

AUG 2 2016

RESOLUTION NO. 31-2016

MARK CHURCH, Chief Elections Officer  
By \_\_\_\_\_  
Clerk

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURLINGAME CALLING AND GIVING NOTICE OF A MUNICIPAL ELECTION TO BE HELD NOVEMBER 8, 2016 AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES AND SUBMITTING TO THE VOTERS A QUESTION RELATING TO AN INITIATIVE PETITION; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS; DIRECTING THE CITY ATTORNEY AND THE CITY CLERK TO PREPARE THE NECESSARY DOCUMENTS TO PLACE THE INITIATIVE ON THE BALLOT; AND REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN MATEO TO CONSOLIDATE A MUNICIPAL ELECTION TO BE HELD WITH THE PRESIDENTIAL GENERAL ELECTION ON NOVEMBER 8, 2016 PURSUANT TO ELECTIONS CODE SECTION 10403**

**WHEREAS**, on March 31, 2016, proponents of an initiative measure entitled "the Burlingame Community Protection Ordinance" ("Initiative") submitted a Notice of Intent and written text of the measure and requested that a Ballot Title and Summary be prepared for the measure in order to circulate the petition; and

**WHEREAS**, the City Attorney prepared and provided the Ballot Title and Summary on April 14, 2016, with the Ballot Title "An ordinance to enact rent stabilization and just cause for eviction and repeal prior restrictions on the regulation of sale or rental price of real estate"; and

**WHEREAS**, on April 21, 2016 the proponents published their Notice of Intent, Ballot Title and Summary in the newspaper and pursuant to Elections Code Section 9207 began circulating their petition; and

**WHEREAS**, the petition was filed with the City Clerk on July 5, 2016, and was submitted to the San Mateo County Elections Office on July 6, 2016, for signature verification; and

**WHEREAS**, in order for the Initiative to be placed on the November 8, 2016 Presidential General Election ballot, proponents needed to collect valid signatures of at least fifteen percent (15%) of the registered voters in the City; and

**WHEREAS**, the City Clerk conducted a prima facie review of the petition as to form and found it complied with the provisions of the Elections Code; and

**WHEREAS**, the certified results of the signature verification were presented by the City Clerk and accepted by the City Council; and

**WHEREAS**, it is desirable that the municipal election be consolidated with the Presidential General Election to be held on the same date and that within the City the precincts, polling places and election officers of the two elections be the same; and that the San Mateo County Elections Office canvass the returns of the municipal election; and that the election be held in all respects as if it were one election;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council order as follows:

**Section 1.** That pursuant to the requirements of the laws of the State of California relating to general law cities, there is called and ordered to be held in the City of Burlingame, California, on Tuesday, November 8, 2016, a municipal election for the purpose of submitting the following question:

Shall the ordinance (a) enacting rent stabilization with an annual maximum increase of 4% for most multi-family rental residences with certificates of occupancy before February 1, 1995; (b) establishing just cause for eviction restrictions on most rental residential units, including single family homes and multi-family residences built after 1995; (c) creating a Commission authorized to enact regulations and set fees to implement the ordinance; and (d) superseding prior restrictions on the passage of rent control be adopted? 11

YES  
NO

74 words

**Section 2.** That the "full text" of the proposed ordinance shall appear in the Voter Information Pamphlet. The "full text" of the proposed ordinance is attached to this resolution as "Exhibit A."

**Section 3.** That the City Clerk is directed to transmit a copy of the measure to the City Attorney, and the City Attorney is directed to prepare an impartial analysis of the measure showing the effect and operation of the proposed ordinance and to file the analysis no later than August 29, 2016.

**Section 4.** The proponents of the initiative may file a written argument in favor of the measure, and the City Council authorizes any and all members of the City Council to file a written argument against the measure and any individual voter who is eligible to vote on the measure or bona fide association of citizens or combination of voters and associations may also submit a written argument for or against the measure. Such argument, whether in favor or against, shall not exceed 300 words and be accompanied by the printed name(s) and signature(s) of the person(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers. Primary arguments in favor of and against the measure must be submitted to the City Clerk by 5:00 p.m. on August 19, 2016. In the event that more than one written argument is filed in favor of or against the measure, the City Clerk shall select one of the multiple arguments in accordance with the provision of Elections Code Section 9287 and Resolution Number 15-2016. Rebuttal arguments must be submitted to the City Clerk by 5:00 p.m. on August 29, 2016 and shall not exceed 250 words.

**Section 5.** The boundaries of the City have not changed since the City of Burlingame's previous election held on November 3, 2015.

**Section 6.** The measure requires a simple majority of the voters voting on the initiative to pass.

**Section 7.** Pursuant to the requirements of Elections Code Section 10403, the Board of Supervisors of the County of San Mateo is hereby requested to consent and agree to the consolidation of a municipal election with the Presidential General Election on Tuesday, November 8, 2016.

**Section 8.** The City Manager and the City Clerk are authorized to enter into a service agreement with the San Mateo County Elections Office to request the services of the Elections Office in conducting the election, consolidating the election and canvassing the returns. The election shall be held in all respects as if there were only one election and only one form of ballot shall be used.

