. Within ten days after the funds are deposited into escrow, the City shall release the standard relocation assistance to the tenant household, unless the landlord notifies the Rent Stabilization Program in writing that the landlord disputes the tenant's eligibility to receive such assistance.

ii. In order to claim entitlement to additional relocation assistance under Subsection 13.76.130A.8.g, a tenant must notify the landlord and the Rent Stabilization Program in writing that the tenant is claiming low-income, disabled, elderly, tenant with minor child status, or a claim that the tenancy began prior to January 1, 1999 (hereinafter "entitlement to additional relocation assistance") per Subsection 13.76.130A.8.g within 30 days of filing of notice of termination of tenancy with the Rent Stabilization Program. The landlord shall deposit the additional relocation payment with the Rent Stabilization Program or its designated agent to be held in escrow for any tenant household who claims entitlement to additional relocation assistance within ten days after such notice claiming entitlement to additional relocation assistance is mailed. Within ten days after the funds are deposited into escrow, the Rent Stabilization Program shall authorize release of the relocation assistance to the tenant household that claims entitlement to additional relocation assistance, unless the landlord notifies the Rent Stabilization Program in writing that the landlord disputes the tenant's eligibility to receive such assistance.

iii. When a tenant household's eligibility to receive standard or additional relocation assistance as described in Subsection 13.76.130A.8.g is disputed, either party may file a petition with the Board requesting a determination of eligibility or file a claim in a court of competent jurisdiction. The Board shall release disputed relocation assistance funds to either the tenant or the landlord upon receipt of either a written agreement by both the landlord and the affected tenant, an order of a court of competent jurisdiction, or an order of a City or Board hearing examiner issued pursuant to a petition process conducted in accordance with applicable Board regulations.

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

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

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

vi. Failure of the landlord to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the landlord's termination of tenancy notice pursuant to this Subsection (13.76.130A.8). In addition, if the tenants of a rental unit have vacated the unit as a result of a notice of termination of tenancy pursuant to this Subsection (13.76.130A.8), and the landlord fails to make any payment specified herein, the landlord shall be liable to the tenants for three times the amount of the payment as well as reasonable attorney fees.

(q) A tenant who prevails in an action brought under this Subsection (13.76.130A.8), in addition to any damages and/or costs awarded by the court, shall be entitled to recover all reasonable attorney's fees incurred in bringing or defending the action.

(r) At least twice annually, Board staff shall report to the Board regarding the occupancy status of units possession of which has been recovered pursuant to this Subsection (13.76.130A.8) within the prior 36 months.

(s) If any provision or clause of this Subsection (13.76.130A.8) or the application thereof to any person or circumstance is held to be unconstitutional

or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this Subsection are severable.

9. *Exemption of Temporary Lease of Owner's Principal Residence.* A landlord or lessor seeks in good faith to recover possession of the rental unit for their occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as their principal residence and has the right to recover possession of the unit for their occupancy as a principal residence under an existing rental agreement with the current tenants.

10. *Expiration of Temporary Rental Agreement for Replacement Housing During Substantial Repairs.* The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of Subsection 13.76.130A.6.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of 90 days).

B. *Contents of Notice to Terminate Tenancy.* A landlord's failure to specify just cause as listed above in subsections 1. through 10. of Section 13.76.130A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this chapter. Any notice terminating tenancy must additionally include a statement that advice regarding the notice terminating tenancy is available from the Rent Board, the current phone number for the Rent Board's housing counseling services, and the current address to the Rent Board's website.

C. *Allegation of Notice to Terminate Tenancy* In any action to recover possession of a rental unit covered by the terms of this chapter, except an action to recover possession under Subsection 13.76.130.A.6., 13.76.130.A.7., or 13.76.130.A.10., a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this Chapter.

D. *Filing of Termination Notices and Unlawful Detainer Summons and Complaints.* The landlord shall file with the Board a copy of any notice of termination, notice to quit, and summons and complaint, no later than three business days after the tenant has been served with such notice or summons and complaint. The Board may provide an email address to which the landlord may send any notice of termination, notice to quit, and summons and complaint.

13.76.135 Right to Organize.

A. *Tenant Association.* This section shall be limited to 1) parcels that contain ten or more rental units; and 2) parcels that contain between one and nine rental units, so long as the rental units are managed by a property management company as defined by Board regulation.

