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 ASSOCIATION

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **COUNTY OF CONTRA COSTA**

12 CALIFORNIA APARTMENT)
 ASSOCIATION, a California corporation,)
 13)
 Plaintiff)
 14)
 v.)
 15)
 CITY OF RICHMOND, and DOES 1)
 16 through 50, inclusive,)
 Defendants.)
 17)
 18)
 19)
 20)
 21)
 22)
 23)

Case No.)
VERIFIED COMPLAINT FOR
DECLARATORY RELIEF, INJUNCTIVE
RELIEF AND ATTORNEYS' FEES FOR:
 (1) VIOLATIONS OF THE TAKINGS)
 CLAUSES OF THE UNITED)
 STATES AND CALIFORNIA)
 CONSTITUTIONS;
 (2) VIOLATIONS OF THE DUE)
 PROCESS CLAUSES OF THE)
 UNITED STATES AND)
 CALIFORNIA CONSTITUTIONS;
 (3) VIOLATIONS OF THE EQUAL)
 PROTECTION CLAUSES OF THE)
 UNITED STATES AND)
 CALIFORNIA CONSTITUTIONS;
 (4) UNCONSTITUTIONALLY)
 VAGUE, AMBIGUOUS AND)
 OVERBROAD TERMS;
 (5) UNCONSTITUTIONALLY)
 EXERCISING JUDICIAL)
 POWERS;
 (6) STATE LAW PREEMPTION;
 (7) VIOLATIONS OF CALIFORNIA'S)
 FAIR EMPLOYMENT AND)
 HOUSING ACT; and
 (8) VIOLATIONS OF THE)
 CALIFORNIA CONSTITUTION'S)
 RIGHT TO PRIVACY AND)
 CALIFORNIA'S CIVIL CODE)
 SECTIONS 1947.7 AND 1798 *ET*
SEO.

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1 Comes now Plaintiff CALIFORNIA APARTMENT ASSOCIATION and complains as
2 follows:

3 **INTRODUCTION**

4 1. Plaintiff CALIFORNIA APARTMENT ASSOCIATION (“CAA”) challenges the
5 validity of the rent control ballot measure passed by voters in Defendant CITY OF RICHMOND
6 on November 8, 2016, enacting the “Richmond Fair Rent, Just Cause for Eviction and
7 Homeowner Protection Ordinance” (hereinafter referred to as “Measure L” or “RFRO”), which
8 imposes rent control and eviction control on certain owners of real property within the City of
9 Richmond.

10 2. As set forth herein, CAA contends Measure L is invalid because it (a) results in
11 government takings without due process of law in violation of the United States and California
12 Constitutions; (b) violates the Equal Protection Clauses of the United States and California
13 Constitutions; (c) is unconstitutionally vague, ambiguous and overbroad; (d) improperly attempts
14 to exercise judicial powers; (e) is preempted by California State law; (f) is discriminatory in
15 violation of the California Fair Employment and Housing Act; and (g) violates the fundamental
16 right to privacy of landlords, tenants and other citizens of the City of Richmond.

17 **PARTIES**

18 3. Plaintiff CALIFORNIA APARTMENT ASSOCIATION (“CAA”) is a California
19 corporation, operating under and by virtue of the laws of the State of California and which has
20 fulfilled all applicable requirements to conduct business and does business in the State of
21 California.

22 4. CAA is the largest rental housing trade association in the country, representing
23 more than fifty thousand (50,000) property owners and housing operators who are responsible for
24 nearly two million (2,000,000) rental housing units throughout California, including owners and
25 operators within the City of Richmond.

26 5. CAA provides its membership with support, information and educational resources
27 relevant to all aspects of California’s rental housing industry. CAA is headquartered in
28 Sacramento, California, with active chapters throughout the State, including Contra Costa County.

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1 6. As part of its purpose, CAA supports private property rights and opposes rent
2 control as stated in the following published general policies of the organization:

3 CAA is opposed to government control of rents and believes
4 strongly that rent control is as damaging to renters as it is to rental
5 property owners. CAA believes that the best way to ensure the
6 existence of safe, affordable housing with stable rents is for
7 government to recognize and harness market forces by establishing
8 policies that encourage the construction of new housing and to
9 support investment in existing housing.

10 CAA believes that respect for private property rights is fundamental
11 to rental property owners' ability to build and operate safe,
12 affordable housing for California families. CAA supports legislation
13 and regulations that provide property owners' speedy access to
14 administrative and judicial systems at all levels – local, state and
15 federal – to pursue Fifth Amendment takings claims or relief from
16 other property rights violations.

17 7. CAA has standing to bring this Complaint on behalf of its members who own and
18 operate rental property within the City of Richmond and have standing to sue in their own right as
19 the interests at stake are germane to CAA's purpose and neither the claims asserted, nor the relief
20 requested, require individual members' participation in the lawsuit.

21 8. Defendant CITY OF RICHMOND ("CITY") is a charter city pursuant to Article
22 11, Section 3 of the California Constitution. Richmond City Council ("RCC") is a seven member
23 legislative body that sets local policy for Defendant CITY. RCC is obligated to enforce the law at
24 issue against CAA members pursuant to Article III, Section 1 of Defendant CITY'S Charter.

25 9. Plaintiff does not know the true names or capacities, whether individual, corporate,
26 associate, or otherwise of Defendants sued herein as Does 1 through 50, inclusive. Plaintiff sues
27 said Defendants by such fictitious names and prays leave to amend this Complaint when the true
28 names and capacities of said Defendants have been ascertained. Plaintiff is informed and believes
and thereon alleges that said Defendants conducted, participated in, or are responsible for the acts
set forth herein, and Plaintiff is further informed and believes and thereon alleges that some or all
of the said Doe Defendants are in combination, agency, or joint venture relationships with the
named Defendant.

 10. Plaintiff is informed and believes and thereon alleges that at all times herein
mentioned, each Defendant was the agent, servant, joint venturer, partner, and/or employee of

1 each and every one of the other Defendants, and was acting within the course and scope of his
2 authority, and each Defendant ratified, authorized, and approved of the acts of each other
3 Defendant. Any acts or omissions attributed herein to a corporation or other business entity were
4 authorized acts, performed by an authorized representative of said entity, acting within the course
5 and scope of his agency or authority, and were ratified by reasonable representatives of the entity.

6 **VENUE AND JURISDICTION**

7 11. The Superior Court in and for the County of Contra Costa has jurisdiction over this
8 proceeding because this matter involves the validity of an ordinance enacted by a charter city
9 within this County and thus this matter is properly designated as a case of general jurisdiction
10 pursuant to California Code of Civil Procedure.

11 12. Further, Measure L provides “The Board, and Tenants and Landlords of Rental
12 Units, may seek relief from the appropriate court within the jurisdiction within which the affected
13 Rental Unit is located to enforce any provision of this Chapter or its implementing regulations or
14 to restrain or enjoin any violation of this Chapter and of the rules, regulations, orders and
15 decisions of the Board,” essentially acquiescing to the jurisdiction of this Court for all purposes.
16 Since all Rental Units, as defined within Measure L, are located within the CITY and the CITY is
17 within the County of Contra Costa, this Court has jurisdiction over the matters alleged herein.

18 13. Venue is proper in the Superior Court in and for the County of Contra Costa
19 pursuant to California Code of Civil Procedure Section 394 because this is an action or proceeding
20 against a city within Contra Costa County.

21 **GENERAL ALLEGATIONS**

22 14. Measure L was passed by majority vote on November 8, 2016, enacting the RFRO
23 which requires a system of both rent control and eviction control on most multi-family properties
24 constructed prior to February 1, 1995 (pre-Costa-Hawkins), and eviction control affecting almost
25 all residential landlords.

26 15. RCC certified the election results on December 20, 2016, and, as such, Measure L
27 took effect on December 30, 2016.

28 16. A true and correct copy of Measure L is attached hereto as Exhibit A and

1 incorporated herein by this reference. Because of its length and complexity, it is difficult to
2 summarize all the procedural and substantive nuances of Measure L within the confines of this
3 Complaint so reference shall be made to the relevant portions of Measure L attached hereto as
4 Exhibit A where pertinent.

5 17. Plaintiff contends Measure L violates the Takings Clauses, Due Process Clauses,
6 Equal Protection Clauses and Judicial Powers Clauses of the United States and California
7 Constitutions, is unconstitutionally vague, ambiguous and overbroad, is preempted by California
8 State law, violates the California Fair Employment and Housing Act and violates the right to
9 privacy of landlords, tenants and other citizens, which right is protected by the Constitution of
10 California and by the United States Constitution.

11 18. By this Complaint, Plaintiff seeks a declaration of this Court that Measure L is
12 unconstitutional, pre-empted by State law, an unauthorized exercise of judicial powers, and
13 discriminatory on its face and, as such, is invalid and unenforceable.

14 19. By this Complaint, Plaintiff seeks an injunction of this Court enjoining CITY from
15 enforcing all provisions of Measure L because it is unconstitutional, an unauthorized exercise of
16 judicial powers, pre-empted by State law and discriminatory on its face and, as such, is invalid and
17 unenforceable.

18 20. Plaintiff brings this action in order to seek enforcement of important rights
19 affecting the public interest and to secure significant benefits for all owners of rental property
20 within the CITY.

