

EXHIBIT A

The Citizens of the City of Pacifica do hereby enact the following Ordinance, which may be referred to as: “*Pacifica Community Preservation, Rent Stabilization, and Renters’ Rights Act.*”

Article 1. - Rent Stabilization and Just Cause for Eviction

Sec. 9-9.101. - Purpose and Findings.

A. The purpose of this Article is to promote neighborhood and community stability, healthy housing, and affordability for renters in Pacifica by controlling excessive rent increases, protecting tenants from arbitrary, discriminatory or retaliatory evictions, and to assure landlords receive a fair and reasonable return on their investment.

B. The City Council finds and declares the following:

1. WHEREAS, a March 2017 report by RealAnswers, a rental market data provider, stated that the inflation-adjusted average monthly asking rent in Pacifica has risen 51 percent from 2010 to 2015, while the U.S. Census Bureau 2011-2015 American Community Survey stated that the inflation-adjusted median household income for renter households in Pacifica has only risen by 2.7 percent during that same period; and

2. WHEREAS, more than half of renter households in Pacifica are classified as “extremely low,” “very low,” or “low” income households, earning less than 80 percent of the Area Median Income (“AMI”) for San Mateo County per data published by the U.S. Department of Housing and Urban Development and U.S. Census Bureau 2011-2015 American Community Survey; and

3. WHEREAS, according to U.S. Census Bureau 2011-2015 American Community Survey, in 2015, 32 percent of all households in Pacifica are renter households; and

4. WHEREAS, data from the U.S. Census Bureau 2011-2015 American Community Survey shows that as of 2015, 33 percent of all renter households in Pacifica have children under 18 years old;

5. WHEREAS, Pacifica’s population has increased by 5.4 percent from 2010 to 2015, while the number of total housing units available in Pacifica only increased by 1.6 percent during that same period; and

6. WHEREAS, Pacifica’s low rental housing vacancy rate decreased to just 0.5 percent in 2015 according to the U.S. Census Bureau 2011-2015 American Community Survey;

7. WHEREAS, since 2013, the City of Pacifica has not issued a building permit to construct any multi-family housing projects of five or more units; and

8. WHEREAS, market conditions suggest that the high demand for rental housing is likely to persist; and

9. WHEREAS, outside of certain mobile home units and newly-converted condominium units, the City of Pacifica currently does not regulate rental amounts, rent increases, or evictions from residential housing; and

10. WHEREAS, no-fault evictees incur sudden and unexpected expenses associated with relocating, including, but not limited to, moving costs, rental housing application fees, and upfront costs associated with securing a new lease, such as the payment of security deposits and several months' advance rent; and

11. WHEREAS, on multiple occasions, members of the community have expressed concerns to the City Council relating to the state of the rental housing market in Pacifica including no-fault evictions, which leave Pacifica residents vulnerable to displacement from the community and homelessness; and

12. WHEREAS, on December 15, 2016, the City's Rent Advisory Task Force convened to discuss housing issues in Pacifica; and

13. WHEREAS, the foregoing housing and economic conditions create a detrimental effect on substantial numbers of renters in Pacifica, and thus constitute a threat to the public health, safety, and welfare.

Sec. 9-9.102. - Definitions.

Unless further defined elsewhere in this Article, the following words or phrases as used in this Article shall have the following meanings:

Annual General Adjustment. The Annual General Adjustment is the percentage by which the Rent for existing tenancies may be increased each year without an order from a Hearing Officer, subject to the limitations of the Article.

Base Rent. The Base Rent is the reference point from which the lawful Rent shall be determined and adjusted in accordance with this Article. For tenancies commencing on or before December 5, 2015, the Base Rent shall be the rent in effect on December 5, 2015. For tenancies commencing after December 5, 2015, the Base Rent shall be the initial rental rate charged upon initial occupancy, provided that amount is not a violation of this Article or any provision of state law.

City Council. The term City Council refers to the City Council of Pacifica.

Commission. Refers to the Pacifica Rent Commission established by this Article.

Exempt Units. Describes specified Rental Units that are fully exempt from the provisions in this Article.

Fair Return Adjustment. An adjustment to the Rent authorized by a Hearing Officer or the Commission pursuant to this Article.

Hearing Officer. A person that conducts an investigation or administrative hearing pursuant to this Article.

Housing Services. Housing Services include, but are not limited to, repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, Utility Charges that are paid by the Landlord, refuse removal, furnishings, telephone, parking, the right to have a specified number of occupants, and any other benefit, privilege or facility connected with the use

or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building in which the Rental Unit is contained.

Landlord. An owner of record, lessor, sublessor, or any other person, entity or non-natural person entitled to receive Rent for the use and occupancy of any Rental Unit, or an agent, representative, predecessor, or successor of any of the foregoing.

Notice to Quit. Refers to a notice specifically required under state law to vacate the Property.

Notice to Terminate a Tenancy. Refers to any notice required under state law or this Article for a Tenant to vacate a Rental Unit.

Petition. Refers to a petition for a Fair Return Adjustment by Landlords, or a petition by a Tenant for adjustment of the Rent to its lawful level, pursuant to this Article.

