CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 12/10/02

AGENDA ITEM _____

WORK SESSION ITEM WS 2

TO: Mayor and City Council

FROM: City Attorney

SUBJECT: Revisions to the City of Hayward's Residential Rent Stabilization Ordinance

Recommendation:

It is recommended that the City Council review and comment upon the following report.

Background:

The City of Hayward's Residential Rent Stabilization Ordinance ("the Ordinance") was first enacted in 1983 and amended several times since then. In 2000, the City Council authorized the creation of an Ad Hoc Rental Housing Work Group to focus on issues regarding rental housing. The Work Group consists of two representatives of the Rental Housing Owners Association, two representatives of groups working with Hayward tenants, a member of the Alameda County Housing Authority (which administers the Section 8 Program), a representative from Eden Housing, Inc., a local nonprofit affordable housing developer, and staff from various city departments. In April 2001, the City Council reviewed the Ordinance for effectiveness, including the impact of the Costa-Hawkins Act on local rent control ordinances.

Units Subject to Rent Control

When the Ordinance was enacted in 1983, approximately 9,400 units were subject to rent control. The current Ordinance allows voluntarily vacated units to be decontrolled if the unit complies with the City's Housing Code and if $200-$500 (depending on the size of the unit) worth of improvements are made to the unit. As a result of this liberal decontrol process, the number of units now subject to rent control has decreased to less than 2,000.

Costa-Hawkins Act

The Costa-Hawkins Act completely exempts three categories of units from rent control. First, all units for which a certificate of occupancy was issued after February 1, 1995, are exempt from any rental rate controls whatsoever. Second, the City cannot impose rent controls on units already exempted from local controls pursuant to a local exclusion for newly constructed units. In Hayward, all units for which a certificate of occupancy was issued after July 1, 1979, are exempt from the Ordinance and must remain so under Costa-Hawkins. Third, as a general rule, the Costa-Hawkins

Act provides that all single-family homes, condominiums, townhouses, stock cooperatives or any unit that could be sold or transferred separately, regardless of when they were constructed, are also exempt from any rent controls.

In addition to establishing those units that a local agency must exempt completely from rent control, the Costa-Hawkins Act also has abolished vacancy control for all residential rental units. Generally speaking, this means that the City's rent control ordinance can only impose a cap on a unit's rent if the previous tenant did not voluntarily move out. The Act specifies that if the vacancy results from a 30-day notice to terminate the tenancy or a notice of a change in the terms of the tenancy (e.g., rent increase in excess of that permitted by law), then the vacancy is "nonvoluntary." If the previous tenant voluntarily terminated the tenancy, then the landlord is free to set any rental rate for the new tenant without restriction. Once the unit is re-rented and a new rent is set, however; it is permissible for the City to subject future increases for that new tenant to local rent control ceilings.

The Costa-Hawkins Act does not effect the City's authority to regulate the permissible causes for eviction.

Summary of Proposed Revisions to the Ordinance

Given the restrictions on local rent control measures imposed by the Costa-Hawkins Act, the proposed revisions to the Ordinance focus primarily on three areas: (1) conforming the Ordinance to the Costa-Hawkins Act; (2) increasing the amount of improvements required for certain rent increases and vacancy decontrol; and (3) revising the circumstances that warrant eviction for just cause. The proposed revisions to the Ordinance are in bold print and italicized.

In conformance with Costa-Hawkins, the proposed Ordinance provides that single-family residences and other separately alienable properties constructed before 1979 are exempt from the rent increase limitations of the Ordinance, except following a nonvoluntary vacancy. However, these units would continue to be subject to Section 19 of the Ordinance, which requires just cause for eviction. In addition, the definition of "voluntarily vacated" has been changed to reflect the requirements of the Act.

Under the existing Ordinance, a landlord must make a certain amount of improvements for that unit to be eligible for vacancy decontrol or to raise the rent following a nonvoluntary vacancy. The current amount of required improvements is $200 for one bedroom units or studios, $400 for 2-bedroom units, and $500 for units with 3 or more bedrooms. Staff is recommending that these amount be adjusted as follows: $1,000 for one bedroom units or studios, $1,500 for 2-bedroom units, and $2,000 for units with 3 or more bedrooms. Representatives of some local landlords have requested slightly lower adjustments as follows: $500 for one bedroom units or studios; $750 for 2-bedroom units and $1,500 for units with 3 or more bedrooms. In addition, the revised vacancy decontrol provisions would require a declaration from the previous tenant that the unit was voluntarily vacated or a declaration under penalty of perjury by the landlord that unit was voluntarily vacated and the previous tenant was asked to sign the declaration but is either currently unavailable or refused to sign.

The existing Ordinance requires just cause for evictions. Both the property owners' representatives and the tenant groups' representatives raised concerns about the difficulties that they have experienced as a result of violence or illegal drug-related activity on rental properties. Landlords may be unable to evict a tenant without corroborating evidence of wrongdoing, and

tenants are fearful to come forward because of concerns about retribution by the evicted tenant. In an effort to remedy this problem, a provision was added to Article 19 of the Ordinance, authorizing a landlord to evict a tenant who has threatened another person on the property with harm and for which a police report has been filed.

Finally, the current Ordinance called for Council review in April, 2001. This section has been been repealed.

Conclusion:

The City's latitude in revising the Residential Rent Stabilization Ordinance is limited by the Costa-Hawkins Act. The proposed revisions conform the Ordinance to the Costa-Hawkins Act, strengthen the requirements for eviction and raise the monetary threshold for improvements making the certain units eligible for deregulation and rent increases.

Recommended by:

Maureen A. Conneely,
Assistant City Attorney

Michael J. O'Toole, City Attorney

Approved by:

Jesús Armas, City Manager

Attachment: Exhibit "A" Draft Revised Residential Rent Stabilization Ordinance

DRAFT

OFFICE OF THE CITY ATTORNEY
RENT REVIEW PROGRAM

CITY OF HAYWARD

RESIDENTIAL RENT STABILIZATION ORDINANCE

City of Hayward Ordinance No. 83-023 C.S.,
As Amended Through Ordinance No. 96-08,
Effective March 28, 1996

777 B STREET, 4TH FLOOR, HAYWARD, CA 94541 TEL (510) 583-4454 FAX (510) 583-3660

ORDINANCE NO. 83-023 C.S., AS AMENDED

RESIDENTIAL RENT STABILIZATION

SECTION 1. FINDINGS AND PURPOSE.

The City Council finds that a shortage of decent, safe, and sanitary residential rental housing continues to exist in the City of Hayward which is evidenced by a low vacancy rate among such units throughout the City; that in order to retain or find adequate rental housing, many residents of the City of Hayward pay a substantial amount of their monthly income for rent; that the present shortage of rental housing units and the prevailing rent levels have a detrimental effect on the health, safety, and welfare of a substantial number of Hayward residents, particularly those senior citizens, persons in low and moderate income households, and persons on fixed incomes who reside in the City; and that the welfare of all persons who live, work, or own property in the City of Hayward depends in part on attracting persons who are willing to invest in residential rental property in the City and it is therefore necessary to ensure that such persons are not discouraged from making such investments in the City by any action of the City Council.

