

The People of the City of Berkeley do ordain as follows:

### **SECTION 1. Title.**

This measure shall be known and may be cited as the “Berkeley Rent Relief & Homeowners Protection Act.”

### **SECTION 2. Findings**

The people of the City of Berkeley make the following findings in passing this update to the Rent Stabilization and Eviction for Good Cause Ordinance of 1980 (the Ordinance):

Since 1980, the residents of the City of Berkeley have demonstrated a strong commitment to the availability and affordability of quality housing in the City.

The voter-approved Rent Stabilization and Eviction for Good Cause Ordinance of 1980 established the laws that protect renters in the City from excessive housing costs and eviction for unjust causes.

Berkeley voters must approve any changes to Berkeley’s rent control and eviction protection laws. This protects residents from wholesale changes by the government. While the current law has served the city well for almost 45 years, there has come a time for voters to consider improvements that will better reflect the affordable housing needs of today.

The COVID-19 pandemic revealed many renters are often just one disruption away from being unable to pay rent. If there is a loss of employment, or an unexpected car repair, they may struggle to keep a roof over their head.

The city’s rent relief fund became a lifeline for those who needed it during the pandemic, providing them with temporary financial assistance when they struggled to pay rent. During this time of crisis, the City, rental housing providers, and residents partnered to create a rent relief fund that helped almost 1,000 renters stay in their homes.

These funds, however, came from funding that was intended to be temporary, and the City has no ongoing rent relief with permanent funding.

While the causes of homelessness are complex, studies show that many of those currently unhoused have experienced some sort of disruption, such as loss of income or unanticipated expenses, that may have led to loss of housing. A fund to prevent such situations is critical to helping keep people off the streets.

Larger landlords in Berkeley already pay a tax on rents received which is intended to fund housing programs in the City. But these funds are often tied up in future new housing when the city’s renters need more immediate help.

The renters of Berkeley desperately need a more permanent rent relief fund, so much so that twenty percent of the special tax levied on large landlords should go to a permanent rent relief fund. It will help those experiencing difficulty paying rent to stay housed and off the streets.

The residents further find that the long-term availability of affordable housing in the City plays a critical role in ensuring a sufficient supply of affordable housing units in the City, and as such, find that eighty percent of the funds derived from the tax on landlords should go to the Berkeley Housing Trust Fund to assist in increasing the supply of affordable and workforce housing units.

To further increase the availability of quality housing options in the city, the residents also recognize that owners of single-family homes, duplexes in which the owner occupies one unit, and homes with accessory dwelling units (ADUs) should be incentivized to rent their vacant units, thus increasing Berkeley's housing supply, and that these units should be exempted from the Ordinance. In making this finding, the residents further understand that such landlord-tenant relationships are often involve a more personal relationship due to the one-on-one relationship and co-sharing of space that happens when tenant and landlord live together.

Current law allows landlords to go to court for eviction if a tenant is behind by any amount of rent. To protect renters from eviction who may be temporarily unable to pay their full monthly rent, the residents believe the City's Rent Stabilization and Eviction for Good Cause Ordinance should be improved to prohibit evictions unless the tenant is at least a full month's rent behind, or if the tenant is more than 90 days behind on any rent. This will prevent tenants from being evicted for small amounts of unpaid rent.

The residents also find that while the Ordinance protects renters from unaffordable rent increases, some renters are willing to pay higher rent for an upgrade to their living space and as such, where mutually agreed upon, tenant and landlord should be able to increase the rent.

To protect tenants in multi-unit buildings from health and safety violations that may be occurring in another unit the residents find that landlords should be allowed to modify lease terms to comply with new federal, state, or City health and safety guidelines and require these new rules be incorporated into leases.

To ensure that renters have adequate time to decide whether or not to renew their lease at the end of their lease term, the residents of the City find that landlords should not be able to evict tenants at the end of their lease unless they have given the tenant at least 60 days' notice prior to the expiration of the lease of the new terms and an opportunity to sign an extension.

The residents also acknowledge the value of an elected Rent Board in the City to protect renters but find that the Board should be more focused on core services to renters such as setting rent ceilings and tracking all rental units in the City rather than getting involved in litigation where they are not named as a party.

To ensure this and other services are being properly provided to tenants and landlords, the people demand that the Rent Board be audited by the City Audit at least every three years.