**Section 9.** The ballots to be used at the election shall be in the form and content as required by law.

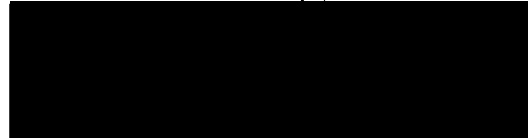
**Section 10.** That the City Clerk is authorized, instructed and directed to contract for the procurement and furnishing of any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election and to take all other necessary actions to place the measure on the November 8, 2016 ballot.

**Section 11.** That the polls for the election shall be open at 7:00 a.m. on the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed, pursuant to Elections Code Section 10242, except as provided in Elections Code Section 14401.

**Section 12.** That the City shall reimburse the County for services performed when the work is completed and upon presentation to the City of a properly approved bill.

**Section 13.** That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

**Section 14.** That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.



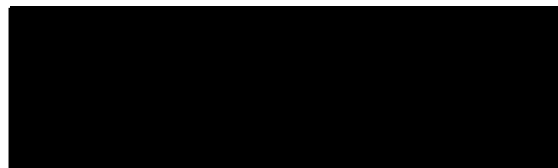
Mayor

I, MEAGHAN HASSEL-SHEARER, City Clerk of the City of Burlingame, do hereby certify that the foregoing Resolution was introduced at a regular meeting of the City Council held on the 1st day of August, 2016, and was adopted thereafter by the following vote:

AYES: COUNCILMEMBERS: BEACH, BROWNRIGG, COLSON, KEIGHRAN, ORTIZ

NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: NONE



City Clerk

FULL TEXT BEGINS:

THE PEOPLE OF THE CITY OF BURLINGAME ORDAIN AS FOLLOWS:

THE BURLINGAME COMMUNITY PROTECTION ORDINANCE

Title 20, Chapter 20.04

20.04.010	Title and Purpose
20.04.020	Findings
20.04.030	Definitions
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20.04.120	Petitions for Individual Rent Adjustment -- Procedures
20.04.130	Judicial Review
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20.04.150	Remedies
20.04.160	Injunctive and Other Civil Relief
20.04.170	Partial Invalidity
20.04.180	"Measure T" Repealed
20.04.190	Codification
20.04.200	Majority Approval, Effective Date, Execution

**20.04.010 TITLE AND PURPOSE**

This Ordinance shall be known as the Burlingame Community Protection Ordinance. The purpose of this Ordinance is to promote neighborhood and community stability, healthy housing, and affordability for renters in the City of Burlingame 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 guaranteeing fair protections for renters, homeowners, and businesses. As such, it is the purpose of this Ordinance to repeal Municipal Ordinance 1356, also known as "Measure T," which otherwise limits the City's ability to provide meaningful protections for its residents.

**20.04.020 FINDINGS**

The People of Burlingame find and declare as follows:

(a) There is a shortage of decent, safe, affordable, and sanitary housing in the City of Burlingame ("the City").

(b) Law abiding tenants have to worry constantly about losing their homes through no fault of their own. Common-sense protections against unreasonable rent increases and arbitrary evictions are needed in the City to protect long-time residents from forced displacement.

(c) Burlingame is one of the most expensive communities in which to live in the San Francisco Bay Area, with median home values over \$1.8 million according to Zillow research. According to several measures such as Zillow and Trulia, the median rental prices for market rate rentals in the City surpass \$4,500 per month.

(d) According to the University of California, Berkeley's 2015 Urban Displacement Project, the entire City of Burlingame is either at-risk of displacement or has already experienced significant displacement.

(e) More than half of Burlingame residents are renters. According to HUD's Comprehensive Housing Affordability Strategy (CHAS, 2008-2012), 47% of Burlingame tenant households are "overpaying households," meaning the household pays 30% or more of its income on housing costs. Many of these tenants are paying more than 50% of their income for rent.

(f) According to San Mateo County Department of Housing statistics, the average rent in San Mateo County for a 2-bedroom apartment has increased more than 50% over the last four years alone.

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

(h) City residents have reported that there have been excessive rent increases and a substantial increase in the number of evictions without cause. Residents have reported these trends to the City Council at City Council meetings, as well as to the press.

(i) Renters are being displaced as a result of evictions or their inability to pay excessive rent increases. These residents must relocate, but as a result of the housing shortage are unable to find decent, safe, and healthy housing at affordable rent levels. Aware of the difficulty in finding decent housing, some renters attempt to pay requested rent increases, but as a consequence must expend less on other necessities of life, such as food, transit, and healthcare. This situation has a detrimental effect on substantial numbers of renters in the City and is a threat to the public health, safety, and welfare. The situation creates a particular hardship for senior citizens, persons on fixed incomes, families with children, and other vulnerable tenants.

(j) No-fault evictions are forcing renters, including the elderly and disabled, from their homes. The City is experiencing a troubling increase in the number of landlords who evict entire buildings full of tenants based on no-cause termination notices. Evictions have been shown to cause serious stress, which can endanger the health and welfare of those affected.

(k) Landlords who evict or price out Tenants impose adverse impacts on the displaced Tenants, including numerous financial costs. These costs include but are not limited to: packing costs, moving costs, lost wages due to taking time off work to search for alternative housing, the cost of applying to alternative housing, change of address expenses, hotel costs or other temporary housing expenses required until suitable long-term alternative housing is obtained, and the cost of a new security deposit. Additionally, nearly all rental housing requires

that prospective tenants pay three months' rent up front in order to secure a lease – generally representing the first month's rent, last month's rent, and security deposit. The total accumulated cost imposed on a displaced household generally exceeds \$10,000 and frequently can reach \$20,000 or greater. Tenants who are seniors, disabled, or have children incur even higher costs due to their particular circumstances. Low- and moderate-income tenants cannot afford such sudden and costly expenses, and they often experience homelessness as a direct consequence of eviction, which itself imposes further financial, social, and emotional costs. The severe impacts of displacement on renters pose a threat to the public health, safety, and welfare.