21 FIRST CAUSE OF ACTION

22 **(Against All Defendants: Measure L Results in an Unlawful Taking 23 Under the United States Constitution and the California Constitution)**

24 21. Plaintiff realleges and incorporates herein by this reference each and every
25 foregoing paragraph of this Complaint as though fully set forth herein.

26 22. The Fifth Amendment of the U.S. Constitution provides, in pertinent part, “. . . nor
27 shall private property be taken for public use, without just compensation.”

28 23. Article 1, Section 19 of the California Constitution provides, in pertinent part, that

1 “[p]rivate property may be taken or damaged for a public use and only when just compensation,
2 ascertained by a jury unless waived, has first been paid to, or into court for, the owner.” The
3 referenced sections of the Fifth Amendment of the U.S. Constitution and Article 1, Section 19 of
4 the California Constitution are hereinafter collectively referred to as “the Takings Clauses.”

5 24. The purpose of the Takings Clauses is to prevent the government from forcing
6 some people to alone bear public burdens which, in fairness and justice, should be borne by the
7 public as a whole.

8 25. Pursuant to the Takings Clauses, a property owner must receive just compensation,
9 through the process the government provides, if private property is taken for public use.

10 26. Plaintiff contends Measure L results in an unconstitutional taking as it results in
11 private property being taken for public use without just compensation in that it fails to provide
12 owners of real property governed by Measure L a fair rate of return on their investment by:

13 a. Effectively depriving property owners governed by Measure L
14 economically reasonable use or value of their property to such an extent that it deprives
15 them of utility or value of that property (Measure L § 11.100.070);

16 b. Retroactively reducing rental rates lawfully implemented prior to Measure
17 L with no prompt or viable methodology for providing an adjustment in the rate that
18 provides property owners with a fair rate of return (Measure L § 11.100.070);

19 c. Defining “Base Rent” such that it cannot reasonably be deemed to reflect
20 general market conditions, thereby constituting an arbitrary and capricious windfall for
21 tenants (Measure L § 11.100.070);

22 d. Imposing improper conditions precedent on a landlord’s ability to petition
23 for an upward adjustment in rents (Measure L § 11.100.070(h)(2));

24 e. Allowing increased occupancy of individual units to an extent that will
25 cause the property to deteriorate at an accelerated pace and will act to reduce the value of
26 the property in the community through overcrowding and an overuse of resources
27 (Measure L § 11.100.050(a)(2)(ii));

28 f. Creating a life estate for tenants in an owner’s property which transfers the

1 value of property from its rightful owners to tenants, which life estate is equal in value to
2 owning the real property outright (Measure L § 11.100.050); and

3 g. Allowing tenants to convert real property which they do not own to an
4 unauthorized use, which exposes CAA members to liability associated with any
5 undisclosed subtenants, tax liabilities, or violations of short-term rental prohibitions
6 (Measure L § 11.100.050).

7 27. Measure L must be held invalid and unenforceable because it results in an
8 unconstitutional taking from the members of CAA, causing them to sustain damage and injury
9 including, but not limited to, loss of individual property rights.

10 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through
11 50 as set forth in the Prayer for Relief below.

12 **SECOND CAUSE OF ACTION**

13 **(Against All Defendants: Measure L Results in a Taking Without Due**
14 **Process Under the United States and the California Constitutions)**

15 28. Plaintiff realleges and incorporates herein by this reference Paragraphs 1 through
16 20 of this Complaint as though fully set forth herein.

17 29. Section One of the Fourteenth Amendment to the U.S. Constitution states in
18 relevant part: “. . . nor shall any State deprive any person of life, liberty, or property, without due
19 process of law;”

20 30. Article 1, Section 7 of the California Constitution provides, in pertinent part, that:
21 “[a] person may not be deprived of life, liberty, or property without due process of law;” The
22 referenced sections of the Fourteenth Amendment of the U.S. Constitution and Article 1, Section 7
23 of the California Constitution are hereinafter collectively referred to as “the Due Process Clauses.”

24 31. Under these Due Process Clauses, government must not impose binding
25 determinations upon parties without giving them appropriate notice of the issue and an opportunity
26 to be heard. Property owners must be given adequate notice of new laws which may interfere with
27 their reasonable expectation of a fair rate of return in accordance with due process.

28 32. Plaintiff contends Measure L violates the Due Process Clauses by:

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- 1 a. Imposing new legal consequences about which CAA members had no
- 2 notice (Measure L §§ 11.100.050, 11.100.070);
- 3 b. Obviating vested rights without notice (Measure L §§ 11.100.050,
- 4 11.100.070);
- 5 c. Retroactively reducing rental rates lawfully implemented to pre-Measure L
- 6 rates with no prompt or viable methodology for providing an adjustment in the rate that
- 7 provides property owners with a fair rate of return (Measure L § 11.100.070); and
- 8 d. Implementing a petition process which denies a landlord with a fair
- 9 opportunity to be heard (Measure L §§ 11.100.070(c-d).

10 33. Measure L must be held invalid and unenforceable because it results in an

11 unconstitutional taking from the members of CAA without due process of law, causing them to

12 sustain damage and injury including, but not limited to loss of individual property rights.

13 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through

14 50 as set forth in the Prayer for Relief below.

THIRD CAUSE OF ACTION

(Against All Defendants: Measure L Violates the Equal Protection Clauses of the United States and the California Constitutions)

18 34. Plaintiff realleges and incorporates herein by this reference Paragraphs 1 through

19 20 of this Complaint as though fully set forth herein.

20 35. Section One of the Fourteenth Amendment to the U.S. Constitution states in

21 relevant part: “. . . nor shall any State . . . deny any person within its jurisdiction the equal

22 protection of the laws.”

23 36. Article 1, Section 7 of the California Constitution provides, in pertinent part, that:

24 “[a] person may not be deprived of life, liberty, or property without due process of law or denied

25 equal protection of the laws; . . .” The referenced sections of the Fourteenth Amendment of the

26 U.S. Constitution and Article 1, Section 7 of the California Constitution are hereinafter

27 collectively referred to as “the Equal Protection Clauses.”

28 37. Measure L provides, in pertinent part, that “[t]here shall be no more than two

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1 members that own or manage any rental property, or are realtors” on the City of Richmond Rent
2 Board (Measure L § 11.100.060(b)).

3 38. All individuals have fundamental rights to real property and government service
4 including the right to hold office by election or appointment. It is unlawful to enact arbitrary
5 exclusions from office.

6 39. Measure L must be held invalid and unenforceable because it unconstitutionally
7 jeopardizes the exercise of the fundamental right to hold office by members of CAA and further
8 violates their First Amendment right to political expression and association, causing the members
9 of CAA to sustain damage and injury.

10 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1
11 through 50 as set forth in the Prayer for Relief below.

12 **FOURTH CAUSE OF ACTION**

13 **(Against All Defendants: Measure L is Unconstitutionally Vague,
14 Ambiguous and Overbroad under the Due Process Clauses)**

15 40. Plaintiff realleges and incorporates herein by this reference Paragraphs 1 through
16 20 of this Complaint as though fully set forth herein.

17 41. An ordinance is impermissibly vague and ambiguous under the Due Process
18 Clauses if its prohibitions and requirements are not clearly defined where the vagueness of the law
19 allows for multiple interpretations and the danger of arbitrary and discriminatory application.

20 42. Measure L is unconstitutionally ill-defined, lacking clarity and detail, including, but
21 not limited to, the following provisions:

22 a. Measure L’s reporting requirements as written make it procedurally
23 impossible for a Landlord to ever increase rent, change the terms of tenancy or terminate a
24 tenancy. Section 11.100.060(s)(1) provides:

25 Within sixty (60) days after the adoption of this Chapter, all
26 Landlords shall be required to file a copy of all rental increase
27 notices, change of terms of tenancy and termination notices with the
28 Board **before serving the tenant the notice. A proof of service,
with the time and date of service of notice, shall be included with
notice filed with the City (emphasis added).**

1 It is impossible for a landlord to include the proof of service on the tenant with the notice
2 to be filed with the City if the notice to be filed with the City must be filed before it is
3 served on the tenant.

4 b. Measure L allows a landlord to terminate a tenancy for “Breach of Lease,”
5 but only where the tenant continues to “substantially violate” the “material terms” of the
6 lease or rental agreement provided that such terms are “legal and reasonable,” which make
7 the “Just Cause for Eviction Protections” unconstitutionally incomprehensible and leave
8 open the possibility that a term could be found to be unreasonable, even if legal in some
9 circumstances, resulting in inconsistent application and enforcement of Measure L
10 (Measure L § 11.100.050(a)(2));

11 c. Measure L allows a landlord to terminate a tenancy for “Failure to Give
12 Access” without “Good Cause” without identifying what may justify a tenant denying a
13 landlord access to a unit in contravention of applicable California law (Measure L §
14 11.100.050(a)(4));

15 d. Measure L requires a notice to cease be provided prior to terminating a
16 tenancy for breach of lease, nuisance or failure to give access “within a reasonable period
17 prior to serving a notice to terminate tenancy,” but does not define how much notice is
18 required under what circumstances (Measure L § 11.100.050(d));

19 e. Measure L provides, in pertinent part:

20 . . . [t]he Board may authorize the Tenant of such a non-reporting
21 unit or where the Rent housing fee is unpaid to withhold all or a
22 portion of the Rent for the Rental Unit until such time as the Rental
23 Housing Fee is paid or notice filed. After a notice is properly filed
24 or fee paid, the Board shall determine what portion, if any, of the
25 withheld Rent is owed to the Landlord for the period in which the
26 notice was not properly filed or fee paid. Whether or not the Board
27 allows such withholding, no Landlord who has failed to properly
28 report or pay the fee shall at any time increase Rents for a Rental
Unit until such fee or notice is reported. This shall go into effect
thirty (30) days after determination of the Board.