And finally, the people seek to reaffirm their desire that tenants be allowed to form tenants' unions to negotiate with landlords, if needed, and that landlords be required to consider conferring in good faith with such tenant unions when they are properly formed.

### **SECTION 3. Funding Rent Relief and Berkeley Housing Trust Fund.**

Chapter 9.04 of the Berkeley Municipal Code is amended as follows:

#### **9.04.196. Rental of five or more units of residential real property.**

A. Notwithstanding Section 9.04.195, this Section shall govern the taxation of gross receipts from the rental of five or more residential rental units in the city of Berkeley.

B. Every person engaged, directly or indirectly, including through an interest in another entity, in the business of renting or leasing dwelling units in the City of Berkeley shall pay an annual tax as provided in Section 9.04.240 for each thousand dollars of gross receipts. All proceeds generated by this section (9.04.196) shall be deposited into the Berkeley Housing and Homeless Protection Account as provided in subdivision 9.04.196G.

C. Gross receipts from the following categories of dwelling units shall not be subject to this Section, but shall be subject to section 9.04.195:

1. dwelling units owned by a nonprofit corporation whose primary purpose is the provision of affordable housing, as provided in Section 9.04.300;
2. dwelling units whose rents are controlled under state or federal law, deed restrictions, or agreements with public agencies, at rental rates that are affordable to households earning no more than 80% of AMI and whose tenants must be income-qualified;
3. any unit subject to rent control under Chapter 13.76 that are occupied by a tenant who resided in that unit prior to January 1, 1999;
4. units occupied by tenants receiving monthly rental assistance (such as Section 8 vouchers or Shelter + Care) from the Berkeley Housing Authority or City of Berkeley; and
5. any dwelling unit during the first 12 years after the issuance of a certificate of occupancy.

D. Any person who would otherwise be subject to the tax imposed under this Section may seek a 1-year hardship exemption due to exceptional circumstances. The City Manager may approve such applications for good cause. Such approvals shall be in writing and specifically state the factors that constitute good cause. Any hardship exemption shall be effective for one tax year only, after which it will expire. Taxpayers who seek hardship exemptions must reapply every year.

E. The City Council may reduce the tax rate set forth in Section 9.04.240 under this Section for rental of five or more dwelling units, and may terminate any such reductions, without further voter approval.

F. The tax imposed by this Chapter shall not be passed on to sitting tenants in the form of rent increases or in any manner, even if permitted under Chapter 13.76.

G. The City Manager and/or Director of Finance shall establish a Berkeley Housing and Homeless Protection Account and all gross receipts tax proceeds generated by this section shall be deposited by the City Manager and/or Director of Finance into the Berkeley Housing and Homeless Protection Account. Such

proceeds shall only be used for the specific purposes identified in section 9.04.197. The Department of Finance shall be solely responsible for the distribution of funds from the Berkeley Housing and Homeless Protection Account for rent relief, pursuant to section 9.04.197B1. No other City department, nor any entity outside of the City of Berkeley, may make any determinations regarding the qualification of individuals to receive funds, or be given any responsibility for distributing funds, pursuant to section 9.04.197B1.

**9.04.197. Expenditure plan for proceeds from residential real property of five or more units.**

A. The revenues generated by the gross receipts tax imposed by section 9.04.196 shall be allocated by the City of Berkeley on an annual basis with additional independent oversight provided by the Rent Relief Independent Oversight Committee to ensure expenditures are consistent with this Section.

B. The funds deposited into the Berkeley Housing and Homeless Protection Account pursuant to section 9.04.196 shall be expended according to the following schedule:

1. Funding rent relief.

a. Twenty percent (20%) of funds made available from section 9.04.196 shall be dedicated for rent relief for tenants in the form of direct payments for rent. The Department of Finance, considering input from the Rent Relief Independent Oversight Committee, shall be solely responsible for creating rules and regulations setting forth the qualification, application, and distribution of all such funds.

b. All funds distributed pursuant to this subdivision (9.04.197B1) shall be distributed from the Department of Finance to lessors of real property being rented by individual tenants. No other City department, nor any entity outside of the City of Berkeley, may distribute funds pursuant to this subdivision (9.04.197B1).

c. Except where a nonprofit organization receives rent relief funds in its capacity as a lessor of real property to a properly qualified tenant, no funds distributed pursuant to this subdivision (9.04.197B1) may be designated for, or managed by, any nonprofit organization.

d. The Department of Finance shall be solely responsible for the distribution of funds from the Berkeley Housing and Homeless Protection Account to lessors of real property leasing to individuals who qualify for receipt of such funds pursuant to section 9.04.197B1. No other City department, nor any entity outside of the City of Berkeley, may make any determinations regarding the qualification of individuals to receive funds pursuant to section 9.04.197B1.