Among the purposes of this ordinance are therefore: providing relief to residential tenants in the City by stabilizing rent increases for certain tenants; encouraging rehabilitation of rental units whenever vacancies occur; encouraging investment in new residential rental property in the City by providing for the gradual elimination of rent increase controls; and assuring efficient landlords both a fair return on their property and rental income sufficient to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities, and other costs of operation while the provisions of this ordinance are in effect.

SECTION 2. DEFINITIONS.

(a) "**Affected Tenants.**" All tenants in a residential rental unit complex who have been notified that a rent increase is to become effective on the same date.

(b) "**Arbitrator.**" A person who is neither a tenant as that term is defined in this ordinance nor who has an interest in residential rental property that would require disqualification under the provisions of the Political Reform Act if such person were an elected state official and a person whom the Rent Review Officer determines meets one of the following criteria:

(1) Completion of a Juris Doctor or equivalent degree from a school of law and completion of a formal course of training in arbitration which, in the sole judgment of the Rent Review Officer, provides that person with the knowledge and skills to conduct a rental dispute arbitration in a professional and successful manner; or

(2) Completion of at least three arbitration proceedings for a Superior Court or other public entity that involved issues the Rent Review Officer considers similar to those raised in rent dispute arbitrations.

(c) "**Capital Improvements**." Those improvements that materially add to the value of the property and appreciably prolong its useful life or adapt it to new uses, and which may be amortized over the useful remaining life of the improvement to the property.

(d) "**Governmental - Utility Services**." Services provided by a public agency, public utility, or quasi-public agency or utility.

(e) "**Housing Service**." A service provided by the landlord related to the use or occupancy of a rental unit, which is neither a capital improvement nor substantial rehabilitation as those terms are defined herein, including but not limited to, insurance, repairs, replacement, maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.

(f) "**Landlord**." Any owner, lessor, or sublessor of real property who receives or is entitled to receive rent for the use or occupancy of any rental unit or portion thereof in the City of Hayward, and the representative, agent, or successor of such owner, lessor, or sublessor.

(g) "**Mediator**." A person whom the Rent Review Officer determines meets all of the following criteria:

(1) Has received at least 24 hours of formal training in mediation;

(2) Has mediated rent disputes or has had other experience or training showing a capability to mediate the issues which arise in such disputes; and

(3) Who is neither a tenant as that term is defined in this ordinance nor has an interest in residential rental property that would require disqualification under the provisions of the Political Reform Act if such person were an elected state official.

(h) "**Peer Committee**." A committee of landlords to be chosen by the Southern Alameda County Apartment Owners' Association to contact landlords and encourage their participation in and cooperation with this ordinance.

(i) "**Rent**." The total consideration, including any bonus, benefit, or gratuity, demanded or received by a landlord for or in connection with the use or occupancy of a rental

unit, or the assignment of a lease for such a unit, including housing services or subletting, but excluding any amount demanded or received by a landlord as a security deposit.

(j) "**Rent Increase**." Any additional rent demanded of or paid by a tenant for a rental unit including any reduction in housing services without a corresponding reduction in the amount demanded or paid for rent.

(k) "**Rent Review Officer**." The person or persons designated by the City Manager to administer and enforce the provisions of this ordinance.

(l) "**Rental Unit**." Any residential dwelling unit, other than a mobilehome unit, and all housing services provided with such unit that is located in the City of Hayward and used or occupied by the payment of rent, provided that such residential dwelling unit is one of at least five (5) residential dwelling units, whether located on the same or different parcels of land within the City, which are under common ownership. For the purpose of this definition, common ownership shall be deemed to exist whenever a single individual or entity has any kind of ownership interest whether as an individual, partner, joint venturer, stock owner, or in some other capacity, in five (5) or more nonmobilehome residential dwelling units located within the City of Hayward and reports to the Internal Revenue Service any income received or loss of income resulting from such ownership or claims any expenses, credits, or deductions because of such ownership.

Notwithstanding the foregoing, the following residential dwelling units are not deemed rental units for the purpose of this ordinance:

(1) Accommodations in any hospital, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by either an educational institution or a private organization which offers spaces in rooms for rent in conjunction with the providing of services such as meals, cleaning services, and social programs;

(2) Dwelling units in multi-family housing projects financed or insured by a federal, state, or local agency or receiving rent subsidy assistance therefrom if the units are subject to rent controls as a result of such financing, insurance, or subsidy;

(3) Dwelling units located in a structure for which a certificate of occupancy is first issued after July 1, 1979;

(4) Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses; provided that such accommodations are not occupied by the same tenant for thirty (30) or more continuous days; and

(5) Dwelling units in a nonprofit cooperative that is owned, occupied, and controlled by a majority of the residents.

(m) "**Security Deposit**." Any payment, fee, deposit or charge, including but not limited to an advance payment of rent, used or to be used for any purpose, including but not limited to any of the following:

(1) Compensation of a landlord for a tenant's default in the payment of rent;

(2) The repair of damages to the premises caused by the tenant beyond ordinary wear and tear;

(3) The cleaning of the rental unit, if necessary, upon termination of tenancy;

provided, however, that the term security deposit shall not include any fee or charge pursuant to any mutual agreement for the landlord at the request of the tenant to make any structural, decorative, furnishing, or other similar alterations as long as such alterations are other than that cleaning or repairing for which the landlord may charge the previous tenant under California law.

(n) "**Substantial Rehabilitation**." That work done by a landlord to a rental unit or to the common area of the real property or the structure containing a rental unit, exclusive of a capital improvement as that term is defined herein, the value of which exceeds two hundred dollars ($200.00) and which is performed either to secure compliance with any state or local law or to repair damage resulting from fire, earthquake, or other casualty or natural disaster, to the extent such work is not reimbursed by insurance or security deposit proceeds.

(o) "**Tenant**." A tenant, subtenant, lessee, or sublessee, or any other person entitled to the use or occupancy of any rental unit.

(p) "Voluntarily Vacated." A voluntary vacancy is any vacancy other than a vacancy that occurs when the tenancy has been terminated by the landlord by notice pursuant to California Civil Code section 1946 or has been terminated upon a change in the terms of the tenancy noticed pursuant to California Civil Code section 827, except a change permitted by

law in the amount of rent or fees.

For purposes of this subsection, the landlord's termination or nonrenewal of a contract or a recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant, shall be construed as a change in the terms of the tenancy pursuant to Civil Code section 827.

An otherwise voluntary vacancy under this subsection shall be considered nonvoluntary if (i) the rental unit has been cited in an inspection report by the appropriate governmental agency as containing any of the conditions described in section 17920.3 of the Health and Safety Code, excluding any caused by a disaster; (ii) the citation was issued at least 60 days prior to the date of the vacancy; and (iii) the cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time.

SECTION 3. RESIDENTIAL RENT INCREASE LIMITATIONS.