(Measure L § 11.100.060 (s)(2)). While Measure L provides that “[t]his shall go into
effect thirty (30) days after determination of the Board,” it is unclear from the plain reading
of the above-quoted portion of Measure L to what “This” refers – the withholding of rent,

1 the ultimate determination of what rent should be paid after the violations are corrected or
2 the inability to increase rents;

3 f. With respect to a Landlord's right to a reasonable return on investment,
4 Measure L provides that relevant factors include (but are not limited to):

5 The cost of planned or completed capital improvements to the rental
6 unit (as distinguished from ordinary repair, replacement and
7 maintenance) where such capital improvements are necessary to
8 bring the property into compliance or maintain compliance with
9 applicable local code requirements affecting health and safety, and
10 where such capital improvement costs are properly amortized over
11 the life of the improvement.

12 (Measure L § 11.100.070 (g)(3)). Measure L fails to provide any method by which to
13 quantify what may be "necessary" thereby leaving the recovery of capital improvements by
14 way of a petitions unpredictable and, therefore, unconstitutional; and

15 g. Measure L provides for a determination of compliance with "California
16 Civil Procedure Section 1942.4,"¹ which does not currently exist under California Law
17 (Measure L § 11.100.070(d)(13)).

18 43. Measure L must be held invalid and unenforceable because it contains
19 unconstitutionally vague and ambiguous provisions which are likely to result in arbitrary
20 enforcement, causing members of CAA to sustain damage and injury including, but not limited to,
21 loss of individual property rights.

22 44. Further, Measure L is unconstitutionally overbroad in that it is not narrowly
23 tailored to achieve their stated purposes while infringing on fundamental rights of CAA's
24 members. For example, Measure L provides:

25 All Tenants that are displaced based on Sections 11.100.050(a)(5),
26 (6) or (7) shall have the first right of refusal to return to the unit **if it**
27 **should be ever returned to the market by the Landlord or**
28 **successor Landlord.** Rent shall be the Rent lawfully paid by the
tenant at the time the Landlord gave notice of basis listed in Sections
11.100.050(a)(5), (6) or (7).

So restricting a rental unit in perpetuity is clearly unconstitutionally overbroad.

¹ Plaintiff believes, but does not know, that CITY intended to refer to California Civil Code Section 1942.4; however, Measure L refers to "California Civil Procedure Section 1942.4."

1 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through
2 50 as set forth in the Prayer for Relief below.

3 **FIFTH CAUSE OF ACTION**

4 **(Against All Defendants: Measure L Violates the Judicial Powers
5 Clauses of the United States and California Constitutions)**

6 45. Plaintiff realleges and incorporates herein by this reference Paragraphs 1 through
7 20 of this Complaint as though fully set forth herein.

8 46. Article III, Section 1 of the U.S. Constitution provides, in pertinent part, “[t]he
9 judicial power of the United States, shall be vested in one Supreme Court, and in such inferior
10 courts as the Congress may from time to time ordain and establish.”

11 47. Article VI, Section 1 of the California Constitution provides, in pertinent part, that:
12 “[t]he judicial power of this State is vested in the Supreme Court, courts of appeal, and superior
13 courts, all of which are courts of record.” The referenced sections of Article III, Section 1 of the
14 U.S. Constitution and Article VI, Section 1 of the California Constitution are hereinafter
15 collectively referred to as “the Judicial Powers Clauses.”

16 48. An administrative agency may constitutionally hold hearings, determine facts,
17 apply the law to those facts, and order relief—including certain types of monetary relief—so long
18 as (a) such activities are authorized by statute or legislation and are reasonably necessary to
19 effectuate the administrative agency’s primary, legitimate regulatory purposes and (b) the essential
20 judicial power remains ultimately in the courts through review of agency determinations.

21 49. Measure L provides that the decision of the hearing examiner shall be the final
22 decision of the Board in the event of no appeal to the Board and that the decisions of the hearing
23 examiner shall not be stayed pending appeal (Measure L § 11.100.070(d)(11)). While elsewhere
24 in Measure L it provides that no action or decision by the Board shall go into effect until thirty
25 (30) days have expired to allow for judicial review by appealing to the appropriate court within the
26 jurisdiction (Measure L § 11.100.090), Section 11.100.070(d)(11) appears to contradict such
27 limitation giving immediate effect to the hearing officer’s decision thereby rendering it an
28 unconstitutional exercise of judicial powers.

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1 a. Imposing additional requirements to the statutory notice provisions of Civil
2 Code Section 827 by mandating that a Landlord notify a tenant in writing that he or she
3 need not accept terms effectuated by a notice provided under that California law (Measure
4 L § 11.100.050 (a)(2));

5 b. Preventing landlords from terminating tenancies for committing a nuisance,
6 committing waste or using the premises for an unlawful purpose without first giving
7 tenants a "Written Notice to Cease," essentially vitiating a landlord's statutory right to
8 terminate on these grounds in direct contravention of California Code of Civil Procedure
9 Section 1161(4) (Measure L §§ 11.100.050(a)(2-3), 11.100.050(d)); and

10 c. Requiring landlords to file with the "Board," as defined by Measure L, a
11 copy of all rental increase notices, changes of terms of tenancy and tenancy termination
12 notices, before serving the tenant the notice (while simultaneously requiring the filing of a
13 "proof of service with the time and date of service of notice" on the tenant even though
14 Measure L requires filing of the notice before the tenant is served), and providing that
15 failure to file the notices, changes of terms and tenancy termination notices is a complete
16 affirmative defense in an unlawful detainer action--thus changing the procedural
17 requirements for terminating a tenancy established by State law under California Code of
18 Civil Procedure Section 1161 (Measure L §§ 11.100.060(s)(1), (3)).

19 55. Measure L must be held invalid and unenforceable because it is pre-empted by
20 State law subjecting members of CAA to conflicting requirements where the State has intended to
21 occupy fully the subject matter being legislated.

22 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through
23 50 as set forth in the Prayer for Relief below.

24 **SEVENTH CAUSE OF ACTION**

25 **(Against All Defendants: Measure L Violates the California Fair
26 Employment and Housing Act)**

27 56. Plaintiff realleges and incorporates herein by this reference Paragraphs 1 through
28 20 of this Complaint as though fully set forth herein.

1 57. California Government Code Section 12955 provides, among other things, that it is
2 unlawful for the owner of any housing accommodation to discriminate against any person because
3 of the marital status or familial status of that person.

4 58. Measure L discriminates against non-married persons by providing for special
5 treatment for the addition of a "spouse or domestic partner of a Tenant," which treatment is not
6 available to persons who are not married or domestic partners (Measure L § 11.100.050(2)(ii)).

7 59. Pursuant to California Government Code Section 19255.2, "familial status"
8 protects most households which include one or more individuals under 18 years of age.

9 60. Measure L discriminates against certain families with children by mandating the
10 promulgation of regulations that will "promote stability for school-aged children" without regard
11 for children of other ages (Measure L § 11.100.050(2)(ii)).

12 61. Such special treatment on the basis of marital status or school-age is a direct
13 violation of California Government Code Section 12955 and, as such, is invalid.

14 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1
15 through 50 as set forth in the Prayer for Relief below.

16 **EIGHTH CAUSE OF ACTION**

17 **(Against All Defendants: Measure L Violates the Right to Privacy**
18 **Protected by the California Constitution)**

19 62. Plaintiff realleges and incorporates herein by this reference Paragraphs 1 through
20 20 of this Complaint as though fully set forth herein.

21 63. The right to privacy is a personal and fundamental right protected by Section 1 of
22 Article 1 of the Constitution of California.

23 64. California Civil Code Section 1947.7(g) provides, in pertinent part, that:

24 . . . A local agency shall, to the extent required by this subdivision,
25 be considered an "agency" as defined in subdivision (b) of Section
1798.3. For purposes of compliance with subdivision (e) of Section
1954.53, a local agency subject to this subdivision may request, but
26 shall not compel, an owner to provide any information regarding a
tenant other than the tenant's name.

27
28 As such, the Board is a local agency as defined in California Civil Code Section 1798.3(b).

1 65. Pursuant to California’s Information Practices Act of 1977 (“CIPA”) codified at
2 California Civil Code Section 1788 *et seq.*, California law mandates that “in order to protect the
3 privacy of individuals, it is necessary that the maintenance and dissemination of personal
4 information be subject to strict limits.” Cal. Civ. Code § 1798.1(c).