2. Funding the City of Berkeley General Fund.

a. Eighty percent (80%) of the funds made available from section 9.04.196 shall be dedicated to the City of Berkeley's General Fund and/or all costs associated with levying the taxes set forth in section 9.04.196. All funds transferred to the City's General Fund pursuant to this subdivision (9.04.197B2) may be treated as, and distributed as, normal General Fund revenue.

**9.04.198. Separate section with true and impartial statement of facts identifying the tax and specific limitations on how the revenue can be spent.**

Section 9.04.196 enacts a gross receipts tax on the rental of residential real property in the City of Berkeley at the 2023 rates of 10.81 per \$1,000 (for rental of residential property with fewer than five units) and \$28.80 per \$1,000 (for rental of residential property with five units or more) to be used only for the purposes set forth in section 9.04.197, which evenly allocates the funds between direct rent relief for tenants and the Berkeley General Fund. The Expenditure Plan in section 9.04.197 is intended as a specific and legally binding and enforceable limitation on how the proceeds of the gross receipts tax imposed on the rental or residential property may be spent. The revenues collected as a result of this tax may not be used for any purposes not specifically identified in this ordinance.

**9.04.199. Rent Relief Independent Oversight Committee.**

A. Composition. There shall be in the City of Berkeley an appointed Rent Relief Independent Oversight Committee. The Committee shall consist of nine (9) members. The Committee shall elect annually as chairperson one of its members to serve in that capacity.

B. Eligibility. Residents who are duly qualified electors of the city of Berkeley are eligible to serve as members on the Committee. No more than three individuals who qualify as Landlords under section 13.76.040 of the Rent Stabilization and Eviction for Good Cause Program may concurrently serve as members on the Committee. No more than three individuals who qualify as Tenants under section 13.76.040 of the Rent Stabilization and Eviction for Good Cause Program may concurrently serve as members on the Committee.

C. Appointment of Commissioners. Each City Councilmember shall appoint one member of the Rent Relief Independent Oversight Committee. The Mayor shall appoint one member of the Rent Relief Independent Oversight Committee.

D. Term. Each member of the Rent Relief Independent Oversight Committee shall serve a two-year term and are eligible to be reappointed once.

E. Vacancies. In the event a vacancy occurs on the Rent Relief Independent Oversight Committee for any reason, the elected official who appointed the member vacating the Committee shall select a replacement member to fill the remainder of the vacant term. If the replacement member serves on the Board for more than one year (more than 365 days), then that replacement member may only be reappointed once. If the replacement member serves on the Board for one year or less (365 days or fewer), then that replacement member may be reappointed twice.

F. Meetings. The Rent Relief Independent Oversight Committee shall establish its own rules and procedures for conducting meetings but shall hold at least two regularly scheduled public meetings per year.

G. Duties. The Rent Relief Independent Oversight Committee shall provide an annual report containing at least two items for consideration by the City Council and Department of Finance:

1. A detail of the prior fiscal year's activities related to distribution of funds pursuant to section 9.04.197, including a statement regarding the effectiveness of rent relief distributions, as well as potential improvements related to distribution of rent relief funds, pursuant to 9.04.197B1.

2. Suggestions regarding the criteria for qualification under the rent relief program funded through distributions made pursuant to section 9.04.197B1.

H. Compensation. Members of the Rent Relief Independent Oversight Committee shall not be entitled to compensation or benefits in any amount.

#### **SECTION 4. Incentivizing Owners to Offer Units for Rent, Requiring Reasonable Notice for End of Term of the Lease, and Creating a Tenant Right to Organize.**

Chapter 13.76 of the Berkeley Municipal Code is amended as follows:

##### **13.76.050. Applicability.**

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

A. Rental units which are owned by any government agency. However, the exemption of units owned by the Berkeley Housing Authority from the terms of this chapter shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

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

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

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

by the Berkeley Housing Authority or successor agency, shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120.

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

F. Rental units in a residential property which is divided into a maximum of ~~four~~ two units where one of such units is occupied by the landlord as his/her principal residence. This subsection (13.76.050F) shall only apply to tenancies created after December 31, 2024. Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to parcels for rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080I and 13.76.100C. applied to them.