(l) Eviction or other displacement imposes an especially high burden on school-aged children and their families, including increased absence from school and other educational disruption that can have long-lasting effects.

(m) Escalating housing costs and the displacement of current residents has had a detrimental impact on small businesses in the City of Burlingame. Small businesses have struggled to recruit and retain employees, and some businesses have experienced unusually high turnover rates among their staff as workers are displaced by massive rent increases and evictions. Such businesses incur increased costs due to the need to frequently recruit and train new employees for the same position. Moreover, as customers of some local businesses spend a greater portion of their income on rent, they spend less on non-essential goods and services, driving down sales and harming the City's economic vitality and business diversity.

(n) On July 13, 2015, the City Council of Burlingame convened a Special Session, at which it considered several proposals for renter relief, including just cause for eviction protections as well as other policies to potentially address escalating rents. The Special Session drew substantial attendance and participation from the public, including renters and members of the real estate industry.

(o) Burlingame Municipal Ordinance 1356, passed in 1987 and also known as "Measure T," prevents the City from adequately protecting the community from exorbitant rent increases.

(p) The City of Burlingame does not restrict rent increases or the grounds for eviction. Residents have been unfairly evicted or priced out so that Landlords can take advantage of the City's housing shortage and raise rents excessively.

(q) It is reasonably foreseeable that the filing of this Chapter as a proposed ballot initiative will further impact the rental housing market in the City of Burlingame, as Landlords may dramatically increase rents in anticipation of the implementation of this Chapter.

(r) Given the increased housing cost burden and high risk of eviction, the public health, safety, and welfare of Burlingame residents are threatened. Residents, including seniors and people on fixed incomes, are often faced with a choice between paying rent or buying necessary food and medical care for themselves and their families.

(s) 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 result from a substantial decrease of housing affordability within the City, the People of Burlingame 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 promote affordable housing within the City, just cause for eviction policies, and rent stabilization.

20.04.030

**DEFINITIONS**

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

(a) **Annual General Adjustment.** The Annual General Adjustment is the percentage by which the Rent for existing tenancies in Covered Rental Units may be increased each year, subject to the limitations of this Chapter.

(b) **Base Rent.** The Base Rent is the reference point from which the lawful Rent shall be determined and adjusted in accordance with this Chapter.

(1) **Tenancies commencing on or before March 30, 2016.** The Base Rent for tenancies that commenced on or before March 30, 2016 shall be the Rent in effect on March 30, 2016.

(2) **Tenancies commencing after March 30, 2016.** The Base Rent for tenancies that commenced after March 30, 2016 shall be the initial rental rate charged upon initial occupancy, provided that amount is not a violation of this Chapter or any provision of state law. The term "initial rental rate" means only the amount of Rent actually paid by the Tenant for the initial term of the tenancy.

(c) **Commission.** The term "Commission" refers to the Burlingame Rental Housing Commission established by this Chapter.

(d) **Covered Rental Units.** All Rental Units not specifically exempted by this Chapter.

(e) **City Council.** The term "City Council" refers to the City Council of the City of Burlingame.

(f) **Disabled.** The term "Disabled" as defined in Government Code Section 12955.3.

(g) **Hearing Officer.** An official appointed by the Commission to conduct an investigation or administrative hearing pursuant to this Chapter.

(h) **Housing Services.** Housing Services include, but are not limited to: repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, Utility Charges that are paid by the Landlord, refuse removal, furnishings, telephone, parking, the right to have a specified number of occupants, and any other benefit, privilege, or facility connected with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building in which the Rental Unit is contained.

(i) **Individual Rent Adjustment.** An adjustment to the otherwise lawful Rent authorized by a Hearing Officer or the Commission pursuant to this Chapter.

(j) **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, predecessor, or successor of any of the foregoing.

(k) **Petition.** A petition for Individual Rent Adjustment pursuant to this Chapter.

(l) **Primary Residence.** The occupant's usual place of return. To classify a unit as an occupant's Primary Residence does not require that the occupant be physically present in the unit at all times or continuously, but does require that the unit be the occupant's usual place of return. Factors that are indicative of Primary Residence include but are not limited to:

(1) The occupant carries on basic living activities at the subject premises for extended periods;

(2) The subject premises are listed with public agencies, including but not limited to federal, state, and local taxing authorities, as the occupant's primary residence;

(3) Utility Charges and other charges and fees associated with usage of the structure are billed to and paid by the occupant at the subject premises;

(4) The occupant does not file for a homeowner's tax exemption for any different property;

(5) The occupant is not registered to vote at any other location; and

(6) Ownership is held in the name of the occupant claiming Primary Residence and not held by a Limited Liability Corporation or other corporate or business entity structure.

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

(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. This shall also include any other at-large organization that represents the interest of Tenants.

(o) **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 concerning the use or occupancy of a Rental Unit and premises and attendant Housing Services, including all payment and consideration demanded or paid for parking, Utility Charges, pets, furniture, and/or subletting.

(p) **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.