(a) Except as provided hereinafter, from and after April 1, 1987, the rent payable for use or occupancy of any rental unit shall not be increased more than five percent (5%) per annum and shall not be increased more than once in any twelve (12) month period.

(b) Any rent increase or combination of increases occurring after July 1, 1979, and prior to the effective date of this ordinance, which taken together exceeds an aggregate of seven percent (7%) per annum, shall be subject to review as hereinafter provided.

(c) In the event a landlord has increased the rent payable during any twelve (12) month period commencing July 1, 1979, and ending March 31, 1987, by less than seven percent (7%) per annum, the landlord may, in addition to the increase provided for herein, increase no earlier than the anniversary date of the last rent increase the rent payable by the difference between the percent of increase actually imposed and seven percent (7%); provided, however, that no single increase shall exceed twelve percent (12%) per annum. Notwithstanding the provisions of Section 9, the standard of review shall be limited to verification of the rent increases imposed on the affected tenant.

(d) In the event a landlord has increased the rent payable during any twelve (12) month period commencing April 1, 1987, by less than five percent (5%) per annum, the landlord may, in addition to the increase provided for herein, increase no earlier than the anniversary

date of the last rent increase the rent payable by the difference between the percent of increase actually imposed and five percent (5%); provided, however, that no single increase shall exceed ten percent (10%) per annum. Notwithstanding the provisions of Section 9, the standard of review shall be limited to verification of the rent increases imposed on the affected tenant.

(e) In the event a landlord wishes to increase the rent payable for any rental unit more than five percent (5%) per annum within a twelve (12) month period in order to apportion to each unit on a pro rata basis any increases in costs of governmental-utility services, the following provisions shall apply:

(1) The landlord shall provide to all affected tenants relevant and detailed documentation supporting the level of increase desired to recover increases in the cost of governmental- utility services. At a minimum such documentation shall include: receipts or other equivalent records showing the amount paid by the landlord immediately prior to the increase in governmental-utility service cost for which the landlord seeks a rent increase; billing notices or other equivalent documents from the agency imposing the increase reflecting the amount of increase in the governmental- utility services cost; and the calculations used by the landlord to apportion the increased costs among the affected tenants.

(2) The documentation required by the preceding paragraph shall precede or accompany the written notice of rent increase required by state law. Failure of the landlord to follow the procedure set forth in this subsection shall be a defense in any action brought to recover possession of a rental unit or to collect such rent increase.

(3) Notwithstanding the provisions of Section 9, the standard of review shall be limited to verification of the governmental-utility services cost increase, to the extent that the cost increase does not result from the irresponsible or wasteful use of utilities, and the allocation of such increase to or among the affected tenants.

(4) A rent increase approved pursuant to the provisions of this subsection and in accordance with the procedure set forth in Section 5 of this ordinance shall not be considered part of the rent base upon which future rent increases can be made.

(f) In the event a landlord wishes to increase the rent payable for any rental unit more than five percent (5%) per annum within a twelve (12) month period for any reason other than that stated in subsection (e) herein, the procedures set forth in Sections 4 and 5 shall be followed.

(g) The rent increase limitations and procedures set forth in this Section shall not apply if doing so would violate the terms of a written lease entered into on or before March 22, 1980, for all units that were subject to the provisions of Ordinance No. 80-005 C.S., or July 26, 1983, for all other units.

(h) Except as provided in this subsection, in accordance with California Civil Code Section 1954.52, the rent increase limitations and procedures set forth in Section 3 shall not apply to any residential real property that is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b), (d) or (f) of Section 11004.5 of the California Business and Professions Code. This exception shall not apply to a rental unit where the preceding tenancy has been terminated by the owner by notice pursuant to California Civil Code Section 1946 or has been terminated upon a change in the terms of the tenancy noticed pursuant to California Civil Code Section 827. This exception shall not apply to any rental unit (i) if the rental unit has been cited for any of the conditions described in section 17920.3 of the Health and Safety Code, excluding any caused by a disaster; (ii) the citation was issued at least 60 days prior to the date of the vacancy; and (iii) the cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time.

SECTION 4. INFORMATION TO BE SUPPLIED TENANT.

(a) Within 30 days after the effective date of this ordinance and upon rerenting of each rental unit thereafter, the landlord shall supply the tenant either a current copy of this ordinance or a City prepared summary thereof. In addition, if the landlord or the landlord's predecessor(s) has failed to do so, the landlord shall provide each tenant with the rent history of the tenant's rental unit since July 1, 1979, and shall do so before July 1, 1987; in the event that the rental history of a tenant's rental unit is not available to the landlord, the landlord shall be deemed to have complied with this requirement if before July 1, 1987, the landlord provides the tenant with as much of the rent history of the tenant's rental unit as is available and with a statement made under penalty of perjury explaining why the complete rental history is not available.

(b) Whenever the landlord serves a notice of rent increase, the landlord shall at the

same time and in the same manner serve the tenant with a notice that sets forth all of the following information:

(1) The amount of the rent increase both in dollars and as a percentage of existing rent and either:

(i) A statement that the landlord considers the rent increase consistent with the five percent (5%) increase limitation set forth in Section 3(a) of this ordinance; or

(ii) Documentation supporting the level of increase desired, including at a minimum: the rental history of the unit if the landlord considers Section 3(c) or (d) as providing authorization for the rent increase; or a summary of the unavoidable increases in maintenance and operating expenses, a statement of the cost, nature, amortization, and allocation among rental units of any substantial rehabilitation or capital improvement, or a summary of the increased cost of the landlord's debt service and the date and nature of the sale or refinancing transaction, or other relevant information that supports the level of rent increase desired.

(2) The identity of all other affected tenants and the units which they rent;

(3) The address and telephone number of the Rent Review Officer and the fact that the tenant is encouraged to contact the Officer for an explanation of the provisions of this ordinance;

(4) The name, address, and telephone number of the person whom the tenant must attempt to contact within ten (10) days of receipt of the notice to satisfy the provisions of Section 5(b) of this ordinance and the best time(s) to attempt that contact; and

(5) A copy of the petition form prepared by the Rent Review Officer which initiates the process established by this ordinance.

(c) The landlord and tenant shall execute a single document stating that the information, documents, or notices required by this section have been received by the tenant. The original of the document acknowledging receipt of information, documents, or notices required by this section shall be retained by the landlord and a copy thereof provided to the tenant. In the event a tenant fails or refuses to execute the document required herein within

ten (10) days after the landlord's request that the tenant do so, the landlord shall prepare a declaration under penalty of perjury stating that the information, documents, or notices required by this section have been delivered to the tenant, the date the landlord requested the tenant to sign the joint document acknowledging receipt, and the date the declaration was executed.

(d) A landlord failing to provide a tenant the information, documents, or notices required by this section shall not be entitled to collect any rent increase otherwise authorized by this ordinance from that tenant nor to any rent increase that might otherwise be awarded by a mediator or arbitrator and such failure by the landlord shall be a defense in any action brought by the landlord to recover possession of a rental unit or to collect any rent increase from the tenant. A landlord may cure the failure to serve any notice or the obligation to provide information to a tenant which is required under this ordinance by giving such notice or information before initiating an action for possession of the unit or collecting any rent increase otherwise authorized hereunder.