Tenants of such a residential rental property may establish a Tenant Association by providing their Landlord a petition signed by Tenants representing at least 50% of the occupied rental units, including Rooming Houses as defined by Board regulation, of the residential rental property certifying their desire to form a Tenant Association, and identifying the Tenant Association. For purposes of this subsection, a petition may include individual written statements signed by said Tenants or some combination of individual and collective written statements.

B. *Confer in Good Faith.* Landlords and Tenant Associations shall confer with each other in good faith regarding housing services and conditions, community life, landlord-tenant relations, rent increases, and other issues of common interest or concern. “Confer in good faith” means that the parties shall have the mutual obligation, personally or through their authorized representatives, to meet and confer and continue for a reasonable period of time, in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement. Examples of conferring in good faith include, but are not limited to, maintaining a designated point of contact, engaging in regular communications, responding to reasonable requests for information, allowing participation by non-resident advocates, providing adequate time for limited-English speakers to obtain translation services, providing and adhering to timelines for addressing habitability concerns, and negotiating and putting agreements into writing. In addition, a Landlord may not prohibit a Tenant from

allowing a Tenant Association representative to attend meetings involving the Landlord and one or more Tenants. The Board, through regulation, may further define good faith.

C. *Organizing Activities*. “Organizing Activities” means:

1. initiating contact with tenants, including conducting door-to-door surveys, to ascertain interest in and/or seek support for forming a Tenant Association;
2. joining or supporting a Tenant Association;
3. distributing literature, requesting or providing information, offering assistance, convening meetings (which may occur without a landlord or landlord representative present); or
4. otherwise acting on behalf of one or more tenants in the building regarding issues of common interest or concern.

The term “Organizing Activities” shall include, but is not limited to, the operations of a Tenant Association. A person’s participation or failure to participate in Organizing Activities shall have no effect on whether that person qualifies as a tenant. The Board, through regulation, may further define Organizing Activities. In addition, a tenant’s right to engage in Organizing Activities, to receive assistance from a Tenant Association, and to have Organizing activities occur at the property shall qualify as a housing service, and a landlord’s failure to confer in good faith with a Tenant Association may send the Landlord a single standing request to attend meetings for the duration of the calendar year.

- D. A Landlord must on written request of the Tenant Association attend, either themselves or through their representative, at least one Tenant Association meeting per calendar quarter, though more frequent attendance at the request of the Tenant Association is permitted. Landlord or Landlord’s representative must remain in attendance at the meeting until all agenda items are complete, unless the meeting extends for more than two hours, in which case the Landlord or Landlord’s representative may withdraw from the meeting and request that the remaining items be continued to a subsequent meeting. These meetings shall occur at a mutually convenient time and place. To request that a landlord or their representative attend a meeting, the Tenant Association shall send the Landlord a written request at least 14 days in advance; alternatively, if the Tenant Association meets at a regularly

scheduled time and place, then the Tenant Association may send the Landlord a single standing request to attend meetings for the duration of the calendar year.

- E. *Private Right of Action.* In the event of a violation of this section, any Tenant Association, or individual tenant, aggrieved by the violation may institute a civil proceeding for injunctive relief, and actual money actual damages as specified below, and whatever other relief the court deems appropriate. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees.

13.76.140 Retaliation prohibited.

No landlord may threaten to bring, or bring, an action to recover possession, cause the tenant to quit the unit involuntarily, serve any notice to quit or notice of termination of tenancy, decrease any services, including a tenant's right to engage in Organizing Activities, or increase the rent where the landlord's intent is retaliation against the tenant for the tenant's assertion or exercise of rights under this Chapter. Such retaliation shall be a defense to an action to recover possession, or it may serve as the basis for an affirmative action by the tenant for actual and punitive damages and injunctive relief. In an action by or against a tenant, evidence of the assertion or exercise by the tenant of rights under this Chapter within six months prior to the alleged act of retaliation shall create a presumption that the landlord's act was retaliatory. "Presumption" means that the court must find the existence of the fact presumed unless and until its nonexistence is proven by a preponderance of the evidence. A tenant may assert retaliation affirmatively or as a defense to the landlord's action without the aid of the presumption regardless of the period of time which has elapsed between the tenant's assertion or exercise of rights under this Chapter and the alleged act of retaliation.