(q) **Rental Housing Fee.** The fee described in Section 20.04.100(j) herein.

(r) **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.

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



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

(u) **Utility Charges.** Any charges for gas, electricity, water, garbage, sewer, telephone, cable, internet, or other service relating to the use and occupancy of a Rental Unit.

(v) **Written Notice to Cease.** A written notice provided by a Landlord that gives a Tenant an opportunity to cure an alleged violation or problem prior to service of a notice to terminate tenancy. Any Written Notice to Cease must:

- (1) Provide the Tenant a reasonable period to cure the alleged violation or problem;
- (2) Inform the Tenant that failure to cure may result in the initiation of eviction proceedings;
- (3) Inform the Tenant of the right to request a reasonable accommodation;
- (4) Inform the Tenant of the contact number for the Commission; and
- (5) Include sufficient details about the conduct underlying the Written Notice to Cease that allow a reasonable person to comply.

#### 20.04.040

#### EXEMPTIONS

(a) **Fully Exempt (Exempt from Both Rent Stabilization and Just Cause for Eviction).** The following Rental Units are exempt from all provisions of this Chapter:

- (1) Units in hotels, motels, inns, tourist homes, and rooming and boarding houses which are rented primarily to transient guests for a period of fewer than 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 regulations; and
- (4) Rental Units additionally exempted pursuant to Section 20.04.050 herein.

(b) **Partially Exempt (Just Cause for Eviction Applies).** The following Rental Units are exempt only from Sections 20.04.070, 20.04.080, and 20.04.090 of this Chapter (Stabilization of Rents) and Sections 20.04.110 and 20.04.120 (Petitions for Individual Rent Adjustment):

- (1) **Single-Family Homes and Condominiums.** Single-Family Homes, condominiums, and other Rental Units specified in Civil Code § 1954.52(a)(3)(A); and

- (2) Rental Units with an initial certificate of occupancy dated after February 1, 1995.

**20.04.050 ADDITIONAL HOMEOWNER PROTECTIONS**

Homeownership is of great importance to the residents of the City of Burlingame. In addition to the Rental Units exempted in Section 20.04.040(a) of this Chapter, the following Rental Units are also Fully Exempt from this Chapter:

(a) **Owner-Occupied Secondary Dwelling Units.** A Rental Unit that is permitted and in compliance with Burlingame Municipal Code Chapter 25.59, if the Landlord is a natural person and uses either the secondary dwelling unit or the larger Single-Family Home as his or her Primary Residence.

(b) **Owner-Occupied Duplexes.** Rental Units in Properties that have two (2) total dwelling units, if the Landlord is a natural person who occupies one of the units as his or her Primary Residence.

**20.04.060 JUST CAUSE FOR EVICTION 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 orally 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 at least one of the following conditions exists:

(1) **Failure to Pay Rent.** The Tenant has failed, after three days' written notice as provided by law, to pay the amount stated in the notice, so long as the amount stated does not exceed 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 the Landlord has served the Tenant with Written Notice to Cease, to substantially violate any of the material terms of the Rental Housing Agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the Tenant; and provided further that, where such terms have been accepted by the Tenant or made part of the Rental Housing 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.

(A) 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 Rental Unit if the following requirements are met:

(i) The Tenant continues to reside in the Rental Unit as his, her, or their Primary Residence;

(ii) The sublessee replaces one or more departed Tenants under the Rental Housing Agreement on a one-for-one basis; and

(iii) 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 exceeds the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by Health & Safety Code Section 17922.

(B) **Protections for Families.** Notwithstanding any contrary provision in this Section, a Landlord shall not take any action to terminate a tenancy as a result of the addition to the Rental Unit of a Tenant's child, parent, grandchild, grandparent, brother, or sister, or the spouse or domestic partner (as defined in 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 Health & Safety Code 17922. The Commission may 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 the Rental Unit.

(4) **Criminal Activity.** The Tenant has continued, after the Landlord has served the Tenant with a Written Notice to Cease, to be so disorderly as to destroy the peace, quiet, comfort, or safety of the Landlord or other tenants at the Property. Such disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the Landlord or other tenants at the Property.

(5) **Failure to Give Access.** The Tenant has continued to refuse, after the Landlord has served the Tenant with a Written Notice to Cease, without good cause, to grant the Landlord reasonable access to the Rental Unit as required by state or local law.

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

(A) The repairs necessitate that the Tenant vacate the Rental Unit because the work will render the rental unit uninhabitable for a period of not less than thirty (30) days;

(B) The Landlord gives advance notice to the Tenant of the Tenant's right to elect between:

(i) The right of first refusal to any comparable vacant Rental Unit owned by the Landlord at the same Rent, if such comparable vacant unit exists; or

(ii) The first right of return to reoccupy the unit upon completion of the repairs at the same Rent charged to the Tenant before the Tenant temporarily vacated the Rental Unit.

(iii) In the event that the Tenant elects to accept an offer to move to a comparable vacant Rental Unit at the same Rent, the Tenant is not eligible for any relocation assistance pursuant to Section 20.04.060(b) herein.

(C) In the event the Landlord files a Petition for Individual Rent Adjustment within six (6) months following the completion of the work, the Tenant shall be 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 reoccupy the premises pursuant to this Subsection.

(7) **Owner Move-In.** The Landlord seeks, after providing written notice to the Tenant pursuant to state law, to recover possession of the Rental Unit in good faith for use and occupancy as a Primary Residence by the Landlord, or the Landlord's spouse, domestic partner, children, parents or grandparents.