SECTION 5. THE RENT DISPUTE RESOLUTION PROCESS.

(a) **Tenant Right to Contact Rent Review Officer.** The tenant may contact the Rent Review Officer for an explanation of the provisions of this ordinance.

(b) **Tenant and Landlord Obligations to Discuss a Noticed Rent Increase.** Within ten (10) days after service of the rent increase notice and the accompanying notice required by Section 4(b), the tenant shall make a good faith attempt to contact the landlord or the person designated by the landlord at the time and place shown on the notice provided by the landlord to discuss the rent increase. A tenant's failure to make a good faith attempt to contact the landlord or other person designated shall result, unless good cause is found by the mediator or arbitrator, in the dismissal of any petition thereafter filed by the tenant. A landlord's or landlord designee's avoidance or refusal to respond to any attempted contact by a tenant to discuss a rent increase shall result, unless good cause is found therefor by a mediator or arbitrator, in denial of a rent increase.

(c) **Tenant Right to File a Petition.** A tenant may file a petition to initiate review of a rent increase, including a reduction in housing services, or the status of a unit as decontrolled. A tenant may not file a petition to initiate review of an eviction. Upon the filing of a petition, the rent increase, or that portion of the demanded rent that is in dispute, is not effective and may not be collected until and to the extent it is awarded by a mediator or, if appealed in a timely fashion, by an arbitrator pursuant to the provisions of the ordinance, or until the petition is abandoned.

(d) **Time to File a Petition.** Where applicable a tenant filing a petition under this section shall do so within the following time limits:

(1) A tenant receiving a notice of rent increase and the accompanying notice required by Section 4(b) shall have thirty (30) days after service of such notices to file a petition for review of rent;

(2) A tenant receiving any information, documentation or notice in accord with Section 4(d) shall have thirty (30) days after the service of such information, documentation, or notice to file for a petition for review of rent.

(3) In instances where notice is not required under Section 4 of the ordinance the tenant shall file a petition for review of rent within thirty (30) days after he or she knew of the alleged failure to comply with the requirements of the ordinance.

(e) **Rent Review Officer Authority to Refuse to Accept Petitions.** The Rent Review Officer shall refuse to accept a petition in the following instances:

(1) Where the petition is not completely filled out;

(2) Where the subject complex or building consists of more than ten (10) units and the petition is signed by less than twenty-five percent (25%) of the affected tenants as shown on the notice required by Section 4(b);

(3) Where from the face of the petition it is determined that the petition has not been filed in accord with Section 5(d).

(f) **Mediation.** Mediations under this ordinance shall be conducted consistent with the following rules and procedures.

(1) The parties may agree to waive mediation and proceed directly to arbitration. Written notice of the intent to waive mediation must be filed within five (5) days after receiving notice of the mediation hearing.

(2) The Rent Review Officer may adopt procedures for the conduct of mediation hearings.

(3) Upon receipt of the petition, the Rent Review Officer shall, within three (3)

working days, assign a mediator. The Rent Review Officer shall set a date for a mediation no sooner than ten (10) nor later than twenty-one (21) days after the mediator is assigned. The landlord and tenant(s) shall be notified immediately in writing by the Rent Review Officer of the date, time, and place of the mediation hearing and this notice shall be served either in person or by ordinary mail. The Rent Review Officer may grant postponements of the hearing of up to twenty-one (21) days for good cause.

(4) The landlord and tenant(s) may appear at the mediation and offer oral and documentary evidence. Both the landlord and the tenant(s) may designate a representative or representatives to appear for them at the hearing. Such designation shall be in writing. The mediator may grant or order one continuance for not more than ten (10) days from the date of the initial mediation hearing. The parties, with concurrence of the mediator and Rent Review Officer, may agree to additional continuances. The burden of proving that the amount of rent increase is reasonable, or that the unit is decontrolled, shall be on the landlord.

(5) At any time during the mediation hearing process the mediator may, upon a determination of lack of good faith, if the parties reach an impasse, or upon a determination that further mediation is impracticable or not likely to be of further value, order the matter to arbitration. The parties shall be notified of this decision in person, if possible, or forthwith in writing if the decision is made outside the presence of the parties.

(6) In the event that the parties agree to a level of rent increase, the mediator shall prepare a memorandum of agreement for the signature of the landlord and the tenant(s). This agreement shall constitute a legally enforceable contract. If there are more than ten (10) units in the subject complex or building, all affected tenants must execute a memorandum of agreement; failing execution of a memorandum of agreement by all affected tenants within ten (10) days of the hearing at which agreement is first reached, no executed memorandum of agreement shall be deemed valid or enforceable and the parties shall proceed to best offer mediation or arbitration as determined by the mediator.

(7) The mediator may request each party to submit a best offer in writing at the hearing or within five (5) days of the initial mediation hearing or the continued hearing, if any, if agreement is not reached at that hearing. Upon receipt of a best offer from each party, the mediator shall determine the amount of rent

increase, if any, which is reasonable. The mediator may determine that relief in the form of a rent reduction is appropriate for any period of time that the tenant has endured a reduction in services without a corresponding reduction in rent. The mediator may additionally determine that the rental rate may be restored to its former level if the landlord fixes, repairs, or otherwise cures the reduction in services by a date to be determined by the mediator. The determination of the mediator shall be based upon all the provisions of this ordinance, the evidence presented by the parties, and any previous decisions which are found relevant and persuasive, and shall be made within ten (10) days after the date the mediator received the parties' best offers. The parties may agree to a greater time in which to make a determination. The mediator shall forthwith communicate this determination and the reasons for it in writing by mail to the Rent Review Officer who shall forthwith distribute copies of the determination by mail to the landlord and tenant(s).

(8) The determination of the mediator is final and binding thirty (30) days after it has been mailed to landlord and tenant unless that determination is appealed by either landlord or tenant within ten (10) days from the date of mailing of the mediator's determination. The appeal shall be in writing and shall be filed with the Rent Review Officer. Where the complex or building contains more than ten (10) units, at least fifty-one percent (51%) of all affected tenants must sign an appeal from the mediator's decision or that decision shall be final and binding upon the landlord and all affected tenant(s).

(g) **Arbitration Hearing.** Arbitrations under this ordinance shall be conducted consistent with the following rules and procedures:

(1) The Rent Review Officer may adopt procedures for the conduct of arbitration hearings.

(2) Within three (3) working days after the filing of an appeal from a mediation decision, the Rent Review Officer shall appoint an arbitrator to hear the appeal. If possible, the Rent Review Officer shall not select the same person to arbitrate the dispute as mediated the dispute. The arbitration hearing on the appeal shall be held no less than ten (10) nor more than twenty-one (21) days after the arbitrator is assigned. The landlord and tenant(s) shall be notified immediately in writing by the Rent Review Officer of the date, time, and place of the arbitration hearing and this notice shall be served either in person or by ordinary mail. The Rent Review Officer may grant postponements of up to

twenty-one (21) days for good cause.