Property. All Rental Units on a parcel or lot or contiguous parcels or contiguous lots under common ownership.

Relocation Assistance. Refers to financial assistance landlords are required to provide affected Tenant households in accordance with this Article.

Rent. All periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord for Housing Services under a Rental Housing Agreement.

Rental Housing Agreement. An oral, written, or implied agreement between a Landlord and a Tenant for use or occupancy of a Rental Unit and Housing Services.

Rental Housing Fee. Refers to a fee on Landlords pursuant to Section 9-9.104 of this Article.

Rental Unit. Describes a building, structure, or part thereof, or land appurtenances thereto, or any other rental property rented or offered for rent for residential purposes and Housing Services.

Tenant. A Tenant, subtenant, lessee, sublessee, or a person entitled under the terms of a Rental Housing Agreement or this Article to the use or occupancy of a Rental Unit.

Two-Family Dwelling. Refers to a building, or portion thereof, used and designed as a residence for two (2) families living independently of each other and doing their own cooking in such building, including without limitation a duplex.

Upfront Costs. Refers to costs associated with relocating to and securing replacement housing pursuant to an eviction under Section 9-9.105(A)(6)-(9) in this Article. Upfront Costs include, but are not limited to, fees charged by moving companies to pack and relocate Tenants' belongings, rental application fees, credit check fees, security deposits, first and last months' rent, installation fees of equipment for disabled Tenants, and any fees associated with commencing or discontinuing utility services.

Written Notice to Cease. Refers to a written notice provided by a Landlord that gives a Tenant an opportunity to cure an alleged violation or problem, except that a Written Notice to Cease

shall not be required for those grounds for eviction already addressed under state law. Any Written Notice to Cease must:

1. Provide the Tenant a reasonable time to cure alleged violation or problem;
2. Inform the Tenant that the failure to cure the alleged violation or problem may result in the initiation of eviction proceedings;
3. Inform the Tenant of the contact information for the Commission; and
4. Include sufficient details about the alleged violation or problem underlying the Written Notice to Cease.

Sec. 9-9.103. - Exemptions.

Exempt Units. The following Rental Units are exempt from all provisions of this Article:

1. Units in hotels, motels, inns, tourist homes and rooming and boarding houses which are rented primarily to transient guests for a period of fewer than thirty days;
2. Units in a hospital, convent, monastery, extended medical care facility, asylum, non-profit home for the aged, or dormitory owned and operated by an accredited institution of higher education;
3. Units which a government entity owns, operates, or manages, and applicable federal or state law specifically exempt such units from municipal rent stabilization and eviction controls;
4. Single-Family Dwellings, as defined in Section 9-4.237 of Article 2 of Chapter 4 of Title 9 of this Code;
5. Two-Family Dwellings, including but not limited to duplexes;
6. Dwelling units, other than multiple dwelling units as defined in Section 9-4.235 of Article 2 of Chapter 4 of Title 9 of this Code; and
7. Condominiums, as defined in Section 9-4.230 of Article 2 of Chapter 4 of Title 9 of this Code, including but not limited to townhouses;
8. Rental Units with an initial certificate of occupancy dated on or after February 1, 1995, pursuant to the Costa-Hawkins Rental Housing Act (Cal. Civ. Code § 1954.52), or any successor thereto; and
9. Accessory Dwelling Units, as defined in Government Code section 65852.2.

Sec. 9-9.104. - Pacifica Rent Commission.

A. Composition. There shall be an appointed Pacifica Rent Commission comprised of City residents as set forth in this Section. The Commission shall consist of seven (7) members appointed by the City Council. Membership of the Commission shall consist of: two (2) members that own or manage rental property or serve as realtors or developers; two (2)

members that are Tenants as defined under this Article; and three (3) residents of the community that neither own a Rental Unit subject to this Article, nor is a Tenant as defined under this Article.

1. Eligibility and Appointment. Members shall be appointed by the City Council at a public meeting. Applicants for membership on the Commission shall submit an application to the City Council. The application shall include a statement under penalty of perjury of the applicant's interest and dealings in real property, including but not limited to, ownership, trusteeship, sale, or management, and investment in and association with partnerships, corporations, joint ventures, syndicates engaged in ownership, sale, or management of real property during the three years immediately prior to the applicant's application. This documentation shall be made available to the public.

2. Term of Office. Commission members shall serve terms of four (4) consecutive years and may be reappointed for a total of two (2) full terms. Commission members' terms shall be staggered. Therefore, initial appointments shall consist of two (2) members with two-year terms, two (2) members with three-year terms, and three (3) members with four-year terms.

3. Vacancies. If a vacancy occurs on the Commission, a person qualified to fill such vacancy shall be appointed by the City Council in accordance with this Article.

B. Powers and Duties. The Commission shall have the following powers and duties:

1. Set Rents at fair and equitable levels to achieve the purposes of this Article. Notwithstanding any other provision of this Article, the Commission shall have the authority to adopt regulations authorizing Rent increases and/or adjustments required by state or federal law.