5 66. Under California Law, “the term ‘personal information’ means any information that
6 is maintained by an agency that identifies or describes an individual, including, but not limited to,
7 his or her name, social security number, physical description, home address, home telephone
8 number, education, financial matters, and medical or employment history. It includes statements
9 made by, or attributed to, the individual.” Cal. Civ. Code § 1798.3.

10 67. CIPA contains certain notice requirements and procedural protections with respect
11 to the collection, maintenance and disclosure of personal information, almost all of which are
12 violated by many provisions of Measure L because, among other things:

13 a. Measure L provides that all Maximum Allowable Rent adjustment hearings
14 shall be open to the public.” (Measure L § 11.100.070(d)(5) (emphasis added)).

15 b. Measure L provides that the “Board shall make available for inspection and
16 copying by any person an official record” . . . “for the cost of copying. . . .” This record
17 will include, but not be limited to all exhibits, papers and documents required to be filed or
18 accepted into evidence during the proceedings. (Measure L § 11.100.070(d)(7) (emphasis
19 added)).

20 68. Some of the personal information to be collected by the Board pursuant to
21 Measure L, and which is made available to the general public in violation of the right of privacy of
22 landlords, tenants and witnesses to lease violations, include, but are not limited to, the following:

23 a. Measure L requires that all “Written Warnings Notices” include “any
24 information necessary to determine the date, time, place, witnesses present, and other
25 circumstances concerning the reason for the notice” (Measure L § 11.100.050(d) (emphasis
26 added)).

27 b. Measure L authorizes a hearing examiner to “require either party to a Rent
28 adjustment hearing to provide it with any books, records and papers deemed pertinent in

1 addition to that information contained in registration statements” (Measure L §
2 11.100.070(d)(4)).

3 c. Measure L provides the hearing examiner “shall conduct a current building
4 inspection and/or request the city to conduct a current building inspection if the hearing
5 examiner finds good cause to believe the Board’s current information does not reflect the
6 current condition of the Controlled Rental Unit. The Tenant may request the hearing
7 examiner to order such an inspection prior to the date of the hearing.” (Measure L §
8 11.100.070(d)(4)).

9 d. Measure L grants the Board the following powers and duties among other
10 things: (i) conduct hearings; (ii) make such studies, surveys and investigations, conduct
11 such hearings, and obtain such information as is necessary to carry out its powers and
12 duties; (iii) collect and/or receive copies of notices of termination of tenancy and changes
13 in terms of tenancy; and (iv) create a searchable database of information collected
14 (Measure L § 11.100.060(e)).

15 69. The collection, compilation, storage and disclosure of the above personal
16 information, as well as other information to be collected under Measure L, is all subject to CIPA
17 and none of the procedural protections of CIPA are contained within Measure L.

18 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through
19 50 as set forth in the Prayer for Relief below.

20 **NINTH CAUSE OF ACTION**

21 **(Against All Defendants: Declaratory Relief Pursuant to Cal. Code of**
22 **Civ. Pro. § 1060)**

23 70. Plaintiff realleges and incorporates herein by this reference each and every
24 foregoing paragraph of this Complaint as though fully set forth herein.

25 71. An actual controversy has arisen and now exists between Plaintiff and Defendant
26 relative to their respective rights and duties under Measure L.

27 72. Plaintiff contends that Measure L violates the Takings Clauses, the Equal
28 Protection Clauses, the Due Process Clauses and the Judicial Powers Clauses of the United States

1 and California Constitutions, is unconstitutionally vague, ambiguous and overbroad, is preempted
2 by California State law, violates the California Fair Employment and Housing Act, and violates
3 the fundamental right to privacy of landlords, tenants and other citizens of the City of Richmond
4 and, therefore, is invalid and unenforceable.

5 73. Plaintiff requests that this Court issue an order declaring Measure L invalid and
6 unenforceable because it: (a) violates, amongst other things, the Takings Clauses, the Equal
7 Protection Clauses, the Due Process Clauses and the Judicial Powers Clauses of the United States
8 and California Constitutions; (b) is preempted by California State law; (c) is discriminatory on its
9 face; and (d) violates the fundamental right of privacy of landlords, tenants and other citizens of
10 the City of Richmond.

11 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through
12 50 as set forth in the Prayer for Relief below.

13 **TENTH CAUSE OF ACTION**

14 **(Against All Defendants: Injunctive Relief Pursuant to Cal. Code of**
15 **Civ. Pro. §§ 525 et seq.)**

16 74. Plaintiff realleges and incorporates herein by this reference each and every
17 foregoing paragraph of this Complaint as though fully set forth herein.

18 75. Plaintiff contends that Measure L violates the Takings Clauses, the Equal
19 Protection Clauses, the Due Process Clauses and the Judicial Powers Clauses of the United States
20 and California Constitutions, is unconstitutionally vague, ambiguous and overbroad, is preempted
21 by California State law, violates the California Fair Employment and Housing Act, and violates
22 the fundamental right to privacy of landlords, tenants and other citizens of the City of Richmond
23 and, therefore, is invalid and unenforceable.

24 76. Defendant is threatening to apply and proceed with enforcement of Measure L
25 against members of Plaintiff CAA.

26 77. Unless and until enjoined by an order of this Court, Defendant CITY and those
27 acting in concert with CITY will enforce the illegal and invalid Measure L against members of
28 Plaintiff CAA.

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78. Defendant should be enjoined from enforcing Measure L.

WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through 50 as set forth in the Prayer for Relief below.

PRAYER

WHEREFORE, Plaintiff CALIFORNIA APARTMENT ASSOCIATION prays for judgment against Defendant CITY OF RICHMOND and DOES 1 through 50, and each of them, as follows:

1. For a Declaration that Measure L is impermissibly retroactive, vague, ambiguous, overbroad, preempted by existing California Law, unconstitutional, void, without effect, invalid and/or unenforceable.

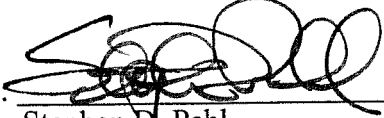
2. For a temporary restraining order, preliminary injunction, and permanent injunction prohibiting Defendant CITY, as well as its City Council, officers, agents, employees, attorneys, and all persons who are in active concert or participation with it, from enforcing Measure L.

3. For an award of reasonable attorney's fees and costs of suit as allowed by law, including, but not limited to, pursuant to Code of Civil Procedure Section 1021.5, as Plaintiff brings this action in order to seek enforcement of important rights affecting the public interest and to secure significant benefits for all owners of rental property within the CITY and the necessity and financial burden of private enforcement are such as to make the award of attorneys' fees appropriate.

4. All other relief that the Court deems to be just and equitable.

DATED: January 5, 2017

PAHL & McCAY
A Professional Law Corporation

By: 
Stephen D. Pahl

Attorneys for PLAINTIFF
CALIFORNIA APARTMENT ASSOCIATION

Pahl & McCay
A Professional Corp.
225 W. Santa Clara
Suite 1500
San Jose, CA 95113
(408) 286-5100

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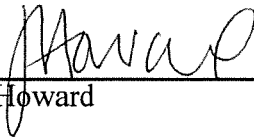
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VERIFICATION

I, the undersigned, certify and declare that I have read the foregoing Verified Complaint and know its contents. I am an officer of CALIFORNIA APARTMENT ASSOCIATION, the Plaintiff in this action. The matters stated in the document described above are true of my own knowledge except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

I have read the above and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5th day of January, 2017, at San Jose, California.



Joshua Howard

Pahl & McCay
A Professional Corp.
225 W. Santa Clara
Suite 1500
San Jose, CA 95113
(408) 286-5100

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EXHIBIT A

THE PEOPLE OF THE CITY OF RICHMOND ORDAIN AS FOLLOWS:

**THE RICHMOND FAIR RENT, JUST CAUSE FOR EVICTION
AND HOMEOWNER PROTECTION ORDINANCE**

Chapter 11.100

- 11.100.010 Title and Purpose.
- 11.100.020 Findings.
- 11.100.030 Definitions.
- 11.100.040 Homeowner Protections.
- 11.100.050 Just Cause for Eviction Protection; Family Protections.
- 11.100.060 Richmond Rent Board.
- 11.100.070 Rent Control; Right of Reasonable Return for Landlords.
- 11.100.080 Non-waiverability.
- 11.100.090 Judicial Review.
- 11.100.100 Remedies.
- 11.100.110 Injunctive and Other Civil Relief.
- 11.100.120 Partial Invalidity.
- 11.100.130 Majority Approval, Effective Date, Execution.

11.100.010 Title and Purpose.

This Ordinance shall be known as The Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance. The purpose of this Ordinance is to promote neighborhood and community stability, healthy housing, and affordability for renters in the

City of Richmond by controlling excessive rent increases and arbitrary evictions to the greatest extent allowable under California law, while ensuring Landlords a fair and reasonable return on their investment and protecting homeowners.

11.100.020 Findings.

The People of Richmond find and declare as follows:

(a) There is a shortage of decent, safe, affordable, and sanitary housing in the City of Richmond (“the City”).

(b) Tenants who play by the rules should not have to worry constantly about losing their home for no reason. Common-sense protections against unfair evictions are needed in the City to protect long-time and low-income residents from landlords that try to game the system to take advantage of all-time high rents.