(A) As used in this Subsection "Landlord" shall only include a Landlord that is a natural person and who has at least a fifty percent (50%) recorded ownership interest in the Property.

(B) No eviction may take place under this Subsection 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 Burlingame is necessary to accommodate the person's disability.

(C) Any notice terminating tenancy pursuant to this Subsection shall contain the name, address, and relationship to the Landlord of the person intended to occupy the Rental Unit.

(D) The Landlord or enumerated relative must intend in good faith to move into the Rental Unit within sixty (60) days after the Tenant vacates and to occupy the Rental Unit as a Primary Residence for at least thirty-six (36) consecutive months. The Commission 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 Rental Unit within sixty (60) days after the Tenant vacates, the Landlord shall:

- (i) Offer the Rental Unit to the Tenant who vacated it at the same Rent in effect when the Tenant vacated; and
- (ii) Pay to said Tenant all reasonable expenses incurred in moving to and from the Rental Unit.

(f) 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 sixty-two (62) years old or Disabled; or (2) is certified as being terminally ill by the Tenant's treating physician. Notwithstanding the above, a Landlord may evict a Tenant who qualifies for the exemption herein if the Landlord or enumerated relative who will occupy the Rental Unit also meets the criteria for this exemption and no other units are available.

(8) **Withdrawal of the Unit Permanently from Rental Market.** The Landlord seeks in good faith to recover possession to withdraw all Rental Units of an entire Property from the rental market. The Landlord first must have filed the requisite documents with the Commission initiating the procedure for withdrawing Rental Units from rent or lease under Government Code Section 7060 et. seq. and all regulations passed by the Commission, with the intention of completing the withdrawal process and going out of the rental business. Tenants shall be entitled to a minimum of 120-day notice or one (1) year in the case Tenants are defined as senior or Disabled under Government Code Section 12955.3. Notice times may be increased by regulations if state law allows for additional time.

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

(b) **Relocation Assistance.**

(1) A Landlord seeking to recover possession under Subsections (a)(6)-(9), herein shall provide relocation assistance to affected Tenant households in an amount equal to three (3) times the current market rate Rent for a similar Rental Unit in Burlingame. The relocation assistance required herein shall be a minimum amount. The City Council may increase the dollar amounts of relocation assistance pursuant to its powers under law. The Landlord shall notify the affected Tenants of their rights under this Subsection, if any, at the time of service of the notice to quit.

(2) The Commission shall issue rules and regulations to effectuate this Subsection including but not limited to rules and regulations setting forth an additional amount of relocation assistance applicable to particularly vulnerable Tenant households, the procedures for establishing and facilitating payment of the relocation assistance, and for the reasonably timely payment of any applicable relocation assistance.

(c) **First Right of Return.** All Tenants whose tenancy is terminated based upon a basis enumerated in Subsections (a)(6)-(9) herein shall have the first right of return to the Rental

Unit if that Rental Unit is returned to the market by the Landlord or successor Landlord. Rent for the Rental Unit shall be the Rent lawfully paid by the Tenant at the time the Landlord gave notice of termination based upon Subsections (a)(6)-(9) herein.

(d) **Retaliation is Barred.** Notwithstanding the above provisions, no Landlord shall take action to terminate any tenancy or otherwise recover possession of a Rental Unit in retaliation for the Tenant reporting violations of this Chapter, for exercising rights granted under this Chapter, or for forming or participating in a Recognized Tenant Organization.

(e) **Notice to Specify Basis for Termination.** Any notice purporting to terminate tenancy on any of the bases specified in this Section must state with specificity the basis on which the Landlord seeks to terminate the tenancy.

(f) **Landlord Compliance with this Chapter.** In any action brought to recover possession of a Rental Unit, the Landlord shall allege compliance with this Chapter.

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

(h) **Failure to comply.** A Landlord's failure to comply with any requirement of this Chapter, including without limitation the failure to serve any of the required notices on the Commission pursuant to Subsection (g) herein, is a complete affirmative defense in an unlawful detainer or other action brought by the Landlord to recover possession of the Rental Unit.

#### **20.04.070 STABILIZATION OF RENTS**

(a) **Rents Stabilized.** Upon the effective date of this Chapter, no Landlord shall charge Rent in an amount that exceeds the sum of the Base Rent plus any lawful Rent increases actually implemented pursuant to this Chapter.

(b) **Rent Increases Regulated.** No Landlord shall increase Rent for a Covered Rental Unit except as authorized by this Chapter. Rent increases shall be limited to those imposed pursuant to Section 20.04.080 (Annual General Adjustment) and Section 20.04.110(a) (Petition for Upward Adjustment—Fair Rate of Return). A Landlord may set the initial Rent for a new tenancy pursuant to Section 20.04.090 (Initial Rents for New Tenancies).

(c) **Security Deposit at Commencement of Tenancy Only.** No Landlord shall increase a security or other deposit originally required from a Tenant as a condition of occupancy of a Rental Unit.

#### **20.04.080 RENT INCREASES PURSUANT TO ANNUAL GENERAL ADJUSTMENT**

(a) **Annual General Adjustment.** No later than June 30th each year, the Commission shall announce the amount of the Annual General Adjustment, which shall be effective as of September 1st of that year. The Annual General Adjustment is the percentage by which the Rent for existing tenancies in Covered Rental Units may be increased each year, subject to the limitations of this Chapter.