2. Recommend rules and regulations for administration and enforcement of this Article.

3. The City Manager shall authorize appropriate staff to assist the Commission in administering and enforcing this Article.

4. Determine and publicize the Annual General Adjustment pursuant to this Article.

5. Conduct hearings on Petitions pursuant to this Article.

6. Adjudicate Petitions pursuant to this Article and issue decisions with orders for appropriate relief.

7. Administer the withdrawal process for the removal of Rental Units from the rental housing market pursuant to Section 9-9.105 of this Article.

8. Conduct hearings and obtain information to further the purposes of this Article.

9. Report periodically to the City Council. Reports shall include: a summary of the numbers of termination of tenancy notices served pursuant to Section 9-9.105 of this Article, including the bases upon which they were served, and a summary of any and all Petitions

submitted to and/ or decided by a Hearing Officer and/or the Commission, including the bases on which the Petitions were submitted and the determinations of Petitions.

10. Publicize through reasonable and appropriate means the provisions of this Article, including without limitation the rights and responsibilities of Landlords and Tenants.

11. Recommend to the City Council the level of fees required to finance its reasonable and necessary expenses, which shall be subject to final City Council approval.

12. Any other duties necessary to administer and enforce this Article.

C. Rules and Regulations. The City Council shall issue and the Commission shall follow such rules and regulations as will further the purpose of this Article.

D. Meetings. The Commission shall hold regularly scheduled meetings as necessary to ensure the performance of its duties under this Article. All regular and special meetings shall be called and conducted in accordance with state law.

E. Quorum. Four (4) members shall constitute a quorum for the Commission.

F. Voting. The affirmative vote of four (4) members of the Commission is required for a decision, including on all motions, regulations, and orders of the Commission.

G. Financing. The City shall finance the reasonable and necessary expenses, including all costs incurred in the implementing this Article, by charging a monthly Rental Housing Fee ("Fee"), established by action of the City Council, to Landlords of Rental Units that are not fully exempt from the provisions of this Article. The initial fee shall be Nineteen dollars (\$19.00) per month per Rental Unit, and shall be adjusted as necessary by the City Council to ensure full funding of this Article. The amount of the Fee, and the manner of collection, shall be determined by the City Council in accordance with all applicable law following a recommendation by the Commission. The Fee may be passed on to Tenants. The City Council has advanced funds and may decide to advance additional funds to ensure the effective implementation of this Article which funds shall be reimbursed to the City's general fund upon the receipt of funds through collection of the Fee.

H. Conforming Regulations. If any portion of this Article is declared invalid or unenforceable by decision of a court of competent jurisdiction or rendered invalid or unenforceable by state or federal legislation, the City Council shall have the authority to enact replacement regulations consistent with the intent and purpose of the invalidated or unenforceable provisions of this Article to the extent necessary to resolve any inconsistency. The subject matter of such replacement regulations shall be limited to the matters addressed in this Article.

I. Designation of Replacement Commission. In the event the establishment of the Commission under this Section is adjudged to be invalid for any reason by a court of competent jurisdiction, the City Council shall designate one or more City departments, agencies, committees, or commissions to perform the duties of the Commission as prescribed by this Article.

J. Conflicts of Interest. Commission members shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the

basis of the Commission member's status as a Landlord, realtor, developer, or Tenant. However, a Commission member shall be disqualified from ruling on a Petition if the Commission member is either the Landlord of the Property or a Tenant residing in the Property that is involved in the Petition. The provisions of the Political Reform Act, Government Code Section 87100, *et seq.* shall apply.

Sec. 9-9.105. - Just Cause for Eviction Protections.

A. No landlord shall take action to terminate any lawful tenancy evidenced by a Rental Housing Agreement, including but not limited to, making a demand for possession of a Rental Unit, threatening to terminate a tenancy verbally or in writing, serving any Notice to Terminate a Tenancy, or bringing any action to recover possession, or be granted recovery of possession of a Rental Unit unless at least one of the following conditions exists:

1. Failure to Pay Rent. The Tenant has failed to pay the Rent to which the Landlord is legally entitled under the Rental Housing Agreement, this Article, or any other state or local law.

2. Breach of Lease. The Tenant has continued, after the Landlord has served the Tenant with Written Notice to Cease, to substantially violate any of the material terms of the Rental Housing 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.

a) Notwithstanding any contrary provision in this Article, a Landlord shall not take any action to terminate a tenancy based on a Tenant's sublease of the Rental Unit if the following requirements are met:

- 1) The Rental Unit continues to constitute the Tenant's primary residence;
- 2) The sublessee replaces one or more departed Tenants under the Rental Housing Agreement on a one-for-one basis; and
- 3) The Landlord has unreasonably withheld the right to sublease following written request by the Tenant. If the Landlord fails to respond to the Tenant in writing within fourteen (14) days of receipt of the Tenant's written request, the Tenant's request shall be deemed approved by the Landlord. A Landlord's reasonable refusal of the Tenant's written request may not be based on the proposed additional person's lack of creditworthiness if the proposed occupant is not legally obligated to pay some or all of the Rent to the Landlord. A Landlord's reasonable refusal of the Tenant's written request may be based on, but is not limited to, the grounds that the Tenant has replaced one or more departed Tenants with short-term sublessors, or the grounds that the total number of occupants in a Rental Unit exceeds the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by Health & Safety Code Section 17922.

b) Notwithstanding any contrary provision of this Section, a Landlord shall not take any action to terminate a tenancy as a result of the addition to the Rental Unit of a Tenant's family member, such as a child, step-child, foster child,

ward, parent, grandchild, grandparent, brother, sister, or spouse or partner, so long as the number of occupants does not exceed the maximum number of occupants specified in the Rental Housing Agreement, or as determined under Section 503(b) of the Uniform Housing Code as incorporated by California Health & Safety Code 17922, whichever is less.