(c) The Haas Institute for a Fair and Inclusive Society at the University of California, Berkeley recently published a research brief entitled “Belonging and Community Health in Richmond: An Analysis of Changing Demographics and Housing.” It found that displacement is a danger in the City; that median household income in the City has decreased by 15% from 2000 to 2013, twice the rate of Oakland and far more severe than El Cerrito and Berkeley; and that the decrease in homeownership in the City is only exceeded by two other local cities, Vallejo and Antioch.

(d) Given the increased housing cost burden and poverty faced by many Richmond residents, excessive rent increases threaten the public health, safety, and welfare of Richmond residents, including seniors, those on fixed incomes, those with very low, low, and moderate income levels, and those with other special needs, to the extent that such persons may be forced to choose between paying rent and providing food, clothing, and medical care for themselves and their families.

(e) According to RealFacts (March 20, 2015), the monthly rent and occupancy rates of market-rate units in apartment buildings of fifty or more units in the City have increased every year since 2010; the average asking rent of market-rate rental units has increased by 24.3% between 2010 and 2014.

(f) According to the U.S. Census Bureau, 2009-2013 American Community Survey, 15.6% of families in the City live below the poverty level, and the number of persons living below the poverty level in the City has increased since 2000. According to the same survey, 54.9% of Richmond tenant households are “overpaying households,” meaning the household pays 30% or more of its income on housing costs. Nearly half of Richmond’s residents are Tenants.

(g) The Haas Institute for a Fair and Inclusive Society memorandum entitled “Data on Richmond Rental Housing Issues,” citing the American Community Survey, U.S. Census, found that during the 2011-2013 period, large portions of the City were made up of low-income tenants; approximately 6,740 tenant households (37% of the total tenants) are low-income, earn less than \$35,000 annually, and spend more than 30% of their income on

housing; and certain central and southern Richmond areas have more than 80% rental households.

(h) The problem of rent increases has reached a crisis level, with examples of rents rising at rates more than ten (10) times that of inflation or average wage growth.

(i) The City of Richmond currently does not restrict rental increases or grounds for eviction. Residents have been unfairly evicted so that landlords can take advantage of the current Bay Area housing shortage and raise rents. Tenants are provided little information regarding their rights in the case of eviction and how to get help if they believe their rights have been violated.

(j) In light of the numerous concerns noted herein, including, but not limited to, the current and immediate threat to the health, safety, and welfare of the City's residents and the adverse impacts that would result from a substantial decrease of affordable housing within the City, the People of Richmond determine that it is in the interest of immediately preserving the public health, safety and general welfare to adopt this Ordinance in order to put into place, among other things, regulations to protect homeownership, just cause for eviction, rent stabilization, and a simple process to ensure that landlords continue to receive a reasonable return on their investment.

11.100.030 **Definitions.**

The following words or phrases as used in this Ordinance shall have the following meanings:

(a) **Annual Allowable Rental Adjustment**: Annual Allowable Rental Adjustment refers to the limit on the Maximum Allowable Rent increase, which a Landlord may charge on any Controlled Rental Unit each year without order from a hearing officer.

(b) **Board**: The term "Board" refers to the Richmond Rent Board established by this Chapter.

(c) **Disabled**: The term "Disabled" shall have the same meaning as in Section 12955.3 of the Government Code.

(d) **Controlled Rental Units**: All Residential Rental Units in the City of Richmond, except those Rental Units exempt under one or more of the following provisions:

(1) Rental 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 fourteen (14) days.

(2) Rental Units in any 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) Rental Units which a government unit, agency or authority owns, operates, manages, or in which governmentally subsidized Tenants reside only if applicable

federal or state law or administrative regulation specifically exempt such units from municipal rent control.

(4) Rental Units exempt from rent control pursuant to the Costa-Hawkins Rental Housing Act (California Civil Code § 1954.52).

(5) Any permitted small, second housing unit built in compliance with the Small, Second Unit Ordinance of the City of Richmond (*Richmond Municipal Code* § 15.04.810).

(6) Any units exempted by the Homeowner Protections in Section 11.100.040.

(e) **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, utilities that are paid by 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.

(f) **Landlord:** An owner, lessor, sublessor or any other person entitled to receive rent for the use and occupancy of any Rental Unit, or an agent, representative or successor of any of the foregoing.

(g) **Maximum Allowable Rent.** The maximum allowable rent which may be charged on any Controlled Rental Unit covered by this chapter.

(h) **Primary Residence:** Occupancy of a Primary Residence does not require that the individual be physically present in the unit at all times or continuously, but the unit must be the individual's usual place of return. Indicia of Primary Residence include:

- (1) the individual carries on basic living activities at the subject premises for extended periods;
- (2) the subject premises are listed with other public agencies, including Federal, State and local taxing authorities as their primary residence;
- (3) Utilities are billed to and paid by the individual at the subject premises;
- (4) Homeowner's tax exemption for the individual has not been filed for a different property;
- (5) The occupant is not registered to vote at any other location;
- (6) Ownership must be held in the name of the individual claiming Primary Residence and not held by a Limited Liability Corporation or other corporate structure;

(7) Other relevant factors illustrating Primary Residence.

(i) **Property**: All Rental Units on a parcel or lot or contiguous parcels or contiguous lots under common ownership.

(j) **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 under a Rental Housing Agreement, as defined in this Section, concerning the use or occupancy of a Rental Unit and premises, including all payment and consideration demanded or paid for parking, utilities, pets, furniture, subletting and security deposits for damages and cleaning.

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

(l) **Rental Housing Fee**: The fee described in Section 11.100.060(1)(1).

(m) **Rental Unit**: Any building, structure, or part thereof, or land appurtenant thereto, or any other rental property rented or offered for rent for residential purposes, together with all Housing Services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the Tenant.

(n) **Recognized Tenant Organization**: Any group of Tenants residing in Rental Units in the same building or in different buildings operated by the same management company, agent or Landlord, who choose to be so designated.

(o) **Rounding**: Numbers will be rounded using the "half away from zero" method.

(p) **Single-Family Home**: A detached building containing a single residential dwelling unit separately alienable from any other dwelling unit.

(q) **Temporary Tenancy**. The tenancy in a Single-Family Home, which is the primary residence of the Homeowner and does not last any longer than 12 consecutive months. A written contract must be provided to Tenant at the inception of the tenancy, which includes a notice that the tenancy shall terminate in no more than 12 months when the owner shall return to the Single Family Home to reoccupy.

(r) **Tenant**: A Tenant, subtenant, lessee, sublessee or any other person entitled under the terms of a Rental Housing Agreement to the use or occupancy of any Rental Unit.

(s) **Utility Charges**: Any charges for gas, electricity, water, gas, cable or internet.

11.100.040 Homeowner Protections.

(a) Homeownership is of great importance to the residents of the City of Richmond. The following protections for Homeowners shall be part of this ordinance:

(1) **Temporary Rentals Allowed**. A homeowner who is the Primary Resident of a single-family home may create a temporary tenancy. The temporary Tenant must be

provided, in writing at the inception of the tenancy, the length of the tenancy and a statement that the tenancy maybe terminated at the end of the temporary tenancy (pursuant to Section 11.100.050 (8) below) and relocation shall not be required.

(2) **Small, Second Units Unregulated.** A unit that is lawful and in compliance with the Small Second Unit Ordinance of the City of Richmond (*Richmond Municipal Code* § 15.04.810.) will be exempt from this Chapter if the owner is the Primary Resident of the first, larger single-family home.

(3) **Renting of a Room Unregulated.** The tenancy where the Tenant shares a bathroom or kitchen with the homeowner shall be exempt from this Chapter if the home is the Primary Residence of the homeowner.

11.100.050 **Just Cause for Eviction Protections; Family Protections.**

(a) No Landlord shall take action to terminate any tenancy, 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 quit or other eviction notice, or bringing any action to recover possession or be granted recovery of possession of a Rental Unit unless:

(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 Chapter, state and any other local law.

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

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

a. The Tenant continues to reside in the Rental Unit as his, her or their primary residence.

b. The sublease replaces one or more departed Tenants under the Rental Housing Agreement on a one-for-one basis.

c. 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 occupant's lack of creditworthiness, if that person will not be 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 ground that the total number of occupants in a Rental Unit exceed the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922.

(ii) **Protections for Families.** Notwithstanding any contrary provision in this Section, a Landlord shall not endeavor to recover possession of a Rental Unit as a result of the addition to the Rental Unit of a Tenant's child, parent, grandchild, grandparent, brother or sister, or the spouse or domestic partner (as defined in California Family Code Section 297) of such relatives, or as a result of the addition of the spouse or domestic partner of a Tenant, so long as the number of occupants does not exceed the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by California Health & Safety Code 17922. The Rent Board shall promulgate regulations that will further protect families and promote stability for school-aged children.

(3) **Nuisance.** The Tenant has continued, after the Landlord has served the Tenant with a written notice to cease, to commit or expressly permit a nuisance in, or cause substantial damage to the Rental Unit.