(1) The Annual General Adjustment shall be equal to one hundred percent (100%) 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 twelve-month period ending as of March of the current year. The Annual General Adjustment shall be rounded to the nearest one-tenth of a percent.

(2) Subparagraph 1 of this Subsection notwithstanding, in no event shall the Annual General Adjustment be less than one percent (1%) or more than four percent (4%).

(3) The first Rent increase that a Landlord may impose pursuant to this Section shall not take effect prior to September 1, 2017.

(4) A Landlord may only implement a Rent increase pursuant to an Annual General Adjustment within the twelve (12) months immediately after the effective date of such Annual General Adjustment. Any Annual General Adjustment not implemented within the twelve (12) months immediately following its effective date is waived.

(b) **One Rent Increase Per Year.** No more than one Rent increase per twelve-month period may be imposed on a Tenant.

(c) **Notice of Rent Increase Required.** Allowable Rent increases pursuant to the Annual General Adjustment shall become effective only after the Landlord provides written notice to the Tenant in the manner prescribed by law, with at least thirty (30) days' advance written notice.

(d) **Conditions Under Which Rent Increase Not Permitted.** No Rent increase shall be effective if the Landlord:

(1) Has failed to substantially comply with all provisions of this Chapter and all rules and regulations promulgated by the Commission; or

(2) Has failed to maintain the Rental Unit in compliance with Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10; or

(3) Has failed to make repairs ordered by a Hearing Officer, the Commission, or the City.

#### 20.04.090

#### INITIAL RENTS FOR NEW TENANCIES

(a) **Setting of Initial Rents Without Restriction.** To the extent permitted by state law, Landlords may set the initial Rent for new Tenants at the market rate.

(b) **Costa-Hawkins Exceptions.** The Costa-Hawkins Rental Housing Act, Civil Code § 1954.50 et seq., permits municipalities to regulate the initial Rent in certain limited circumstances. Pursuant to the Costa-Hawkins Rental Housing Act, limitations on the initial Rent shall apply in any of the following circumstances:

(1) **No Fault Termination of Tenancy.** The previous Tenant vacated following a notice described in Civil Code § 1954.53(a)(1);

(2) **Rent Increase Not Permitted by this Chapter.** The previous Tenant vacated following a notice of Rent increase not permitted by this Chapter (see Civil Code § 1954.53(a)(1));

(3) **Failure to Renew Government Contract.** A Landlord that terminates or fails to renew a contract or recorded agreement with a government agency that provides for a Rent limitation to a qualified Tenant shall not be eligible to set an initial Rent for three (3) years following the date of the termination or nonrenewal of the contract or agreement (see Civil Code § 1954.53(a)(1)(A));

(4) **Serious Code Violation.** The Rental Unit was cited for serious health, safety, fire, or building code violations at least sixty (60) days prior to the vacancy and the violations were not abated by the time the Rental Unit was vacated (see Civil Code § 1954.53(f));

(5) **Ellis Act Termination of Tenancy.** The previous Tenant vacated pursuant to a notice described in Section 20.04.060(a)(8) of this Chapter, but the withdrawal of the Property was not fully or properly completed under the Ellis Act or any local implementing ordinances or regulations; or

(6) **Exchange for Public Subsidy.** The Landlord has agreed to a Rent restriction in return for a direct financial contribution (see Civil Code § 1954.53(a)(2)).

(c) **Rent Increases After Setting an Initial Rent.** After the Landlord sets an initial Rent pursuant to this Section, the Landlord may only increase the Rent in accordance with this Chapter. The Landlord may not increase Rent based on Annual General Adjustments, cost increases, capital improvements, or other circumstances that arose before the new tenancy began.

#### **20.04.100 RENTAL HOUSING COMMISSION**

(a) **Composition.** There shall be in the City of Burlingame an appointed Rental Housing Commission comprised of Burlingame residents as set forth in this Section. The Commission shall consist of five (5) Commission members appointed by the City Council, and an alternate Commission member. The alternate Commission member shall be permitted to attend all Commission meetings and to speak, but not be authorized to vote unless a regular member of the Commission is absent at that meeting or is recused from voting on an agenda item. There shall be no more than two members who own or manage any rental property or are realtors or are developers. At least three (3) members shall be Tenants. Anyone nominated to this Commission must be in compliance with this Chapter and all other local, state, and federal laws regulating the provision of housing. Annually, the Commission shall elect one of its members to serve as chairperson.

(b) **Eligibility and Appointment.** Commission members shall be appointed by the City Council at a public meeting. Applicants for membership on the Commission shall submit an application to the City Council. The application shall include a statement under penalty of perjury of the applicant's interests and dealings in real property, including but not limited to, ownership, trusteeship, sale, or management, and investment in and association with partnerships, corporations, joint ventures, and syndicates engaged in ownership, sale, or management of real property during the three (3) years immediately prior to the applicant's application. This documentation shall be made available to the public.