3. Nuisance. The Tenant has continued to commit or expressly permit a nuisance in the Rental Unit.

4. Criminal Activity. The Tenant's conduct is so disorderly as to destroy the peace, quiet, comfort, or safety of the Landlord or other tenants at the Property. Such disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the Landlord or other tenants at the Property.

5. Failure to Give Access. The Tenant has continued to refuse, after the Landlord has served the Tenant with a Written Notice to Cease, to grant the Landlord reasonable access to the Rental Unit as required by state or local law.

6. Necessary and Substantial Repairs Requiring Temporary Vacancy. The Landlord, after having obtained any necessary permits from the City, and having provided written notice to the Tenant pursuant to state law, seeks to undertake substantial repairs that are necessary to bring the Rental Unit into compliance with applicable codes and laws affecting the health and safety of tenants of the building, provided that:

- a) The repairs necessitate that the Tenant vacate the Rental Unit because the work will render the rental unit uninhabitable for a period of not less than (30) days; and
- b) The Landlord gives advance notice to the Tenant of the Tenant's right of return to reoccupy the Rental Unit upon completion of the repairs at the same Rent charged to the Tenant before the Tenant temporarily vacated the Rental Unit, or Tenant's right of first refusal to any comparable vacant Rental Unit owned by the Landlord at the same Rent, if such comparable unit exists. In the event that the Tenant accepts an offer to move to a comparable vacant Rental Unit at the same Rent, the Tenant is not eligible for any Relocation Assistance pursuant to this Article.
- c) In the event that the Landlord files a Petition for a Fair Return Adjustment within six (6) months following the completion of the repairs, the Tenant shall be party to such proceedings 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 reoccupy the premises.

7. Owner Move-In. The Landlord seeks, after providing written notice to the Tenant pursuant to state law, to recover possession of the Rental Unit in good faith for use and occupancy as a primary residence by the Landlord, or the Landlord's relative, such as a child, foster child, step-child, ward, parent, grandchild, grandparent, brother, sister, or spouse or partner.

- a) This provision may be invoked only if the Landlord seeking to recover possession of the Rental Unit is a natural person and has at least a fifty (50) percent recorded ownership interest in the Property.
- b) No eviction may take place under this provision if the same Landlord or enumerated relative already occupies a unit on the Property, or a vacancy already exists on the Property. A Landlord may request the Commission for an exception to this prohibition if the Landlord or enumerated relative is disabled pursuant to Government Code Section 12955.3.
- c) Any Notice to Terminate a Tenancy pursuant to this provision shall contain the name, address, and relationship to the Landlord of the person intended to occupy the Rental Unit.
- d) The Landlord or enumerated relative must intend in good faith, to move into the Rental Unit within sixty (60) days after the Tenant vacates the unit, and occupy the Rental Unit as a primary residence for at least thirty-six (36) consecutive months. The City Council shall adopt regulations governing the determination of good faith.
- e) If the Landlord or enumerated relative specified on the notice terminating the tenancy fails to occupy the Rental Unit within sixty (60) days after the Tenant vacates, the Landlord shall:
 - 1) Offer the Rental Unit to the Tenant who vacated it at the same Rent in effect when the Tenant vacated; and
 - 2) If such offer is accepted, pay Tenant's Upfront Costs incurred to move back into the Rental Unit.
- f) A Landlord may not evict a Tenant under this provision if the Tenant:
 - 1) Has resided in the Rental Unit for at least five (5) years;
 - 2) The Tenant is at least sixty-two (62) years old, or is disabled pursuant to Government Code Section 12955.3, or is certified as being terminally ill by the Tenant's treating physician; and
 - 3) Notwithstanding the above, a Landlord may evict a Tenant who qualifies for the exemption herein if the Landlord or enumerated relative who will occupy the Rental Unit also meets the criteria for this exemption and no other units are available.

8. Withdrawal of the Unit Permanently from the Rental Market. The Landlord seeks in good faith to recover possession to withdraw all Rental Units of an entire Property from the rental housing market.

- a) This provision may be invoked only if the Landlord has first filed the requisite documents with the Commission initiating the procedure for withdrawing Rental Units from rent or lease under Government Code Section 7060 *et seq.*, and has complied with all regulations passed by the City Council.
- b) Tenants affected by this provision shall be entitled to a minimum of 120-day notice, or a notice of not less than one (1) year in the case of Tenants defined as seniors or disabled under Government Code Section 12955.3. Notice

times may be increased by regulations if state law allows for additional time.