(4) **Failure to Give Access.** The Tenant has continued to refuse without good cause, after the Landlord has served the Tenant with a written notice, to grant the Landlord reasonable access to the Rental Unit for the purposes of showing the unit to prospective purchasers or mortgagees or making necessary repairs or improvements required by the laws of the United States, the State of California or any subdivision thereof. This shall include inspections by the Richmond Residential Rental Inspection Program and any other inspections needed so that the landlord may comply with such laws. The Board shall promulgate regulations for the repair and improvement of Rental Units to ensure the least amount of disruption for the Tenant. Unless due to a documented emergency affecting a Tenant's health and/ or safety, all repair or improvement work will be scheduled in compliance with applicable Board regulations. To terminate a tenancy under this Subsection (a)(4), a Landlord must show that written notice was provided to the Tenant and all necessary repair or improvement work was scheduled in compliance with this Section and all applicable Board regulations. Landlords may not use lock boxes on occupied units.

(5) **Temporarily Vacate in Order to Undertake Substantial Repairs.**

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

(B) Where such repairs can be completed in a period of 60 or fewer days, and the Tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the Landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the Landlord may not recover possession pursuant to this subsection 5 unless the Tenant shall fail or refuse to vacate the premises in accordance with such agreement.

(C) Where the Landlord owns any other residential rental units in the City of Richmond, and any such unit is vacant and available at the time of service of the written notice terminating the tenancy, or at any time thereafter until the earlier of the Tenant's vacating the premises or the entry of a judgment by a court of competent jurisdiction awarding possession of the premises to the Landlord, the Landlord shall, as a condition of obtaining possession pursuant to this subsection 11.100.050 (a) (5) notify Tenant in writing of the existence and address of each such vacant rental unit and offer Tenant the right, at the tenant's option:

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

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

(D) Where the Landlord recovers possession under this subsection 11.100.050 (a) (5) the Tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the Landlord files an application for an individual rent adjustment within six months following the completion of the work, the Tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the Landlord shall submit, with such application, a written waiver by the Tenant of his or her right to re-occupy the premises pursuant to this subsection.

(6) **Owner Move-In.** The Landlord seeks to recover possession in good faith for use and occupancy as a Primary Residence by the Landlord, or the Landlord's spouse children, parents or grandparents.

- (A) Landlord, as used in this Subsection (a)(6), shall only include a Landlord that is a natural person who has at least a fifty (50) percent recorded ownership interest in the Property.
- (B) No eviction may take place for an “owner move-in” if the same Landlord or enumerated relative already occupies a unit on the property, or if a vacancy already exists on the property. At all times a Landlord may request a reasonable accommodation if the Landlord or enumerated relative is Disabled and another unit in Richmond is necessary to accommodate the person’s disability.
- (C) The notice terminating tenancy 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 ninety (90) days after the Tenant vacates and to occupy the Rental Unit as a primary residence for at least Thirty-Six (36) consecutive months. The Board may adopt regulations governing the determination of good faith.
- (E) If the Landlord or relative specified on the notice terminating tenancy fails to occupy the unit within ninety (90) days after the Tenant vacates, the Landlord shall:
 - i. Offer the unit to the Tenant who vacated it; and
 - ii. Pay to said Tenant all reasonable expenses incurred in moving to and from the unit.
- (F) **Eviction Protection for Elderly or Disabled Tenant.** A Landlord may not evict a Tenant pursuant to this Subsection if the Tenant (1) has resided in the Rental Unit for at least five (5) years and is either at least 62 years old or Disabled; or (2) is certified as being terminally ill by the Tenant’s treating physician. For the purposes of this Subsection, Notwithstanding the above, a Landlord may evict a Tenant who qualifies for the exemption if the Landlord or enumerated relative who will occupy the unit also meets the criteria for this exemption and no other units are available.
- (7) **Withdrawal from Rental Market.** The Landlord seeks in good faith to recover possession to withdraw all Rental Units of an entire property located in the City of Richmond. The Landlord has filed the documents with the Board initiating the procedure for withdrawing Units from rent or lease under Government Code Section 7060 et. seq. and all regulations passed by the Board, with the intention of completing the withdrawal process and going out of the rental business or demolition of the property. If demolition is the purpose of the withdrawal then the Landlord must have received all needed permits from the City of Richmond before serving any

notices Terminating a tenancy based on 11.100.50 (a) (7). Tenants shall be entitled to a 120-day notice or one (1) year in the case tenants are defined as senior or Disabled under Govt. Code Section 7060.4 (6). Tenants will also have a right of return if the unit is placed back on the market.

(8) **Temporary Tenancy.** A landlord or lessor seeks in good faith to recover possession of the Single-Family Home for his/her/their occupancy as a primary residence, where the landlord has previously occupied the rental unit as his/her/their principal residence and has the right to recover possession of the unit for his/her occupancy as a principal residence under an existing rental agreement with the current tenants for no more than twelve (12) consecutive months. No relocation is required. To be used only in reference to tenancies as listed in 11.100.040 (a)(1).

(b) **Relocation.** A landlord seeking to recover possession under Sections 11.100.050(a)(5), (6) or (7) above shall make relocation payments to each Tenant. These amounts shall be determined by the City Council through a Relocation Ordinance.

(c) **Right of Return and First Right of Refusal.** All Tenants that are displaced based on Sections 11.100.050(a)(5), (6) or (7) shall have the first right of refusal to return to the unit if it should ever be returned to the market by the Landlord or successor Landlord. Rent shall be the Rent lawfully paid by the tenant at the time the Landlord gave notice of basis listed in Sections 11.100.050(a)(5), (6) or (7).

(d) **Written Warning Notice Requirements.** Any written notice as described in Subsections 11.100.050(a)(2), (3) or (4) shall be served by the Landlord within a reasonable period prior to serving a notice to terminate tenancy and shall inform the Tenant that a failure to cure may result in the initiation of eviction proceedings, of the right to request a reasonable accommodation and the contact number for the Board. The notice shall also include sufficient details allowing a reasonable person to comply. The notice shall also include any information necessary to determine the date, time, place, witnesses present and other circumstances concerning the reason for the notice.

(e) **Retaliation is Barred.** Notwithstanding the above provisions, possession shall not be granted if it is determined that the eviction is knowingly in retaliation for the Tenant reporting violations of this Chapter, for exercising rights granted under this Chapter, including the right to withhold Rent under common, state or local law or for forming a Recognized Tenant Organization with other Tenants.

(f) In any notice purporting to terminate a tenancy the Landlord shall state the cause for the termination, and in any action brought to recover possession of a Rental Unit, the Landlord shall allege and prove compliance with this Section. All notices described in Subsection 11.100.050(d) shall be attached to any notices that purport to terminate a tenancy for which they correspond.

(g) Failure to comply with any requirement of this Chapter may be asserted as an affirmative defense in an action brought by the Landlord to recover possession of the Unit. Additionally, any attempt to recover possession of a Unit in violation of this Chapter shall

render the Landlord liable to the Tenant for actual damages, including damages for emotional distress, in a civil action for wrongful eviction. The Tenant or the Rent Board may seek injunctive relief and money damages for wrongful eviction. A Tenant prevailing in an action for wrongful eviction shall recover costs and reasonable attorney's fees.

11.100.060 **Richmond Rent Board**

(a) **Composition.** There shall be in the City of Richmond a Rent Board. The Board shall be made up of Richmond residents. The Board shall consist of five Board Members appointed by the City Council. The Board shall elect annually as chairperson one of its members to serve in that capacity.

(b) **Eligibility.** Duly qualified residents of the City of Richmond are eligible to serve as Members of the Board. There shall be no more than two members that own or manage any rental property or are realtors. Anyone nominated to this board must be in compliance with this Chapter and all other local, state and federal laws regulating the provision of housing.

(c) **Full Disclosure of Holdings.** Nominees for the position of Board Member shall submit a verified statement listing all of their interests and dealings in real property, including but not limited to its ownership, sale or management, during the previous three (3) years. The Board may promulgate additional regulations.

(d) **Term of Office.** Board Members shall serve terms of two (2) years and maybe reappointed for a total of four (4) full terms for a total of fewer than ten (10) years.

(e) **Powers and Duties.** The Board shall have the following powers and duties:

- (1) Establish a Base Rent under Section 11.100.070 (a).
- (2) Make adjustments in the Rent Increase and Decreases in accordance with Section 11.100.070.
- (3) Set Rents at fair and equitable levels in order to achieve the intent of this Chapter.
- (4) Issue orders, rules and regulations, conduct hearings and charge fees as set forth below.
- (5) Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
- (6) Report annually to the City Council of the City of Richmond on the status of rental housing covered by this chapter. Reports shall include a summary of the numbers of notices served, the basis upon which they were served, the amount of the Rent increases and the addresses for which they were served.
- (7) Charge and collect registration fees, including penalties for late payments.

(8) Collect and/or receive copies of notices of termination of tenancy and changes in terms of tenancy.

(9) A searchable database will be created so that service of notice may be determined as well information for the reports described above.

(10) Administer the withdrawal process for the removal of Rental Units from rental housing market under sections 11.100.050 (a)(6) and (7).

(11) Administer oaths and affirmations and subpoena witnesses.

(12) Establish rules and regulations for deducting penalties and settling civil claims under Section 11.100.100.

(13) Refer violations of this Chapter to appropriate authorities for prosecution.

(14) Seek injunctive and other civil relief under Section 11.100.100 - 110.