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

(d) **Powers and Duties.** The Commission shall have the following powers and duties:

- (1) Set Rents at fair and equitable levels to achieve the purposes of this Chapter. Notwithstanding any other provision of this Chapter, the Commission shall have the authority to adopt regulations authorizing Rent increases and/or adjustments required by state or federal law.
- (2) Establish rules and regulations for administration and enforcement of this Chapter.
- (3) Determine and publicize the Annual General Adjustment pursuant to this Chapter.
- (4) Adjudicate Petitions pursuant to Sections 20.04.110 and 20.04.120 herein and issue decisions with orders for appropriate relief pursuant to this Chapter.
- (5) Administer oaths and affirmations and subpoena witnesses and relevant documents.
- (6) Establish a budget for the reasonable and necessary implementation of the provisions of this Chapter, including without limitation the hiring of necessary staff, and charge fees as set forth herein in an amount sufficient to support that budget.
- (7) Administer the withdrawal process for the removal of Rental Units from the rental housing market pursuant to Section 20.04.060(a)(8) herein.
- (8) Hold public hearings.
- (9) Conduct studies, surveys, investigations, and hearings, and obtain information to further the purposes of this Chapter.
- (10) Report periodically to the City Council on the status of Covered Rental Units. Reports shall include (a) a summary of the numbers of termination of tenancy notices served pursuant to Section 20.04.060, including the bases upon which they were served, and (b) a summary of any and all Petitions submitted to and/or decided by a Hearing Officer and/or the Commission pursuant to Sections 20.04.110 and 20.04.120, including the bases on which the Petitions were submitted and the determinations on the Petitions.
- (11) Publicize through reasonable and appropriate means the provisions of this Chapter, including without limitation the rights and responsibilities of Landlords and Tenants.
- (12) Establish a schedule of penalties that may be imposed for noncompliance with this Chapter or with rules and regulations promulgated under this Chapter.

(13) Pursue civil remedies as provided by this Chapter in courts of appropriate jurisdiction.

(14) Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a Landlord or Tenant with respect to Covered Rental Units.

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

(c) **Rules and Regulations.** The Commission shall issue and follow such rules and regulations as will further the purposes of the Chapter.

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

(g) **Quorum.** Three (3) members shall constitute a quorum for the Commission.

(h) **Voting.** The affirmative vote of three (3) members of the Commission is required for a decision, including on all motions, regulations, and orders of the Commission.

(i) **Vacancies.** If a vacancy occurs on the Commission, a person qualified to fill such vacancy shall be appointed by the City Council in accordance with this Chapter.

(j) **Financing.** The Commission shall finance its reasonable and necessary expenses by charging Landlords an annual Rental Housing Fee as set forth herein, in amounts deemed reasonable by the Commission in accordance with applicable law. The Commission is also empowered to request and receive funding when and if necessary from any available source for its reasonable and necessary expenses.

(1) **Rental Housing Fee.** All Landlords shall pay a Rental Housing Fee on an annual basis. The first Commission convened after the effective date of this Chapter shall determine the amount of the Rental Housing Fee. The amount of the Rental Housing Fee may differ between Rental Units subject to the entirety of this Chapter and those that are Partially Exempt. The Commission may adjust the amount of the Rental Housing Fee at its discretion to ensure full funding of its reasonable and necessary expenses, in accordance with all applicable law.

(2) **City to Advance Initial Funds.** During the initial implementation of this Chapter, the City shall advance all necessary funds to ensure the effective implementation of this Chapter, until the Commission has collected Rental Housing Fees sufficient to support the implementation of this Chapter. The City may seek a reimbursement of any advanced funds from the Rental Housing Commission after the Rental Housing Fee has been collected.

(k) **Integrity and Autonomy of Commission.** The Commission 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 Commission. In the period between the effective date of this Chapter and the appointment of the initial members of the Commission, the City shall take whatever steps are necessary to perform the duties of the Commission and implement the purposes of this Chapter.

(l) **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 Commission 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 the matters addressed in this Chapter.

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

(n) **Conflict of interest.** Commission members shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a Landlord, realtor, developer, or Tenant. However, a Commission member shall be disqualified from ruling on a Petition if the Commission member is either the Landlord of the Property or a Tenant residing in the Property that is involved in the Petition. The provisions of the Political Reform Act, Government Code Sections 87100 et seq. shall apply.

#### 20.04.110

#### PETITIONS FOR INDIVIDUAL RENT ADJUSTMENT--BASES

A Landlord or a Tenant may file a Petition with the Commission seeking adjustment, either upward or downward, of the Rent for any given tenancy in accordance with the standards set forth in this Section, and using the procedures set forth in Section 20.04.120 herein and implementing regulations. A Petition shall be on a form provided by the Commission and, if made by the Landlord, shall include a declaration by the Landlord that the Rental Unit complies with all requirements of this Chapter.

(a) **Petition for Upward Adjustment—Fair Rate of Return.** To effectuate the purposes of this Chapter and the requirements of law, a Landlord may file a Petition for an upward adjustment of the Rent to ensure a fair and reasonable rate of return. It is the intent of this Chapter that individual upward adjustments in Rent be granted only when the Landlord demonstrates that such adjustments are necessary to provide the Landlord with a fair rate of return. The Commission shall promulgate regulations to further govern Petitions filed pursuant to this Subsection in accordance with law and the purposes of this Chapter.

(1) **Prerequisites.** No upward adjustment of Rent shall be authorized by a Hearing Officer or the Commission under this Subsection if the Landlord:

(A) Has continued to fail to comply, after order of the Commission or other authority, with any provisions of this Chapter or orders or regulations issued thereunder; or

(B) Has failed to maintain the Rental Unit in compliance with Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10.