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

H. For the purposes of Subsections 13.76.050 F. and G., the term landlord shall be defined only as the owner of record holding a material beneficial interest at least 50% interest in the property.

I. Newly constructed rental units, as defined in Section 13.76.040. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. ~~To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.~~

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

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

tenant who occupied the unit prior to the property's acquisition by the tax-exempt organization.

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

M. 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.

N. A rental unit in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance) and ~~one~~ any 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 (13.76.050N) 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.~~

O. A dwelling or a unit alienable separate from the title to any other dwelling unit unless the tenancy commenced before January 1, 1996. However, the exemption of such units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. A property owner who owns only one residential unit in the City of Berkeley, and occupied that residential unit for 365 consecutive days as their principal residence immediately prior to renting the unit, and is absent from the unit for a period not to exceed 24 months, and such period is specified in the lease, shall also be exempt from the terms of Section 13.76.080, Rent Registration, of this Chapter. The exemptions provided in this Section 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.

P. A rental unit in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance). This subsection (13.76.050P) shall only apply to a property owner who owns a maximum of two



residential units in the City of Berkeley. This subsection (13.76.050P) shall only apply to tenancies created after December 31, 2024.

### **13.76.060. Rent Stabilization Board.**

- A. Composition. There shall be in the city of Berkeley an elected rent stabilization board; the board shall consist of nine commissioners. The board shall elect annually as chairperson one of its members to serve in that capacity.
- B. Eligibility. Residents who are duly qualified electors of the city of Berkeley are eligible to serve as commissioners on the board.
- C. Full disclosure of holdings. Candidates for the position of commissioner shall fulfill the requirements as set forth in the City Charter in Article III, Section 6 1/2.

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

- D. Election of commissioners. Commissioners shall be elected at the statewide general election held in November of even numbered years.
- E. Terms of office. Commissioners' terms of office shall be as set forth in Article XVII of the Berkeley City Charter.

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

1. Set the rent ceilings for all rental units.
2. Require registration of all rental units under Section 13.76.080.
3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.
4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.
5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this chapter.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set below.
7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
8. Report annually to the city council of the city of Berkeley on the status of rental housing units covered by this chapter and request every three years an audit by the City Auditor.
9. Request the City Council to remove rent controls under Section 13.76.060Q.

10. Administer oaths and affirmations and subpoena witnesses and relevant documents.
11. Establish rules and regulations for settling civil claims under Section 13.76.150.
12. Seek injunctive relief under Section 13.76.150.
13. Pursue civil remedies in courts of appropriate jurisdiction.
- ~~14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this chapter.~~
- ~~14~~5. Hold public hearings.
- ~~15~~6. Charge and collect registration fees, including penalties for late payments.
- ~~17. Other powers necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter.~~
- ~~16~~8. Except as provided in Section 13.76.060N of this chapter, the board shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the city of Berkeley.

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

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

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

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

I. Quorum: Five commissioners shall constitute a quorum for the board.

J. Voting: The affirmative vote of five commissioners of the board is required for a decision, including all motions, rules, regulations, and orders of the board.

K. Compensation: ~~The rent stabilization board shall be a working board. Commissioners shall not be paid entitled to compensation or and benefits in any 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 of Berkeley 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. Decontrol: If the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six month period, the city council is empowered, upon request by the board, at its discretion and in order to achieve the purposes of this chapter, to exempt rental units covered by this chapter from Sections 13.76.080, 13.76.100, 13.76.110 and 13.76.120 of this chapter. In determining the vacancy rate for the city of Berkeley the board and the city council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection Q coverage shall be reimposed if the city council finds that the average annual vacancy rate has thereafter fallen below five percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection Q the board shall hold at least two public hearings.

R. Conflict of Interest: Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

### **13.76.080. Rent registration.**

A. The board shall require all landlords subject to the provisions of this chapter prior to November 3, 2020, to file a rent registration statement with the board by September 1, 1980 for each rental unit covered by this chapter. The board shall require all landlords subject to Subsections 13.76.050I. and 13.76.050O. of this chapter to file a rent registration statement with the board for each rental unit covered by this chapter as outlined in Subsection 13.76.080L. A property owner

who owns only one residential unit in the City of Berkeley, and occupied that residential unit for 365 consecutive days as their principal residence immediately prior to renting the unit, and is absent from the unit for a period not to exceed 24 months, and such period is specified in the lease, shall also be exempt from the terms of Section 13.76.080, Rent Registration, of this Chapter and need not file a rent registration statement for the subject rental unit.