(15) Any other duties necessary to administer and enforce this Chapter.

(f) **Rules and Regulations.** The Board shall issue and follow such rules and regulations, including those which are contained in this Chapter, as will further the purposes of the Chapter. The Board shall publicize its rules and regulations prior to promulgation on its website and any other appropriate medium. All rules and regulations, internal staff memoranda, and written correspondence explaining the decisions, orders, and policies of the Board shall be kept in the Board's office and shall be available to the public for inspection and copying.

(g) **Community Education.** The Board shall publicize this Chapter so that all residents of Richmond will have the opportunity to become informed about their legal rights and duties under this Chapter. The Board shall prepare a brochure which fully describes the legal rights and duties of Landlords and Tenants under The Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance. The brochure shall also include helpful information for homeowners. The brochure will be available to the public, and each Tenant of a Rental Unit shall receive a copy of the brochure from his, her or their Landlord. Landlords shall provide the brochure at the commencement of the tenancy and with each notice of rent increase. This brochure will be made available for download from the City of Richmond website and/or other appropriate technology. Information about the Ordinance shall be made available in all other languages that are requested by the community.

(h) **Meetings.** The Board shall hold such regularly scheduled meetings as are necessary to ensure the timely performance of its duties under this Chapter. All regular and special meetings shall be called and conducted in accordance with state law. There shall be minimally one (1) meeting a year so that the Board may comply with 11.100.070.

(i) **Quorum.** Three (3) Members shall constitute a quorum for the Board.

(j) **Voting.** The affirmative vote of three (3) Members of the Board is required for a decision, including all motions, regulations, and orders of the Board.

(k) **Dockets.** The Board shall maintain and keep in its office all hearing dockets.

(l) **Financing.** The Board shall finance its reasonable and necessary expenses by charging Landlords annual registration fees in amounts deemed reasonable by the Board. The Board is also empowered to request and receive funding when and if necessary from any available source for its reasonable and necessary expenses.

(1) **Residential Rental Housing Fee.** All Landlords shall pay a business license fee if required by Richmond Municipal Code plus a Residential Rental Housing Fee. The City shall charge the Residential Rental Housing Fee at the same time as the business license fee. The amount will be determined by the City Council after a recommendation by the Board is provided to the City Council. The City Council will vote on the recommendation at the next regularly scheduled meeting. The budget shall be funded by the Rental Housing Fee.

(2) This fee shall become due within thirty (30) days of inception of new tenancy if no fee was paid the prior year. Ongoing tenancies shall have fees collected at the same time as the City business license each year.

(m) **Integrity and Autonomy of Board.** The Board shall be an integral part of the government of the City, but shall exercise its powers and duties under this Chapter independent from the City Council, City Manager, and City Attorney, except by request of the Board. The City shall provide infrastructural support on an ongoing basis as it would with any other department. During the transition period before the Board Members are appointed and an Executive Director is hired, the City shall take whatever steps necessary to perform the duties of the Board and implement the purpose of this Chapter.

(n) **Budget.** The Board shall, prior to July 1 of each year, hold a public hearing on a proposed budget and adopt an annual budget for the ensuing fiscal year. At least thirty-five days prior to the beginning of each fiscal year, the Board's Executive Director shall submit to the Board the proposed budget as prepared by the Executive Director. After reviewing the same and making such revisions as it may deem advisable, the Board shall determine the time for the holding of a public hearing thereon and shall cause to be published a notice thereof not less than ten days prior to said hearing, by at least one insertion in the official newspaper. Copies of the proposed budget shall be available for inspection by the public in the office of the Board at least ten days prior to said hearing. The City Council and the City Manager shall have no authority to oversee, supervise, or approve this budget. Upon final adoption, the budget shall be in effect for the ensuing fiscal year and the amounts stated therein shall be and become appropriated by the Board for the respective objects and purposes therein specified. At any meeting after the adoption of the budget the Board may amend or supplement the budget by the affirmative votes of at least three members. Copies of the adopted budget and any amendments or supplements shall be filed with the City Clerk, and City Manager. Necessary adjustments to city administrative procedures shall be made.

(o) **Personnel.** The Board shall review and assess yearly that sufficient number of staff are employed, including an Executive Director, hearing examiners, housing counselors and legal staff, as may be necessary to perform its function efficiently in order to fulfill the purpose of this Chapter. The Executive Director shall be hired by the Board. All employees of

the Board shall be hired, terminated, suspended, and demoted in accordance with the Charter and implementing provisions of the Municipal Code.

(p) **Board Legal Work.** Legal staff hired by the Board shall represent and advise the Board, its Members, and its staff in any civil matters, actions, or proceedings in which the Board, its Members, or its staff, in or by reason of their official capacity, are concerned or are a party. The Board may, in its sole discretion, and without approval of the City Council, retain private attorneys to furnish legal advice or representation in particular matters, actions or proceedings.

(q) **Contracts and Purchases.** The Board shall procure goods and services as do other City agencies using existing support services within the City as would any other department, i.e. Finance, Information Technology, and Public Works among others. Provided, however, that the Board shall have sole and final authority to employ attorneys, legislative lobbyists, and other professionals, and to approve contracts for such professional services.

(r) **Conforming Regulations.** If any portion of this Chapter is declared invalid or unenforceable by decision of a court of competent jurisdiction or rendered invalid or unenforceable by state or federal legislation, the Board and not the City Council shall have authority to enact replacement regulations consistent with the intent and purpose of the invalidated provision and applicable law. Such replacement regulations shall supersede invalidated or unenforceable provisions of this Chapter to the extent necessary to resolve any inconsistency. The subject matter of such replacement regulations shall be limited to rent control matters as enumerated in this Chapter.

(s) **Reporting and Fee Payment Requirements.**

(1) Within sixty (60) days after the adoption of this Chapter, all Landlords shall be required to file a copy of all rental increase notices, change of terms of tenancy and tenancy termination notices with the Board before serving the tenant the notice. A proof of service with time and date of service of notice shall be included with notice filed with the City.

(2) If the Board, after the Landlord has proper notice and after a hearing, determines that a Landlord has willfully and knowingly failed to properly report, as described above, any rental increase notices, change of terms of tenancy or tenancy termination, or pay the Rental Housing fee, the Board may authorize the Tenant of such a non-reporting unit or where the Rent housing fee is unpaid to withhold all or a portion of the Rent for the Rental Unit until such time as the Rental Housing fee is paid or notice filed. After a notice is properly filed or fee paid, the Board shall determine what portion, if any, of the withheld Rent is owed to the Landlord for the period in which the notice was not properly filed or fee paid. Whether or not the Board allows such withholding, no Landlord who has failed to properly report or pay the fee shall at any time increase Rents for a Rental Unit until such fee or notice is reported. This shall go into effect thirty (30) days after determination of the Board.

(3) Further, failing to pay the fee or filing a copy of a notice before the filing of an unlawful detainer is a complete defense to an unlawful detainer. No Board action is required for defense to be alleged or litigated in an unlawful detainer.

(t) In the event the establishment of the Board 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, boards, or commissions to perform the duties of the Board prescribed by this Chapter.

11.100.070 Rent Control; Right of Reasonable Return for Landlords

(a) **Establishment of Base Rent.** Beginning the effective date of this Chapter, no Landlord shall charge Rent for any Controlled Rental Units in an amount greater than the Rent in effect on July 21, 2015 except for increases expressly allowed under this Chapter. The Rent in effect on that date is the Base Rent. If there was no Rent in effect on July 21, 2015, the Base Rent shall be the Rent that was charged on the first date that Rent was charged following July 21, 2015. For tenancies commencing after the adoption of this Chapter, the Base Rent is the initial rental rate in effect on the date the tenancy commences. As used in this Subsection, the term "initial rental rate" means only the amount of Rent actually paid by the Tenant for the initial term of the tenancy. The Base Rent is the reference point from which the Maximum Allowable Rent shall be adjusted upward or downward in accordance with Section 11.100.070 (c).

(b) **Annual General Adjustment.** No later than June 30 each year, the Board shall announce the percentage by which Rent for eligible Rental Units will be generally adjusted effective September 1 of that year.

(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 later 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 12-month period ending as of March of the current year.

(2) Subparagraph 1 of this Subsection notwithstanding, in no event shall the Annual General Adjustment be less than zero percent (0%).

(3) For the period between the effective date of this Charter and the first Annual General Adjustment announced September 1, the landlord may increase the Maximum Allowable Rent to include one Annual General Adjustment for September 2016.

(c) **Petitions.** Upon receipt of a petition by a Landlord and/or a Tenant, the Maximum Allowable Rent of individual Controlled Rental Units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this Section. The petition shall be on the form provided by the Board and shall include a declaration by the Landlord that the Rental Unit meets all requirements of this Chapter. Notwithstanding any other provision of this Section, the Board or hearing examiner may refuse to hold a hearing and/or grant a Rent

adjustment if an individual hearing has been held and decision made with regard to the Maximum Allowable Rent within the previous twelve (12) months.