9. Demolition. The Landlord, having obtained all necessary permits from the City, and having provided written notice to the Tenant pursuant to state law, seeks in good faith to recover possession of the Rental Unit to remove the Rental Unit permanently from the rental housing market through demolition.

B. A Landlord seeking to recover possession under Subsections (A)(6)-(9) herein shall provide Relocation Assistance to affected Tenant households whose household income does not exceed one-hundred-and-twenty (120) percent of the median household income for San Mateo County as adjusted for household size according to the United States Department of Housing and Urban Development. The City Council shall issue regulations to effectuate this provision that include, but are not limited to, procedures for establishing the amount of Relocation Assistance applicable to an affected Tenant's household, and the reasonably timely payment of such Relocation Assistance.

1. The amount of Relocation Assistance required shall be a minimum amount that is limited to reasonable Upfront Costs associated with securing replacement housing. To the extent that Upfront Costs may be determined with reasonable certainty before the Tenant incurs any such expenses ("Determinable Upfront Costs"), the Landlord shall provide the Determinable Upfront Costs to the Tenant immediately after the Tenant provides evidence of such costs to the Landlord.

2. The Landlord shall notify the affected Tenants of their rights under this provision, if any, at the time of service of the Notice to Quit.

C. All Tenants whose tenancy is terminated based upon a basis enumerated in Subsections (A)(6)-(9) herein shall have the first right of return to the Rental Unit if that Rental Unit is returned to market by the Landlord or successor Landlord. The Tenant's first right of return is valid for a period of not less than five (5) years from the date that the Rental Unit is returned to the market. Rent for the Rental Unit shall be the Rent lawfully paid by the Tenant at the time the Landlord gave notice of termination.

D. No Landlord shall take action to terminate a tenancy or otherwise recover possession of a Rental Unit in retaliation for a Tenant contacting the Commission, or for the reporting violations of this Article, or for exercising rights granted under this Article.

E. Any notice purporting to terminate a tenancy on any of the bases specified in this Article must state with specificity the basis on which the Landlord seeks to terminate the tenancy.

F. In any action brought to recover possession of a Rental Unit, the Landlord shall allege compliance with this Article.

G. The Landlord shall file with the Commission a copy of any notice terminating tenancy within three (3) days after serving the notice on the Tenant.

H. A Landlord's failure to comply with any requirements of this Article, including without limitation, of the failure to serve any required notices, is a complete affirmative defense in an unlawful detainer or other action brought by the Landlord to recover possession of the Rental Unit.

Sec. 9-9.106. - Rent Stabilization.

- A. Upon the effective date of this Article, no Landlord shall charge rent in an amount that exceeds the sum of the Base Rent plus any lawful Rent increases actually implemented after December 5, 2015 and prior to the effective date of this Article unless those Rent increases are implemented pursuant to this Article.
- B. No Landlord shall increase Rent except as authorized by this Article. Rent increases shall be limited to those authorized by Sections 9-9.107 and 9-9.108.
- C. No Landlord shall increase a security or other deposit originally required from a Tenant as a condition of occupancy of a Rental Unit.
- D. To the extent required by state law, a Landlord may set the initial Rent for a new tenancy at the market rate. After a Landlord sets an initial Rent, the Landlord shall only increase the Rent in accordance with this Article. The City Council may issue regulations to govern the restriction on the initial Rent for new a tenancy if such restrictions are permitted by state law.

Sec. 9-9.107. - Rent Increases Pursuant to Annual General Adjustment.

- A. The Annual General Adjustment is the percentage by which the Rent for existing tenancies that are not otherwise exempted from this Article may be increased each year, subject to the limitations of this Article.
 - 1. The Annual General Adjustment shall be equal to one hundred (100) percent of the percentage increase in the Consumer Price Index (All Urban Consumers, San Francisco-Oakland-San Jose region, or any successor designation of that index that may be adopted by the U.S. Bureau of Labor Statistics) as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending as of March of the current year. The Annual General Adjustment shall be rounded to the nearest one-tenth percent.
 - 2. Notwithstanding Subparagraph 1 of this Section, in no event shall the Annual General Adjustment be less than two (2) percent or more than five (5) percent.
 - 3. No more than one Rent increase per twelve-month period may be imposed on a Tenant.
 - 4. The overall Rent increase in any twelve-month period shall not exceed ten (10) percent of the Rent actually charged to the Tenant. Notwithstanding the foregoing, the overall Rent increase in any twelve-month period may exceed ten (10) percent of the Rent actually charged to the Tenant only if that Rent increase is pursuant to a decision of a Hearing Officer or the Commission as a result of a Landlord Petition pursuant to Section 9-9.108 of this Article.
- B. The Commission shall announce the amount of the Annual General Adjustment no later than June 30 of each year, which shall be effective as of September 1 of that year. Accordingly, the first Rent increase that a Landlord may impose pursuant to this Article shall not take effect prior to September 1.
- C. Allowable Rent increases pursuant to the Annual General Adjustment shall become effective only after the Landlord provides written notice to the Tenant in the manner prescribed by law, with at least thirty (30) days' advance notice.