(3) The arbitrator shall hold a hearing de novo at which both oral and documentary evidence may be presented. The parties to the arbitration shall have the right to examine documents and cross-examine witnesses. Both the landlord and the tenant(s) may designate a representative to appear for them at the hearing. Such designation shall be in writing and in the case of tenant(s) may be included on the appeal form. The arbitrator may grant or order one continuance for not more than ten (10) days from the date of the initial arbitration hearing. The parties, with the concurrence of the arbitrator and Rent Review Officer, may agree to additional continuances. The burden of proof that the amount of rent increase is reasonable, or that the unit is decontrolled, shall be on the landlord.

(4) The arbitrator shall, within ten (10) days of the close of the hearing, submit a written statement of decision and the reasons for the decision by mail to the Rent Review Officer who shall forthwith distribute copies of the decision by mail to the landlord and tenant(s). The parties may agree to a greater time in which to make a determination. The arbitrator shall determine the amount of the rent increase if any, which is reasonable based upon all the provisions of this ordinance, the evidence presented by the parties, and any previous decisions which are found relevant and persuasive. In addition, pursuant to Section 8(f) and Section 20(a), the arbitrator shall make findings as to the landlord's willfulness, oppression, fraud, or malice.

(5) The arbitrator may order relief in the form of a decrease in rent for any period of time that the tenant has endured a reduction in services without a corresponding reduction in rent. The arbitrator may additionally order that the rental rate may be restored to its former level if the landlord fixes, repairs, or otherwise cures the reduction in services by a date to be determined by the arbitrator.

(6) In order to grant any party the time within which to obtain a stay or judicial review from a court of law, the decision of the arbitrator shall not be final and binding upon the landlord and all affected tenant(s) until thirty (30) days after it has been mailed to the landlord and affected tenant(s). However, where a valid and timely application for correction has been filed pursuant to subsection (7), the arbitrator's decision shall not be final or binding until thirty (30) days after the arbitrator's denial of the application or correction of the award has been mailed to the landlord and affected tenant(s). Any sum of money determined by

the decision of the arbitrator to be due to landlord by tenant or to tenant by landlord shall constitute a debt and, subject to the provisions of Section 10 of this ordinance, may be collected in any manner provided by law for the collection of debts.

(7) Not later than thirty (30) days after the date of the mailing of the decision, the arbitrator, upon written application of a party or on his or her own motion, may correct the decision upon the grounds that it contains a misstatement or omission of a material fact or issue. Application for such correction shall be made not later than ten (10) days after the date of mailing of the decision. Upon receiving such application the Rent Review Officer shall mail a copy of the application to all of the other parties to the arbitration. Any party to the arbitration may make a written objection to such application. The objection shall be made not later than ten (10) days after the mailing of the copy of the application by the Rent Review Officer. Upon receipt the Rent Review Officer shall mail a copy of the objection to all of the other parties to the arbitration. The arbitrator shall either deny the application or correct the award. The denial or correction shall be in writing and shall be distributed by mail to the parties.

SECTION 6. SUBPOENA POWER.

Subpoenas, including subpoenas duces tecum, requiring a person to attend a particular time and place to testify as a witness, may be issued in connection with any dispute pending before a mediator or arbitrator, and shall be issued at the request of the Rent Review Officer, a mediator, arbitrator, or a party. Subpoenas shall be issued and attested by the City Clerk in the name of the City. A subpoena duces tecum shall be issued only upon the filing with the City Clerk of an affidavit showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the proceeding, and stating that the witness has the desired matters or things in his or her possession or under his or her control, and a copy of such affidavit shall be served with the subpoena; provided, however, that in the event a subpoena is issued at the request of a landlord, the Peer Committee has a reasonable time, to be determined by the Officer, but not to exceed seven (7) days, to contact the landlord before a subpoena or subpoena duces tecum is issued. Any subpoena or subpoena duces tecum issued pursuant to the provisions of this ordinance may be served in person or by certified mail, return receipt requested, and must be served at least five (5) days before the hearing for which the attendance is sought. Service by certified mail shall be complete on the date of receipt. Notwithstanding any other provision of this ordinance, any time limits set forth in this ordinance shall be extended for such time as is necessary, but not

longer than five (5) days, if a subpoena has been served and five (5) days have not elapsed since the service.

Any subpoena or subpoena duces tecum issued pursuant to the provisions of this ordinance shall be deemed issued by and in the name of the City Council.

SECTION 7. CONSOLIDATION OF PETITIONS.

As soon as possible after a petition has been filed with respect to rental units which are operated as a single complex, the Rent Review Officer shall, to the extent possible consistent with the time limitations provided herein, consolidate petitions involving ten (10) or fewer affected tenants.

SECTION 8. VACANCY DECONTROL.

The following provisions shall apply upon the vacancy of a rental unit.

(a) Rerenting Following a Voluntary Vacancy. This ordinance does not impose limitations on the amount of initial rent a landlord can charge upon the rerenting of a rental unit that has been voluntarily vacated by the previous tenant. However, all subsequent rent increases shall be subject to the residential rent limitations contained in Section 3 for the remainder of the new tenancy.

A landlord may decontrol a rental unit for purposes of both the initial rent and any subsequent rent increase upon satisfaction of the following conditions:

(1) The landlord has obtained a written certification from the City Building Official prior to the rerenting which states that the rental unit complies with the Housing Code of the City of Hayward, and with respect to any such unit rerented on or after January 1, 1991, that the unit has a solid-core front door or a rated fire door assembly as required, with a deadbolt installed to meet the requirements of the building security ordinance, Chapter 41 of the Building Code of the City of Hayward, and any auxiliary door or window locks that the City Building Official considers necessary or advisable to inhibit access to the unit from such possible points of entry; and

(2) The landlord has made improvements, the value of which is at least $1,000.00 for units with one or less bedrooms, $1,500.00 for units with two bedrooms, and $2,000.00 for units with three or more bedrooms, to the unit

following notification by the previous tenant of his or her intent to voluntarily terminate the tenancy and prior to occupancy by the new tenant. The value of the required improvements shall be adjusted annually on the first of each year based on the Consumer Price Index for Rent or Shelter for the San Francisco-Oakland-San Jose Metropolitan Statistical Area; and

(3) The landlord has filed a written document with the Rent Review Officer within thirty (30) days following the rerenting stating that the unit has been decontrolled pursuant to the provisions of this subsection and has attached thereto copies of the City Building Official's certification and the documents required by subsection (e)(1).

Upon satisfactory completion of the vacancy decontrol procedures, the rental unit shall continue to be subject to the provisions of Sections 18 and 19 of this ordinance but shall not be subject to the remaining provisions of this ordinance, except and only to the extent necessary to determine the applicability of this subsection to the rental unit.