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

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

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

D. The first annual registration fee of twelve dollars per unit shall be paid by the landlords to the board no later than September 1, 1980. Subsequent annual registration fees set in accordance with Section 13.76.060N of this chapter shall be paid no later than July 1 of each year. Because fees charged in years prior to 1991 were due on September 1, but paid for board expenses from each preceding July 1, the fee due 1991 shall be calculated to pay for twelve months of board expenses.

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

F. Every annual registration fee required by this chapter which is not paid on or before July 1 is declared delinquent, and the board shall add to said registration fee and collect a penalty of ten ~~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 fifteen ~~one hundred~~ percent of the original fee.

The board may waive the penalty if payment is made within thirty days of the original due date.

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

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

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

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

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

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

L. Landlords of partially-exempt units (set forth above in Sections 13.76.050I. and 13.76.050O.) shall register within sixty days of coming under coverage of this chapter. The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

### **13.76.110. Annual general adjustment of rent ceilings.**

A. Effective January 1 of each year, the rent ceiling for all rental units covered by this chapter for which the landlord did not establish an initial rent during the prior calendar year shall be adjusted by 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve month period ending the previous June 30. In determining the allowable percentage rent increase, numbers of .04 and below shall be rounded down to the nearest tenth decimal place and numbers of .05 and above shall be rounded up to the nearest tenth decimal place. In no event, however, shall the allowable annual adjustment be less than zero (0%) or greater than seven percent and one-tenths (7.1%). The board shall publish and publicize the annual general adjustment on or about October 31st of each year.

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

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

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

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

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

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

F. 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 Rent 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. No petition shall be filed before September 1, 1980. Notwithstanding any other provision of this section, the board or hearing examiner may refuse to hold a hearing and/or grant an individual rent ceiling adjustment for a rental unit if an individual hearing has been held and decision made with regard to the rent ceiling for such unit, within the previous six months. For the purposes of this section 13.76.120, Code Enforcement has the sole and exclusive discretion to make determinations regarding whether a unit has failed to substantially comply with applicable state rental housing laws, the warranty of habitability, or local housing and safety codes. For the purposes of this section 13.76.120, no City Department other than Code Enforcement, and no private entity, shall have the authority to make any determination regarding whether a unit has failed to substantially comply with applicable state rental housing laws, the warranty of habitability, or local housing and safety codes.

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 Record.** The board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be obtainable for the cost of copying. The record of the hearing shall include: all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted in the proceedings; a statement of all materials officially noticed; all recommended decisions, orders and/or rulings; all final decisions, orders and/or rulings, and the reasons for each final decision, order and/or ruling. Any party may have the proceeding tape recorded or otherwise transcribed at his or her own expense.
8. **Quantum of Proof and Notice of Decision.** No individual rent ceiling adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of fact and law upon which said decision is based. At the same time, parties to the proceedings shall also be notified of their right to and the time limit for any appeal allowed by the board and/or to judicial review of the decision pursuant to this section and Section 13.76.180 of this chapter.

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

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

11. Finality of Decision. The decision of the hearing examiner shall be the final decision of the board in the event of no appeal to the board. The decision of the hearing examiner shall not be stayed pending appeal; however, in the event that the board or panel reverses or modifies the decision of the hearing examiner, the board shall order the appropriate party to make retroactive payments to restore the parties to the position they would have occupied had the hearing examiner's decision been the same as that of the board's.

12. Time for Decision. The rules and regulations adopted by the board shall provide for final board action on any individual rent adjustment petition within 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, and must in every petition and hearing, consider the purposes of this chapter and shall specifically consider all relevant factors, including (but not limited to):

1. Increases or decreases in property taxes;
2. Unavoidable increases or any decreases in maintenance and operating expenses;
3. The cost of planned or completed capital improvements to the rental unit (as distinguished from ordinary repair, replacement and maintenance) where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvement;
4. Increases or decreases in the number of tenants occupying the rental unit, living space, furniture, furnishings, equipment, or other housing services provided, or occupancy rules;



5. Substantial deterioration of the controlled rental unit other than as a result of normal wear and tear;
6. Failure on the part of the landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health and safety codes, or the rental agreement;
7. The pattern of recent rent increases or decreases;
8. The landlord's rate of return on investment. In determining such return, all relevant factors, including but not limited to the following shall be considered: the landlord's actual cash down payment, method of financing the property, and any federal or state tax benefits accruing to landlord as a result of ownership of the property.
9. Whether or not the property was acquired or is held as a long-term or short-term investment; and
10. Whether or not the landlord has received rent in violation of the terms of this chapter or has otherwise failed to comply with the chapter.