D. A Landlord who refrains from imposing a Rent increase or any portion thereof pursuant to an Annual General Adjustment may accumulate up to three Annual General Adjustment increases and impose the unimplemented amount in subsequent years. The ability to accumulate and impose unimplemented Rent increases shall not carry over to a successor Landlord in the event of a change in ownership of the Rental Unit. Any such subsequent increase shall be subject to the limitations of this Article.

E. No Landlord shall increase Rent pursuant to the Annual General Adjustment if the Landlord:

1. Has failed to comply with any provision of this Article; or
2. Has failed to comply with any regulations issued by the City Council to assist with implementation of this Article; or
3. Has failed to substantially comply with any applicable State or local housing, health or safety law, which renders the Rental Unit unsafe for habitation.

Sec. 9-9.108. – Rent Increases Pursuant to Fair Return Adjustments.

A. A Landlord may file a Petition with the Commission seeking an upward adjustment of the Rent for any given tenancy in accordance with the standards set forth in this Section, and using the procedures set forth in Section 9-9.109 herein and any applicable regulations. A Petition shall be on a form provided by the Commission and, if made by the Landlord, shall include a declaration by the Landlord that the Rental Unit complies with the requirements of this Article.

B. To effectuate the purposes of this Article and the requirements of law, a Landlord may file a Petition for an upward adjustment of the Rent to ensure a fair and reasonable rate of return. There is a rebuttable presumption that maintenance of net operating income for the calendar year of 2015, as adjusted by inflation over time, provides a Landlord with a just and reasonable rate of return on property. It is the intent of this Article that individual upward adjustments in Rent be granted only when the Landlord demonstrates that such adjustments are necessary to provide the Landlord with a fair rate of return. The City Council shall issue regulations to further govern Petitions filed pursuant to this Section in accordance with the law and the purposes of this Article.

C. No upward adjustment of Rent shall be authorized by a Hearing Officer or the Commission under this Section if the Landlord has failed to comply with any provisions of this Article or orders or regulations issued, or has failed to maintain the Rental Unit in compliance with any applicable State or local housing, health or safety law which renders the Rental Unit unsafe for habitation.

D. In making an upward adjustment to the Rent based upon a Landlord's Petition to ensure a fair rate of return, the Hearing Officer or Commission shall approve an adjustment in accordance with the following criteria:

1. Maintenance of Net Operating Income. Net operating income equals gross income minus operating expenses.
2. Gross income equals the following:

- a) Gross rents; plus
 - b) Interest from security or other deposits, except to the extent that said interest is payable to the Tenant; plus
 - c) Income from services or parking; plus
 - d) All other income or consideration received or receivable in connection with the use or occupancy of Rental Units;
 - e) For purposes of calculating gross income, the Hearing Officer may take into account factors necessary to assure that the Landlord receives a fair and reasonable return on their investment.
3. Operating expenses includes the following expenses:
- a) Real property taxes;
 - b) Unsecured property taxes;
 - c) Utility costs that are not reimbursed by tenants; plus
 - d) Management expenses, include but are not limited to, necessary and reasonable advertising, accounting, insurance, and allowable necessary and routine legal expenses;
 - e) Repair and maintenance expenses;
 - f) Owner performed labor, which shall be counted at reasonable rates;
 - g) License and registration fees required by law that are not reimbursed by the Tenant;
 - h) Capital improvements, repairs, and maintenance expenses subject to the condition that said expenses be amortized in accordance with regulations, except to the extent such costs are compensated by insurance proceeds.
4. The following are excluded from operating expenses:
- a) Avoidable and unnecessary increases in expenses;
 - b) Penalties, fees, or interest assessed or awarded for violation of this or any other law with respect to the Rental Unit;
 - c) Depreciation of the property;
 - d) Any expense for which the Landlord has been reimbursed by any security deposit, insurance settlement, judgment for damages, settlement, or any other method;
 - e) Mortgage interest or principal; and
 - f) Income taxes.

Sec. 9-9.109. – Lawful Rent Adjustment Procedures.

A. **Petition for Excess Rent.** If a Landlord demands or retains rent in excess of the lawful Rent pursuant to this Article, a Tenant may file a Petition with the Commission for an adjustment of the Rent to its lawful level, and the Commission may order the repayment of any excess rent.

B. **Petition for Downward Adjustment Due to Failure to Maintain Habitable Premises.** A Landlord's failure to maintain a Rental Unit in compliance with governing health and safety and building codes, including but not limited to Cal. Civil Code sections 1941.1 *et seq.* and Health and Safety Code sections 17920.3 and 17920.10, shall be deemed an increase in Rent. A Tenant may file a Petition with the Commission to adjust the Rent downward based on a loss in rental value attributable to the Landlord's failure to maintain the Rental Unit in habitable condition.

1. A Tenant Petition filed pursuant to this Article must specify the conditions alleged to constitute the failure to maintain the Rental Unit in habitable condition and demonstrate that the Landlord was provided with reasonable notice and opportunity to correct the conditions that form the basis for the Petition.