(b) **Rerenting Following a Nonvoluntary Vacancy**. Upon the rerenting of a rental unit which has not been voluntarily vacated, the landlord may raise the rent up to five percent (5%) regardless of the date of the last rent increase, provided that all of the following conditions have been met:

(1) ***The landlord has obtained a written certification from the City Building Official prior to the rerenting which states that the rental unit complies with the Housing Code of the City of Hayward, and with respect to any such unit rerented on or after January 1, 1991, that the unit has a solid-core front door or a rated fire door assembly as required, with a deadbolt installed to meet the requirements of the building security ordinance, Chapter 41 of the Building Code of the City of Hayward, and any auxiliary door or window locks that the City Building Official considers necessary or advisable to inhibit access to the unit from such possible points of entry; and***

(2) ***The landlord has made improvements, the value of which is at least $1,000.00 for units with one or less bedrooms, $1,500.00 for units with two bedrooms, and $2,000.00 for units with three or more bedrooms, adjusted annually as provided in Section 8(a)(2), to the rental unit following the landlord's action to terminate the tenancy of the previous tenant or the previous tenant's notification that he or she intends to vacate the unit nonvoluntarily because of an action by the landlord and prior to occupancy by the new tenant. The value of the required improvements shall be adjusted annually on the first of each***

year based on the Consumer Price Index for Rent or Shelter for the San Francisco-Oakland-San Jose Metropolitan Statistical Area; and

(3) The landlord has filed a written document with the Rent Review Officer within thirty (30) days following the rerenting stating that the anniversary date for the unit has been changed pursuant to the provisions of this subsection and has attached thereto a copy of the City Building Official's certification and a copy of the notice required by subsection (e)(2).

A rent increase imposed pursuant to the provisions of this subsection shall establish a new anniversary date for the purpose of applying the provisions of Section 3 of this ordinance to the rental unit. Except for the establishment of a new anniversary date, all provisions of this ordinance shall apply to a rental unit rerented pursuant to the provisions of this subsection.

(c) **Rerenting Following a Vacancy Where No Improvements Have Been Made.** Upon the rerenting of a rental unit to which the provisions of neither subsection (a) nor (b) of this section apply, the rental unit shall continue to be subject to all remaining provisions of this ordinance.

(d) Rerenting Following Termination or Nonrenewal of Contract with Governmental Agency for Rent Limitation. The rent for a rental unit for which the landlord terminated or failed to renew a contract or recorded agreement with a governmental agency providing for a rent limitation to a qualified tenant shall be the same rate as the rent under the terminated or nonrenewed contract or recorded agreement, for three years following the date of termination or nonrenewal.

This limitation on rental increases shall not apply to any new tenancy of 12 months or longer duration established after January 1, 2000, pursuant to the landlord's contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant, unless the prior vacancy was pursuant to a nonrenewed or cancelled contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant. If the new tenancy meets these requirements, the vacancy shall be treated as a voluntary vacancy.

(e) **Information Required Upon Rerenting.** In addition to providing the new tenant with a copy of this ordinance or a City-prepared summary thereof, as required by Section 4(a), the following information shall be provided by the landlord to a tenant upon the rerenting of rental units governed by subsections (a), (b), and (c) of this section.

(1) Upon the rerenting of a rental unit to which the provisions of subsection (a)

apply, the landlord shall provide the tenant with a document indicating the nature and value of the improvements made to the rental unit; a written statement that the security deposit of the previous tenant, if any, was not used for any purpose other than to compensate the landlord for the previous tenant's default in the payment of rent, repair damages to the rental unit caused by the previous tenant beyond ordinary wear and tear, or clean the rental unit if necessary upon termination of the previous tenancy; ***a declaration by the previous tenant that the unit was voluntarily vacated or a declaration under penalty of perjury by the landlord that the unit was voluntarily vacated and the previous tenant was asked to sign the declaration but is unavailable or has refused to sign; and notice that the tenant is covered by the provisions of Sections l8 and 19 of this ordinance.***

(2) Upon the rerenting of a rental unit to which the provisions of subsection (b) of this section apply, the landlord shall provide the tenant with a document indicating the nature and value of the improvements made to the rental unit; a written statement that the security deposit of the previous tenant, if any, was not used for any purpose other than to compensate the landlord for the previous tenant's default in the payment of rent, repair damages to the rental unit caused by the previous tenant beyond ordinary wear and tear, or clean the rental unit if necessary upon termination of the previous tenancy; and a statement indicating the rent paid by the previous tenant.

(3) Upon the rerenting of a rental unit to which the provisions of subsection (c) of this section apply, the landlord shall provide the tenant with a statement indicating the rent paid by the previous tenant and the date of the last rent increase for the rental unit.

(f) **Definition of "Improvement."** As used in this section, the word improvement shall mean that work done to a rental unit which adds to the value of the property but is not ordinary maintenance or repair and which may, but need not necessarily be, a capital expenditure as that term is defined under the Internal Revenue Code. ***Some of the following may require a building permit regarding which additional information can be obtained from the City's Building Department.***

(1) Examples of work which would ordinarily be an improvement for the purposes of the definition provided herein include but are not limited to the following:

(i) Adding *new* appliances;

(ii) Replacing existing appliances with ***new*** ones;

(iii) Adding or replacing carpets or drapes with ***new*** ones;

(iv) Replacing other floor or wall coverings with ***new*** material or refinishing hardwood floors;

(v) Adding new electrical or plumbing fixtures;

(vi) Installing new kitchen or bathroom cabinets;

(vii) Installing solar hot water unit;

(viii) Installing new or improved security systems;

(ix) Remodeling rooms, walls, closets, or ceilings to improve the living space within a unit or replacing windows;

(x) Completing unscheduled painting of all painted wall surfaces to make the unit rentable.

(2) Examples of work which would normally be ordinary maintenance or repair and not an improvement for the purposes of the definition provided herein include but are not limited to the following:

(i) Cleaning windows, ceilings, floors, and appliances;

(ii) Repairing windows, doors, appliances, or lighting and plumbing fixtures;

(iii) Cleaning carpets;

(iv) Cleaning drapes;

(v) Replacing curtains, curtain rods, or window shades;

(vi) Painting interior walls;

(vii) Replacing or installing screens;

(viii) Replacing slide rods.

(g) **Penalties for Violation.** A landlord violating the provisions of this section shall be liable in a civil action to the tenant for three (3) times the amount of any rent increase wrongfully imposed upon a finding by the court that the landlord has acted willfully or with oppression, fraud, or malice. The arbitrator shall make findings as to the landlord's willfulness, oppression, fraud, or malice. In any civil action filed under the authority of this section, the court shall give the arbitrator's findings the weight to which they are legally entitled. In addition, failure to provide the information required herein shall be a defense in any action brought to recover possession of the rental unit or to collect any increased rent permitted by the provisions of this section.

SECTION 9. STANDARDS OF REVIEW.

In evaluating the rent increase proposed or imposed by the landlord, the following factors may be considered:

(a) Unavoidable increases in maintenance and operating expenses, including the reasonable value of the landlord's labor.

(b) The substantial rehabilitation or the addition of capital improvements, including the reasonable value of the landlord's labor, as long as such rehabilitation or improvement has been completed and is:

(1) Distinguished from ordinary repair or maintenance;

(2) For the primary benefit, use, and enjoyment of the tenants;

(3) Permanently fixed in place or relatively immobile and appropriated to the use of the property;

(4) Not coin-operated nor for which a "use fee" or other charge is imposed on tenants for its use; and

(5) Cost-factored and amortized over the good faith estimate of the remaining useful life of the rehabilitation or improvement.