11. Where tenant and landlord have mutually agreed upon an increase in services to tenant's unit.

~~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 individual downward adjustment of a rent ceiling shall be authorized by the board for reason of tenant relocation, unit repairs, improvements, or modifications. ~~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.~~

J. No provision of this chapter shall be applied so as to prohibit an individual upward rent adjustment for an increase in services necessitated by improvements and modifications to the unit and for which improvements and modifications landlord and tenant have reached mutual agreement regarding such upward rent adjustment.

### **13.76.130. Good cause required for eviction.**

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

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in Berkeley 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 be satisfied where the amount of rent demanded is less than one months' rent, unless the balance due is greater than 90 days in arrears.

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, including violation of health and safety codes or city ordinances, 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 include those terms which both parties have expressly agreed upon and do not include any changes to the terms of tenancy associated with a decrease in services.

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

(a) The landlord has unreasonably withheld consent to the subtenancy; and

(b) The tenant remains an actual occupant of the rental unit; and

(c) The number of tenants and subtenants actually occupying the rental unit does not exceed the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater.

(d) Withholding of consent by the landlord shall be deemed to be unreasonable where:

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

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

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

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

3. The tenant has 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, and where the landlord has provided at least 60 days' notice prior to the expiration of prior rental agreement.

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

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

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

(b) Where such repairs can be completed in a period of 60 or fewer days, and the tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this subsection (13.76.130A.7.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.

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

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

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

(d) Where the landlord recovers possession under this subsection (13.76.130A.7.), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this subsection.

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

9. 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.9.), 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.9 shall include the following: the existence and potential availability of relocation assistance under subsection 13.76.130A.9.g; the existence of tenant protections for families with minor children as defined in subsection 13.76.130A.9.k; the name and relationship of any qualified relative for purposes of subsection 13.76.130A.9b; and the landlord's ownership interest in any residential properties in the City of Berkeley where such interest, in any form whatsoever, is ten percent (10%) or greater. The landlord shall, within ten days of giving notice, file a copy of the notice terminating tenancy with the Rent Board.

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

(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 Rent Board.

(g) Where a landlord recovers possession of a unit under subsection 13.76.130A.9, 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.9.h below. The procedures for payment of this relocation assistance are set forth below in subsection 13.76.130A.9.p.(i) through (iv). The following definitions apply for any tenant households evicted for owner move-in under subsection 13.76.130A.9:

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 he/she 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 Berkeley Rent 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.9.g., may 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.9.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.9.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.9.a and that once a unit is used for such occupancy, all future occupancies under subsection 13.76.130A.9.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.9 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.9.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.9 if any tenant in the rental unit:

- i. Is 60 years of age or older and has been residing on the property for five years or more; or
- ii. Is disabled and has been residing on the property for five years or more; or
- iii. Has resided on the property for five years or more and the landlord has a ten percent (10%) or greater ownership interest, in any form whatsoever, in five or more residential rental units in the City of Berkeley.

(m) A tenant who claims to be a member of one of the classes protected by subsection 13.76.130A.9.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.9.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.9.l shall not apply to the following situations:

- i. Where a person is the owner of three or fewer residential units in the City of Berkeley and has no greater than a nine percent (9%) ownership interest in any other residential unit in the City of Berkeley; or
- ii. Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I and the landlord's qualified relative who is seeking possession of a unit subject to subsection 13.76.130A.9.b is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.l(ii) above; or
- iii. Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I, the landlord has owned the unit for which possession is being sought subject to subsection 13.76.130A.9.a for five years or more and is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.l(ii).