C. Petition for Downward Adjustment Due To Decrease in Housing Services or Maintenance. A decrease in Housing Services, maintenance, or deterioration of the Rental Unit after a reasonable time to correct or repair, beyond ordinary wear and tear, without a corresponding reduction in Rent, is considered an increase in Rent. A Tenant may file a Petition to adjust the Rent downward based on a loss in rental value attributable to a decrease in Housing Services or maintenance or deterioration of the Rental Unit.

1. A Tenant Petition filed pursuant to this Article must specify the conditions alleged to constitute the failure to maintain the Rental Unit in habitable condition and demonstrate that the Landlord was provided with reasonable notice and opportunity to correct the conditions that form the basis for the Petition.

D. If a Tenant files a Petition, the procedures detailed in Section 9-9.110 shall apply.

Sec. 9-9.110. – Fair Return and Lawful Rent Adjustment Procedures.

A. The Commission shall promulgate regulations regarding procedures for all Petitions filed under this Article pursuant to this Section.

1. Hearing officer. A Hearing Officer shall conduct a hearing to act upon the Petition, and shall have the power to administer oaths and affirmations, and to render a final decision on the merits of the Petition, subject to the provisions of this Article.

2. Notice. The City 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 provide a copy thereof.

3. Time of Hearing. Each party to a Petition shall receive sufficient advance notice of the bases, theories, and relevant documents to be presented by the other parties, and of the time, date, and place of any hearing regarding the Petition.

4. Developing the Record. The Hearing Officer may require either party to a Petition to provide any books, records, documents, or papers deemed pertinent. If the Hearing Officer finds good cause to believe that a building or other inspection would assist in resolving the issues raised by the Petition, the Hearing Officer may conduct an inspection and/or request the City to conduct an inspection. A party may request the Hearing Officer 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.

5. Open Hearings. All hearings conducted pursuant to this Section shall be open to the public.

6. Right of Assistance. All parties to a hearing conducted pursuant to this Section may have assistance in presenting evidence.

7. Hearing Record. The Commission shall make available for inspection and copying any official record that 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 reasonable cost of copying. All hearings shall be audio or video recorded as ordered by the Hearing Officer, and any party to the Petition may receive a copy of the recording upon payment of a reasonable cost.

8. Quantum of Proof. No Petition shall be granted unless supported by the preponderance of the evidence submitted prior to and at the hearing.

9. Notice of Decision. 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 proceeding shall also be notified of their right to appeal to the Commission and/or the availability of judicial review.

10. Consolidation. Whether submitted by a Landlord or Tenant, all Petitions pertaining to Rental Units at the same Property may be consolidated for hearing upon a showing of good cause.

11. Appeal. Any person aggrieved by the decision of the Hearing Officer may appeal to the Commission for review. The procedures to be followed when appealing a decision of the Hearing officer to the Commission shall be set forth in regulations adopted by the City Council. On appeal, the Commission shall affirm, reverse, or modify the decision of the Hearing Officer. The Commission may conduct a new (de novo) hearing or may act on the basis of the record before the hearing examiner without permitting new evidence.

12. Finality of Decision. Notwithstanding any other provision of the Code, the decision of the Hearing Officer shall be the final decision of the Commission, unless an aggrieved party has timely sought an appeal to the Commission. The decision of the Commission shall be final unless an aggrieved party has timely sought judicial review pursuant to law.

13. Time for Decision. A final decision on any Petition shall be made within a reasonable time. Decisions decreasing Rent shall remain in effect until the Landlord has corrected the defect warranting the decrease. The Commission shall, through adopted regulations, establish procedures for making prompt compliance determinations.

14. Right to Fair Return Guaranteed. No provision of this Article shall be applied so as to prohibit the Commission from granting a Fair Return Adjustment that is demonstrated by the Landlord to be necessary to provide the Landlord with a fair rate of return.

B. All administrative costs incurred by the City in processing a Petition under this Article shall be paid by the Landlord and the City Council shall include in its regulations all necessary procedures to assure that all costs incurred related to a Fair Return Adjustment are collected.

Sec. 9-9.111. – Judicial Review.

A Landlord or Tenant aggrieved by any action or decision of the Commission may seek judicial review pursuant to state law, this Article, and all applicable regulations. No action or decision by the Commission shall go into effect until any statutory time period for such review has expired.

Sec. 9-9.112. – Non-Waivability.

Any provision of a Rental Housing Agreement, whether oral or written, which purports to waive any provision of this Article established for the benefit of the Tenant shall be deemed to be against public policy and shall be void.

Sec. 9-9.113. – Remedies.

A. In addition to any other remedies provided by law, Landlords and Tenants covered by this Article shall have the following remedies for violations of this Article.