(c) Increased costs of debt service due to a sale or refinancing of the rental units or the building or property of which the units are a part within twelve (12) months of the increase, in accordance with the following criteria:

(1) The arm's length nature of the transaction.

(2) The frequency of past resale. A single sale of property within a five (5) year period is presumed to be non-speculative. Multiple transactions within such a period should be considered as speculative transactions in the absence of evidence to the contrary including, but not limited to, proof that the sale was the result of a dissolution or probate proceeding.

Where the mediator or arbitrator determines that a transfer is speculative as defined herein, and a rent increase was granted as a result of the preceding transfer, no consideration shall be given to increases in debt service resulting from a real or imputed sales price which exceeds the preceding real or imputed sales price by more than the percentage increase in the Consumer Price Index for all urban consumers for the San Francisco-Oakland Metropolitan Area between the date of the previous purchase and the date of the most recent sale, plus any unrecaptured costs of capital improvements or rehabilitation work made or performed by the seller.

(3) The frequency and purpose of past refinancing. Monies derived from increased debt service costs due to refinancing should only be considered where they were reinvested in the subject rental property in the form of recapture of prior year's operating loss, capital improvements or substantial rehabilitation, unless doing so would deprive the landlord of a fair return on the property.

(4) The loan to value ratio. When it is otherwise appropriate, increased debt service costs should be considered reasonable when in accordance with the following formula:

(i) The debt service costs are attributable to a loan or loans of up to seventy percent (70%) of the value of the property; and

(ii) No more than eighty percent (80%) of such debt service costs are being passed through.

Where the loan to value ratio exceeds seventy percent (70%), a rent increase based on debt service costs may be granted, provided that no increase should be granted which is attributable to the amount by which the loan to value ratio exceeds seventy percent (70%). In determining value of the property the mediator or arbitrator shall use the primary lender's appraisal or separately calculate values using information on comparable sales, a net operating income

capitalization formula or any other valuation method accepted by the real estate industry. In considering value, the mediator or arbitrator shall take into account the existence of this ordinance.

(5) The percent of the debt service being apportioned to each rental unit.

(d) The rental history of the unit or the complex of which it is a part, including:

(1) The presence or absence of past increases;

(2) The frequency of past rent increases; and

(3) The occupancy rate of the complex in comparison to comparable units in the same general area.

(e) The physical condition of the rental unit or complex of which it is a part, including the quantity and quality of maintenance and repairs performed during the preceding twelve (12) months.

(f) Any increase or reduction of housing services since the last rental increase.

(g) Other financial information which the landlord is willing to provide.

(h) Existing market value of rents for units similarly situated.

(i) A fair return on the property prorated among the units of the complex.

SECTION 10. OBLIGATIONS OF THE PARTIES.

(a) Any increase in rent which has occurred since July 1, 1979, and prior to the effective date of this ordinance, which increase is subsequently disallowed, shall be either rebated to the tenant within thirty (30) days after the decision is final or credited against or set off from the next rent due after the effective date of this ordinance and any succeeding months until full credit for the increase has been applied; except that, in the event that the tenancy of the tenant is terminated for any reason prior to full credit to him against rent, the balance of the credit due the tenant shall be paid to him by the landlord within thirty (30) days from the date of the termination of his tenancy.

(b) If a final decision by a mediator or arbitrator finds that a proposed increase or any

portion thereof that was previously inoperative is justified, the tenant shall pay the amount found justified to the landlord within thirty (30) days after the decision is final.

(c) If a final decision by a mediator or arbitrator finds that an increase or any portion thereof is not justified, the landlord shall refund any amount found to be unjustified, but that had been paid, to the tenant within thirty (30) days after the decision becomes final; if such refund is not made within thirty (30) days, the tenant may withhold the amount from the next rent(s) due until the full amount of the refund has been made; except that, in the event that the tenancy of tenant is terminated for any reason prior to full credit to him against rent, the balance of the credit due the tenant shall be paid to him by the landlord within thirty (30) days from the date of the termination of his tenancy.

(d) Any sum of money that under the provisions of this section is the obligation of the landlord or tenant, as the case may be, shall constitute a debt and, subject to the foregoing provisions of this section, may be collected in any manner provided by law for the collection of debts.

SECTION 11. TENANT'S RIGHT OF REFUSAL.

A tenant may refuse to pay any increase in rent which is in violation of this ordinance, provided a petition has been filed and either no final decision has been reached by agreement, mediation, or arbitration or the increase has been determined to violate the provisions of this ordinance. Such refusal to pay shall be a defense in any action brought to recover possession of a rental unit or to collect the rent increase.

SECTION 12. RETALIATORY EVICTIONS; TENANTS' RIGHT TO ORGANIZE.

(a) No landlord may retaliate against a tenant for the tenant's assertion or exercise of rights under this ordinance in any manner, including but not limited to: threatening to bring or bringing an action to recover possession of a rental unit; engaging in any form of harassment that causes a tenant to quit the premises; decreasing housing services; increasing the rent; or imposing or increasing a security deposit or any other charge payable by a tenant.

(b) In an action by or against the tenant, evidence of the assertion or exercise by the tenant of his or her rights under this ordinance or other activity in furtherance of tenants' rights and organizations within six (6) months prior to the alleged act of retaliation shall create a presumption that the landlord's conduct was in retaliation for the tenant's assertion or exercise of rights under this ordinance.

(c) Notwithstanding the provisions of subsections (a) and (b) above, a landlord may recover possession of a rental unit and do any of the acts described in subsection (a), other than harassing the tenant, within the six-month period set forth in subsection (b), if any notice, pleading or statement of issues complies with the provisions of Section 19 of this ordinance.

SECTION 13. SECURITY DEPOSITS.

(a) Landlords shall pay annual interest in accordance with the provisions of this section on all security deposits of more than one year's duration with interest accruing from the first day a tenancy begins, and shall not impose or collect any handling, service, or other charges in connection therewith. The payment shall be prorated on a monthly basis upon termination of any tenancy of more than one year's duration. Otherwise, the payment shall be made on an annual basis beginning upon the first anniversary of the tenancy and may be made by direct payment to the tenant within ten calendar days of each anniversary date or by crediting the same against the next month's rental payment. A landlord violating the provisions of this section shall be liable to the tenant for three times the amount of interest wrongfully uncredited or unpaid and a tenant may bring an action in the appropriate court to collect such penalty.

(b) The interest rate to be paid on security deposits shall be set annually by the Rent Review Officer each November. Said interest rate shall be based upon the Federal Reserve Bank Monthly Survey of Selected Accounts and shall equal the latest September percentage for the average rate paid on personal savings accounts for Bank Insurance Fund (BIF) insured savings banks or any successor or alternate survey the Rent Review Officer determines is comparable to the Federal Reserve Bank Monthly Survey. Landlords and tenants may obtain this rate by contacting the Rent Review Office after November 1st of each year. In cases where the year between anniversary dates of a tenancy spans periods in which more than one interest rate percentage applies, each rate shall be utilized to calculate the interest paid on the security deposit depending upon the number of months or, if less than a full month, days to which each rate applies.