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

(p) When a landlord is required to provide a relocation assistance payment subject to subsection 13.76.130A.9.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.9, 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 he/she disputes the tenant's eligibility to receive such assistance.

ii. In order to claim entitlement to additional relocation assistance under subsection 13.76.130A.9.g, a tenant must notify the landlord and the Rent Stabilization Program in writing that he/she 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.9.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 he/she 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.9.g is disputed, either party may file a Rent Board petition requesting a determination of eligibility or file a claim in a court of competent jurisdiction. The Rent Stabilization Program 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 Rent Board hearing examiner issued pursuant to a petition process conducted in accordance with applicable Rent 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.9). 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.9), 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.9), in addition to any damages and/or costs awarded by the court, shall be entitled to recover all reasonable attorney's fees incurred in bringing or defending the action.

(r) At least twice annually, Rent Board staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered pursuant to this subsection (13.76.130A.9) within the prior 36 months.

(s) If any provision or clause of this subsection (13.76.130A.9) or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this subsection are severable.

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

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

B. A landlord's failure to specify good cause as listed above in subsections 1. through 11. of Section 13.76.130A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this chapter.

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

commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this chapter.

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

### **13.76.200. Right to Organize**

A. Tenant Association. Tenants of a residential property may establish a tenant association by providing their landlord a petition signed by tenants representing at least two-thirds of the occupied rental units, including Rooming Houses as defined by board regulation, for the residential rental property certifying their desire to form a tenant association, and identifying the tenant association.

B. Confer in good faith. Landlords and tenant associations shall confer with each other in good faith regarding housing services, landlord-tenant relations, and other issues of common interest or concern. "Confer in good faith" means that the parties shall have the mutual obligation to meet and confer in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement. The board may not further define good faith.

## **SECTION 5. Effective Date and Operative Date.**

This measure shall become effective upon its approval by a simple majority of electors voting on the measure. This measure shall become operative on January 1, 2025.

## **SECTION 6. Severability.**

If any provision of this measure, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this measure are severable. The People of the City of Berkeley hereby declare that this measure, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional. The People of the City of Berkeley further declare their desire that this measure provide funding for rent relief, incentivize property owners to offer units for rent, require reasonable notice for end of term leases, modify the responsibilities and compensation terms for the Rent Stabilization Board, and establish a tenant right to organize, and that each of these vital city services are independently important of one another.

## **SECTION 7. Conflicting Measures.**

This measure is intended to be comprehensive. It is the intent of the People of the City of Berkeley that, in the event this measure and one or more measures relating to Chapter 13.76 of the Berkeley Municipal Code, or the taxation of rental property, the provisions of the other measure or measures shall be deemed in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail

in their entirety, and all provisions of the other measure or measures shall be null and void. If this measure is approved by a majority of the voters, but does not receive a greater number of affirmative votes than any other competing measure or measures appearing on the same ballot, then this measure shall take effect to the extent not in conflict with said other measure or measures.

### **SECTION 8. Liberal Constitution.**

This measure is an exercise of the initiative power reserved to the People of the City of Berkeley for rent relief and funding the Berkeley Housing Trust Fund, and shall be liberally construed to effectuate that purpose.

### **SECTION 9. Municipal Affair.**

The People of the City of Berkeley hereby declare that funding rent relief and the Berkeley Housing Trust Fund, as well as protecting voting rights associated with the Rent Stabilization Board, separately and together, constitute municipal affairs for the proper regulation of residential rental property in the City of Berkeley. The People of the City of Berkeley hereby further declare their desire for this measure to coexist with any similar tax and rental housing measures adopted at the city, county or state levels.

### **SECTION 10. Legal Defense.**

The People of the City of Berkeley desire that this measure, if approved by a simple majority of voters, and thereafter challenged in court, be defended by the City of Berkeley. The People of the City of Berkeley, by approving this measure by a simple majority of voters, hereby declare that the proponent(s) of this Act have a direct and personal stake in defending this measure from constitutional or statutory challenges to the measure's validity or implementation. In the event the City of Berkeley fails to defend this measure, or the City of Berkeley fails to appeal an adverse judgment against the constitutionality, statutory permissibility or implementation of this measure, in whole or in part, in any court of law, the measure's proponent(s) shall be entitled to assert his, her or their direct personal stake by defending the measure's validity and implementation in any court of law and shall be empowered by the People of Berkeley through this measure to act as agents of the People of the City of Berkeley, and the City of Berkeley shall indemnify the proponent(s) for reasonable fees, expenses and other losses incurred by the proponent(s), as agent(s) of the City of Berkeley, in defending the validity and/or implementation of the measure. The rate of indemnification shall be no more than the amount it would cost the City of Berkeley to perform the defense itself.