1. Landlord’s Demand for or Retention of Excessive Rent. When a Landlord demands, accepts, receives, or retains any payment or payments in excess of the lawful Rent pursuant to this Article and the regulations promulgated hereunder, including violations of the provisions ensuring compliance with habitability standards and maintenance of Housing Services, the Tenant may file a Petition or file a civil suit against the Landlord. A Landlord who demands, accepts, receives, or retains any payment of Rent in excess of the lawful Rent shall be liable to the Tenant in the amount by which the payment or payments have exceeded the lawful Rent. In such a case, the Rent shall be adjusted to reflect the lawful Rent pursuant to this Article and its implementing regulations.

2. Civil Remedies. A Tenant may bring a civil suit in the courts of the state alleging that a Landlord has violated any of the provisions of this Article or the regulations promulgated hereunder including that the Landlord has demanded, accepted, received, or retained a payment or payments in excess of the lawful Rent. In a civil suit, a Landlord found to violate this Article shall be liable to the Tenant for all actual damages, including but not limited to the damages described in this Section. A prevailing tenant in a civil action brought to enforce this Article shall be awarded reasonable attorneys’ fees and costs as determined by the court. Additionally, upon a showing that the Landlord has acted willfully or with oppression, fraud, or malice, the Tenant shall be awarded treble damages. No administrative remedy need be exhausted prior to filing suit pursuant to this Section.

3. Additional Relief for Landlord’s Violation of Eviction Rules. If it is shown that the event which the Landlord claims as grounds to recover possession under Section 9-9.105 is not initiated within a reasonable time after the Tenant vacates the Rental Unit, or it is shown that the Landlord’s claim was false or in bad faith, the Tenant shall be entitled to regain possession of the Rental Unit at the same Rent that was lawfully in effect when the Tenant vacated, in addition to the relief described in this Section.

4. Defense to Action Recover Possession. A Landlord’s failure to comply with any of the provisions of this Article or regulations shall serve as a complete affirmative defense in an unlawful detainer or other action brought by the Landlord to recover possession of the Rental Unit. Any and all violations of this Article by the Landlord shall constitute such an affirmative defense, including but not limited to, the demand or retention of payment in excess of the lawful Rent, failure to serve any of the notices required pursuant to this Article on the Tenant or the Commission, failure to remit payment of fees collected in accordance with Section 9-9.104, and a decrease in Housing Services without a corresponding reduction in Rent..

5. The City, Tenants, and Landlords may seek relief from the appropriate court in the jurisdiction where the affected Rental Unit is located to enforce any provision of this Article

or its implementing regulations or to restrain or enjoin any violation of the Article and of the rules, regulations, orders, and decisions of the City.

B. City Enforcement Action. If the Tenant fails to bring a civil or administrative action to enforce the Tenant's rights under this Article within a reasonable time after the date of the violation, the City Council may bring such an action or settle the claim on the Tenant's behalf. If the City Council brings such an action, the Tenant shall be provided the right to opt in or out of the action. In the case of an opt-in, the Tenant on whose behalf the City Council acted is barred from bringing a separate action against the Landlord in regard to the same violation, and the City shall be entitled to recuperate the costs it incurred from any monetary recovery from the Landlord, with the remainder to go to the Tenant against whom the violation has been committed. In the case of an opt-out, the Tenant shall retain all rights relating to his or her right to private action. The City Council may take other such enforcement action as necessary to ensure compliance with this Article.

C. Remedies Not Exclusive. The remedies available in this Article are not exclusive and may be used cumulatively with any other remedies available in this Article or at law.

D. Jurisdiction. The appropriate court in the jurisdiction which the Rental Unit is located shall have jurisdiction over all actions brought under this Article.

Sec. 9-9.114. – Partial Invalidity.

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

Sec. 9-9.115. – Decontrol.

Using data from the American Community Survey for the preceding year, if the average annual vacancy rate exceeds seven (7) percent, the Commission is empowered, at its discretion and in order to achieve the objectives of this Article, to suspend the provisions of this Article. In determining the vacancy rate, the Commission shall consider all available data and shall conduct its own survey. If the Commission finds that the average annual vacancy rate has thereafter fallen below seven (7) percent, the provisions of this Article shall be reimposed.

Sec. 9-9.116. – Environmental Determination.

The City Council finds that the adoption and implementation of this Article are exempt from the provisions of the California Environmental Quality Act under section 15061(b)(3) in that the City Council finds there is no possibility that the implementation of this Article may have significant effects on the environment.

Sec. 9-9.117. – Supersedes.

In the event any other ballot initiative addressing in whole or in part the same subject matter as this Article is approved by a majority of the voters voting thereon at the same election, the following provisions shall apply:

A. If this Article receives a greater number of affirmative votes than any conflicting initiative, including one that would provide that property owners have the right to set the price at which they rent residential property, then the provisions of this Article shall supersede all conflicting provisions of the initiative with fewer affirmative votes.

B. If this Article receives fewer affirmative votes than another initiative addressing the same subject matter, all provisions of this Article which are not directly contradicted by the initiative receiving a greater number of affirmative votes will apply to the extent permitted by law.

Sec. 9-9.118 – Effective Date.

This Ordinance shall become effective on January 1, 2018, provided it is approved by a majority of the voters at a special election to be held on November 7, 2017. The Mayor and City Clerk are hereby authorized to execute this Article to give evidence of its adoption by the voters.