SECTION 14. TERMINATION.

[REPEALED].

SECTION 15. REVIEW BY THE CITY COUNCIL.

[REPEALED].

SECTION 16. SEVERABILITY.

This ordinance shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable and are intended to have independent validity.

To the extent that this ordinance presents an actual and impermissible conflict with state or federal law, the state or federal law will govern.

SECTION 17. NONWAIVERABILITY.

Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this ordinance is waived or modified, is against public policy and void.

SECTION 18. FEES.

The costs of administration of this ordinance shall be reimbursed in full to the General Fund by imposition of a rent stabilization administration fee chargeable against each rental unit subject to this ordinance in the City. The landlord who pays these fees may pass through to the tenant up to 50 percent of those fees assessed against a rental unit, except a rental unit to which the provisions of Section 8(a) are applicable, as a governmental services cost subject to the provisions of Section 3(e) herein. The remaining 50 percent of the fees assessed against a rental unit that is not subject to Section 8(a) shall not be passed on in any way to tenants.

The fees imposed by this section shall be paid annually. The time and manner of payment, delinquency status, and assessment and collection of penalties for delinquent payment of the fees imposed by this section shall be as provided in Article 1 of Chapter 8 of the Hayward Municipal Code. The City Manager and Rent Review Officer shall recommend to the City Council the amount of such fee and time for payment and the City Council shall adopt such fee by resolution.

A landlord failing to pay fees required by this section shall not be entitled to collect any rent increase otherwise authorized by this ordinance from the tenant nor to any increase that might otherwise be awarded by a mediator or arbitrator, and such failure by the landlord shall be a defense in any action brought by the landlord to recover possession of a rental unit or to collect any rent increase from the tenant. A landlord may cure the failure to pay the fees required by this section by paying such fees before initiating an action for possession of a unit

or collecting any rent increase otherwise authorized hereunder.

If the park owner elects to pass on a percentage of the fee, the park owner shall send a notice to the tenant in substantially the following form:

NOTICE TO TENANTS

Pursuant to the provisions of Section 18 of the City of Hayward's Residential Rent Stabilization Ordinance No. 83-023 C.S., as amended, landlords are required to pay an administration fee to the City on an annual basis to defray the costs of administering the ordinance. The fee is charged against each rental unit subject to the ordinance in the City. The ordinance further provides that landlords may collect up to 50 percent of this fee from the rental unit tenants by assessing the fee to the tenants as a governmental services cost pursuant to Section 3(e) of the ordinance.

The rent stabilization fee imposed for _____ reflects costs incurred during the calendar year of _____. The fee for this year is _____ per rental unit. The landlord has paid the full amount of the fee to the City and has decided to exercise the option to collect a portion of the fee from the rental unit tenants. Your 50 percent share of this fee is _____. Please remit the full amount of _____ to _____ by check payable to _____ with your next rent payment.

SECTION 19. EVICTION FOR CAUSE.

(a) **Cause for Eviction.** No landlord shall be entitled to recover possession of a rental unit covered by the terms of this ordinance unless the 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.

(2) The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement.

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

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

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

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

(7) The landlord, after having obtained all necessary permits from the City of Hayward, 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. Where the landlord recovers possession under this subsection, the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work.

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

(9) The landlord seeks in good faith to recover possession for his or her own use or occupancy as his or her principal residence, or for the use and occupancy as a principal residence by the landlord's spouse or domestic partner or by the landlord's or the landlord's spouse's child, parent, brother, sister, grandparents, or grandchildren. For the purposes of this subsection, the term landlord shall be defined as the owner of record holding at least a fifty-one percent (51%) interest in the property and shall not include a lessor, sublessor, or agent of the owner of record. The landlord may not recover possession under this subsection if a comparable unit is already vacant and available in the property.

(10) A landlord or lessor seeks in good faith to recover possession of the rental unit

for his or her occupancy as a principal residence and has the right to recover possession of the unit for his or her occupancy as a principal residence under an existing rental agreement with the current tenants.

(11) The tenant is convicted of using the rental unit for any illegal purpose.

(12) The tenant has used or allowed the use of the rental unit, or any other area owned or controlled by the landlord, for the manufacture, sale, distribution, possession, or use of a controlled substance as defined in state law.

(13) The tenant has continued, after written notice to cease, to violate legal and reasonable written rules and regulations generally applicable to all tenancies within the premises provided that such terms have been accepted in writing by the tenant.

(14) The lawful termination of the tenant's employment by the landlord, where such employment was an express condition of, or consideration for, the tenancy under a written rental agreement, the notice of termination is given as provided in Section 1946 of the California Civil Code.

(15) ***The tenant has threatened, either verbally or in writing, to commit a crime which would result in the death or great bodily harm to a tenant, guest, manager, owner or other person on the premises, for which a report has been filed with the Hayward Police Department.***

(b) **Form of Notice.** A landlord's failure to specify ***either one or more grounds for eviction authorized by state or federal law or good cause as listed above in subsections 1 through 15*** in the notice of termination or the notice to quit and in the complaint for possession shall be a defense of any action for possession of a rental unit covered by the terms of this ordinance.

SECTION 20. PENALTIES AND REMEDIES.

In addition to those penalties and remedies set forth elsewhere in this ordinance, the following penalties and remedies shall apply.

(a) **Receipt of Rent to Which Landlord is Not Entitled.** Any landlord who demands, accepts, receives, or retains any money as rent from a tenant to which the landlord is not entitled under the provisions of this ordinance shall be liable to the tenant for any actual damages, attorneys' fees, and costs incurred by the tenant as a consequence thereof. The

landlord shall also be liable in a civil action for a civil penalty of five hundred dollars ($500.00) or, if greater, three (3) times the amount of money the landlord accepted, received, or retained in violation of the provisions of this ordinance, upon a showing that the landlord has acted willfully or with oppression, fraud, or malice. The arbitrator shall, in his or her decision, make findings as to the landlord's willfulness, oppression, fraud, or malice. In any civil action filed under the authority of this section, the court shall give the arbitrator's findings the weight to which they are legally entitled.

(b) **Failure to Provide Required Notices.** Except as provided hereinafter, any landlord who fails to provide a tenant with any information, documentation, or notice required by the provisions of this ordinance shall be guilty of an infraction. The first conviction of a landlord of any provision of this ordinance requiring giving information, documentation, or notice in a twelve (12) month period shall be punishable by a fine of not more than one hundred dollars ($100.00), the second conviction by a fine of not more than two hundred dollars ($200.00), and the third by a fine of not more than five hundred dollars ($500.00). Any landlord who has been convicted of three (3) or more infractions for violating any provision of this ordinance requiring giving information, documentation, or notice in a twelve (12) month period shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000.00) or by six (6) months imprisonment, or both for each additional such violation.

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