13.76.150 Remedies.

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

1. A tenant may petition the Board for appropriate relief. If the Board, after the landlord has proper notice and after a hearing, determines that a landlord has willfully and knowingly failed to register a rental unit covered by this Chapter or violated the provisions of Sections 13.76.100, 13.76.110 and 13.76.120 of this Chapter, the Board may authorize the tenant of such rental unit to withhold all or a portion of the rent for the unit until such time as the rental unit is brought into compliance with this Chapter. After a rental unit is brought into compliance, the Board shall determine what portion, if any, of the withheld rent is owed to the landlord for the period in which the rental unit was not in compliance. Whether or not the Board allows such withholding, no landlord who has failed to comply with the Chapter shall at any time increase rents for a rental unit until such unit is brought into compliance.

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

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

4. A tenant may file a damage suit against the landlord for actual damages when the landlord receives or retains any rent in excess of the maximum rent allowed under this Chapter. Upon further proof of a bad faith claim by the landlord or the landlord's retention of rent in excess of the maximum rent allowed by this Chapter, the tenant shall receive a judgment of up to \$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 13.76.130A.6, Subsection 13.76.130A.7, or Subsection 13.76.130A.8 is not initiated within two months after the tenant vacates the unit, or it is shown the landlord's claim was false or in bad faith, the tenant shall be entitled to regain possession and to actual damages. If the landlord's conduct was willful, the tenant shall be entitled to damages in an amount of \$750 or three times the actual damages sustained, whichever is greater.

C. Both the City Attorney and the Board shall have the separate authority to bring an action for injunctive relief on behalf of tenants seeking compliance by landlords with this

Chapter or to restrain or enjoin any violation of this chapter or of the rules, regulations, orders and decisions of the Board.

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

13.76.160 Partial invalidity.

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

13.76.170 Nonwaiverability.

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

13.76.180 Judicial review.

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

13.76.190 Criminal penalties.

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

Section 3. Adoption of Chapter 13.85, the Housing Retention Program. Chapter 13.85 of the Berkeley Municipal Code is hereby added as follows:

13.85.010 Purpose

The purpose of this chapter is to ensure that the City allocates reasonable funding from existing sources to an ongoing Housing Retention Program, whose goal will be to prevent

homelessness by ensuring that at-risk residents of the City of Berkeley are able to remain in stable housing.

13.85.020 Funding

The City Manager or their designee shall recommend how and to what extent the City uses revenues from the general fund to fund the Housing Retention Program and prevent homelessness, with a goal of allocating no less than \$1,180,000.00 per year for this purpose. The target allocation shall increase annually to track the increase in the Consumer Price Index for all Bay Area Consumers.

13.85.030 Operations

The City Manager or their designee is authorized to promulgate any necessary rules or regulations to effectuate the Housing Retention Program including eligibility criteria, application procedures, and any other rule or regulation necessary to administer the Program.

Section 4. Severability – Liberal Construction. If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this Chapter are declared to be severable. The People of Berkeley declare that they would have adopted this Ordinance and each section, subsection, sentence, clause, or phrase of the Ordinance in spite of the fact that any one or more of the same be declared unconstitutional or invalid. This Chapter shall be liberally construed to achieve the purposes of this Chapter and to preserve its validity.

Section 5. Competing Ordinances. In the event that there is another ordinance on the ballot during the same election which seeks to regulate residential housing which also passes, the ordinance which obtains the higher number of votes shall be the controlling ordinance.

Section 6. Effective Date. This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council. The Mayor and City Clerk and hereby authorized to execute this Chapter to give evidence of its adoption by the voters.

The foregoing is a true and correct copy of Ordinance No. 7,950-N.S., and the same was approved by a vote of the electorate of the City of Berkeley on November 5, 2024.

At a special meeting of the Council of the City of Berkeley held on December 10, 2024, this Ordinance was adopted by the following vote:

Ayes: Bartlett, Blackaby, Humbert, Kesarwani, Lunaparra, O’Keefe, Taplin, Tregub, and Ishii.

Noes: None.

Absent: None.

Adena Ishii, Mayor

ATTEST: _____
Mark Numainville, City Clerk

Date signed: _____