(d) **Hearing Procedure.** The Board shall enact rules and regulations governing hearings and appeals of individual adjustment of Maximum Allowable Rents which shall include the following:

- (1) **Hearing Examiner.** A hearing examiner appointed by the Board shall conduct a hearing to act upon the petition for individual adjustment of Maximum Allowable Rent and shall have the power to administer oaths and affirmations.
- (2) **Notice.** The Board shall notify the Landlord, if the petition was filed by the Tenant, or the Tenant, if the petition was filed by the Landlord, of the receipt of such a petition and provide a copy thereof.
- (3) **Time of Hearing.** The hearing officer shall notify all parties as to the time, date and place of the hearing.
- (4) **Records.** The hearing examiner may require either party to a Rent adjustment hearing to provide it with any books, records and papers deemed pertinent in addition to that information contained in registration statements. The hearing examiner shall conduct a current building inspection and/or request the city to conduct a current building inspection if the hearing examiner finds good cause to believe the Board's current information does not reflect the current condition of the Controlled Rental Unit. The Tenant may request the hearing examiner to order such an inspection prior to the date of the hearing. All documents required under this Section shall be made available to the parties involved prior to the hearing at the office of the Board. In cases where information filed in a petition for Maximum Allowable Rent adjustment or in additional submissions filed at the request of the hearing examiner is inadequate or false, no action shall be taken on said petition until the deficiency is remedied.
- (5) **Open Hearings.** All Maximum Allowable Rent adjustment hearings shall be open to the public.
- (6) **Right of Assistance.** All parties to a hearing may have assistance in presenting evidence and developing their position from attorneys, legal workers, Recognized Tenant Organization representatives or any other persons designated by said parties.
- (7) **Hearing Record.** The Board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be obtainable for the cost of copying. The record of the hearing shall include: all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted in the proceedings; a statement of all materials officially noticed; all recommended decisions, orders and/or rulings; all final decisions, orders and/or rulings; and the reasons for each final decision, order and/or ruling. All hearings shall be recorded.

Any party may receive a copy of the audio that was made. Reasonable costs may be charged. The Board shall not be responsible for transcribing such audio.

(8) **Quantum of Proof and Notice of Decision**. No individual adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of fact and law upon which said decision is based. At the same time, parties to the proceeding shall also be notified of their right to any appeal allowed by the Board and/or to judicial review of the decision pursuant to this Section and Section 11.100.090 of this Chapter.

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

(10) **Appeal**. Any person aggrieved by the decision of the hearing examiner may appeal to the Board. On appeal, the Board shall affirm, reverse or modify the decision of the hearing examiner.

(11) **Finality of Decision**. The decision of the hearing examiner shall be the final decision of the Board in the event of no appeal to the Board. The decision of the hearing examiner shall not be stayed pending appeal; however, in the event that the Board on appeal reverses or modifies the decision of the hearing examiner, the Landlord, in the case of an upward adjustment in Rent, or the Tenant, in the case of a downward adjustment of Rent, shall be ordered to make retroactive payments to restore the parties to the position they would have occupied had the hearing examiner's decision been the same as that of the Board.

(12) **Time for Decision**. The rules and regulations adopted by the Board shall provide for final action on any individual Rent adjustment petition within a reasonable time.

(13) Decisions decreasing Rents shall remain in effect until the Board finds that the Landlord has corrected the defect warranting the decrease. The Board shall, by regulation, establish procedures for making prompt compliance determinations. Upon a determination of compliance the Landlord shall be entitled to reinstatement of the prior Rent level, retroactive to the date that the Landlord corrected the defect which warranted the decrease. This shall be in compliance with California Civil Procedure Section 1942.4. If the Landlord is found to be in violation of California Civil Procedure Section 1942.4 then no rent shall be charged for the period during which the Landlord was in violation.

(e) **Individual Adjustment Rent Increase**. In making individual adjustments of the Annual Adjustable Rent Increase, the Board shall consider the purposes of this Chapter and the requirements of law. In making an individual downward adjustment, the Board may consider decreases in living space, furniture, furnishings, equipment, or services; substantial deterioration of the Controlled Rental Unit other than as a result of ordinary wear and tear; or

failure on the part of the Landlord to provide adequate Housing Services or to comply substantially with applicable housing, health and safety codes.

(f) The Landlord may not charge for utilities unless the utility is separately or individually metered.

(g) **Landlords Have the Right to a Reasonable Return on Their Investment.** In making individual adjustments of the rent ceiling, the Board or hearing examiner shall consider the purposes of this chapter and shall specifically consider all relevant factors, including (but not limited to):

- (1) Increases or decreases in property taxes;
- (2) Unavoidable increases or any decreases in maintenance and operating expenses;
- (3) The cost of planned or completed capital improvements to the rental unit (as distinguished from ordinary repair, replacement and maintenance) where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvement;
- (4) Increases or decreases in the number of tenants occupying the rental unit, living space, furniture, furnishings, equipment, or other housing services provided, or occupancy rules;
- (5) Substantial deterioration of the controlled rental unit other than as a result of normal wear and tear;
- (6) Failure on the part of the Landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health and safety codes, or the rental agreement;
- (7) The pattern of recent rent increases or decreases;
- (8) It is the intent of this chapter that individual upward adjustments in the rent ceilings on units be made only when the Landlord demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment.

(h) No upward adjustment of an individual rent ceiling shall be authorized by the Board under this Section if the Landlord:

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

(j) Allowable rent increases pursuant to an individual upward adjustment of the rent ceiling shall become effective only after the Landlord gives the Tenant at least a thirty (30) day written notice of such rent increase and the notice period expires. If the Board makes a downward individual adjustment of the rent ceiling, such rent decrease shall take effect no sooner than thirty (30) days after the effective date set by the Board for the downward adjustment.

(k) No provision of this chapter shall be applied so as to prohibit the Board from granting an individual rent adjustment that is demonstrated by the Landlord to be necessary to provide the Landlord with a fair return on investment. Necessity shall be defined in regulations promulgated by the Board. Limits on the total increase per month and length of monthly increase shall be promulgated by the Board through regulations.

11.100.080 Non-waiverability.

Any provision, whether oral or written in or pertaining to a Rental Housing Agreement whereby any provision of this Chapter for the benefit of the Tenant is waived, shall be deemed to be against public policy and shall be void.

11.100.090 Judicial Review.

A Landlord or Tenant aggrieved by any action or decision of the Board may seek judicial review by appealing to the appropriate court within the jurisdiction. No action or decision by the Board shall go into effect until thirty (30) days have expired to allow for such appeal.

11.100.100 Remedies.

(a) Any Landlord who demands, accepts, receives, or retains any payment of Rent in excess of the Maximum Allowable Rent, in violation of the provisions of this Chapter or any rule, regulation or order hereunder promulgated, including the provisions ensuring compliance with habitability standards and registration fee requirements, shall be liable in a civil action to the Tenant from whom such payments are demanded, accepted, received or retained, for reasonable attorney's fees and costs as determined by the court, plus damages in the amount by which the payment or payments demanded, accepted, received or retained exceeds the Maximum Allowable Rent. A civil penalty of treble the amount by which the payment or payments demanded, accepted, received or retained exceeds the Maximum Allowable Rent shall be awarded against the Landlord upon a showing that the Landlord has acted willfully or with oppression, fraud or malice. No administrative remedy need be exhausted prior to filing suit pursuant to this Subsection.

(b) In lieu of filing a civil action, a Tenant may file an administrative complaint. The Board shall establish by rule and regulation a hearing procedure similar to that set forth in Section 11.100.070.

(1) The rules and regulations adopted by the Board shall provide for final Board action on any complaint for excess Rent within one-hundred twenty (120) days following the date of filing of the complaint.

(2) In any administrative hearing under this Section, a Landlord who demands, accepts, receives or retains any payment of Rent in excess of the Maximum Allowable Rent shall be liable for damages in the amount by which the payment or payments demanded, accepted, received or retained exceeds the Maximum Allowable Rent.

(3) If the Tenant from whom such excessive payment is demanded, accepted, received or retained in violation of the foregoing provisions of this Chapter or any rule or regulation or order hereunder promulgated fails to bring a civil or administrative action as provided for in Sections 11.100.100(b) within one hundred twenty (120) days from the date of occurrence of the violation, the Board may settle the claim arising out of the violation or bring such action. Thereafter, the Tenant on whose behalf the Board acted is barred from also bringing an action against the Landlord in regard to the same violation for which the Board has made a settlement or brought action. In the event the Board settles said claim, it shall be entitled to retain the costs it incurred in settlement thereof, and the Tenant against whom the violation has been committed shall be entitled to the remainder.

(c) The appropriate court in the jurisdiction in which the Controlled Rental Unit affected is located shall have jurisdiction over all actions brought under this Section.

(d) Any Landlord violating this Chapter shall be guilty of a misdemeanor and shall be punished in accordance with Section 1.04.100 of the Richmond Municipal Code

11.100.110 Injunctive and Other Civil Relief.

The Board, and Tenants and Landlords of Rental Units, may seek relief from the appropriate court within the jurisdiction within which the affected Rental Unit is located to enforce any provision of this Chapter or its implementing regulations or to restrain or enjoin any violation of this Chapter and of the rules, regulations, orders and decisions of the Board.

11.100.120 Partial Invalidity.

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

11.100.130 Majority Approval, Effective Date, Execution.

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