(2) **Fair Rate of Return - Factors.** In making any upward adjustment to the Rent based upon a Landlord's Petition to ensure a fair rate of return, the Hearing

Officer or Commission shall consider relevant factors, including but not limited to, the following:

- (A) Increases or decreases in property taxes;
  - (B) Unavoidable increases or any decreases in maintenance and operating expenses;
  - (C) The cost of planned or completed capital improvements to the Rental Unit (as distinguished from ordinary repair, replacement, and maintenance) but only where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local codes affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvements;
  - (D) 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;
  - (E) Substantial deterioration of the Rental Unit other than as a result of normal wear and tear;
  - (F) Failure on the part of the Landlord to provide adequate Housing Services, or to comply substantially with applicable state rental housing laws, local housing codes, health and safety codes, or the Rental Housing Agreement; and
  - (G) The pattern of recent Rent increases or decreases in the Rental Unit during the occupancy of the current Tenant.
- (3) **Fair Rate of Return – Factors Excluded.** In making any upward adjustment to the Rent based upon a Landlord's Petition to ensure a fair rate of return, the Hearing Officer or Commission shall not consider the following factors as justifying an upward adjustment:
- (A) Costs of debt servicing (including but not limited to principal, interest, and fees) for any debt obtained after March 30, 2016;
  - (B) Any penalties, fees, or interest assessed or awarded for violation of this or any other law with respect to the Rental Unit;
  - (C) The costs of capital improvements that are not necessary to bring the property into compliance or maintain compliance with applicable local codes affecting health and safety;
  - (D) Cost increases, capital improvements, Annual General Adjustments, or other circumstances that arose before the current tenancy began; and
  - (E) Income taxes.

(4) **Effective Date of Individual Rent Adjustment.** Rent increases authorized pursuant to this Subsection shall become effective only after the Landlord provides the Tenant written notice of such Rent increase pursuant to state law.

(b) **Petition for Downward Adjustment—Failure to Maintain Habitable Premises.**

(1) Failure to maintain a Rental Unit in compliance with governing health and safety and building codes, including but not limited to Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10, constitutes an increase in Rent. A Tenant may file a Petition with the Commission to adjust the Rent downward based on a loss in rental value attributable to the Landlord's failure to maintain the Rental Unit in habitable condition.

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

(c) **Petition for Downward Adjustment—Decrease in Housing Services or Maintenance.** A decrease in Housing Services or maintenance, or deterioration of the Rental Unit beyond ordinary wear and tear, without a corresponding reduction in Rent is considered an increase in Rent. A Tenant may file a Petition to adjust the Rent downward based on a loss in rental value attributable to a decrease in Housing Services or maintenance or deterioration of the Rental Unit. The Petition must specify the defective conditions and demonstrate that the Landlord was provided with reasonable notice and an opportunity to correct in like manner to Petitions filed pursuant to Section 20.04.110(b)(2) above.

(d) **Petition for Downward Adjustment—Unlawful Rent.** If a Landlord demands or retains Rent in excess of the lawful Rent pursuant to this Chapter, a Tenant may file a Petition to adjust the Rent to its lawful level.

**20.04.120 PETITIONS FOR INDIVIDUAL RENT ADJUSTMENT--PROCEDURES**

The Commission shall promulgate regulations regarding procedures for Petitions filed under this Chapter. Petitions shall be governed by such regulations and by the provisions of this Section.

(a) **Hearing Officer.** A Hearing Officer appointed by the Commission shall conduct a hearing to act upon the Petition and shall have the power to administer oaths and affirmations, and to render a final decision on the merits of the Petition, subject to the provisions of this Chapter.

(b) **Notice.** The Commission 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.

(c) **Time of Hearing.** Each party to a Petition shall receive sufficient advance notice of the bases, theories, and relevant documents to be presented by the other party(ies), and as to the time, date, and place of any hearing regarding the Petition.

(d) **Developing the Record.** The Hearing Officer may require either party to a Petition to provide any books, records, and papers deemed pertinent. If the Hearing Officer finds good cause to believe that an inspection would assist in resolving the issues raised by the Petition, the Hearing Officer may conduct a building inspection and/or request the City to conduct a building inspection. The Tenant may request the Hearing Officer to order such an inspection prior to the date of the hearing. All documents required under this Subsection shall be made available to the parties involved prior to the hearing.

(e) **Open Hearings.** All hearings conducted pursuant to this Subsection shall be open to the public.

(f) **Right of Assistance.** All parties to a hearing conducted pursuant to this Subsection 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.

(g) **Hearing Record.** The Commission shall make available for inspection and copying any official record that shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be obtainable for the reasonable cost of copying. All hearings shall be audio or video recorded, as ordered by the Hearing Officer, and any party to the Petition may receive a copy of the recording upon payment of a reasonable cost.

(h) **Quantum of Proof and Notice of Decision.** No Petition for Individual Rent Adjustment, whether upward or downward, shall be granted unless supported by the preponderance of the evidence submitted prior to and 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 appeal to the Commission and/or to judicial review of the decision.

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

(j) **Appeal.** Any person aggrieved by the decision of the Hearing Officer may appeal to the full Commission for review. On appeal, the Commission shall affirm, reverse, or modify the decision of the Hearing Officer. The decision on appeal shall be based on the hearing record and the Commission shall neither hear nor find facts in addition to those presented to the Hearing Officer.

(k) **Finality of Decision.** The decision of the Hearing Officer shall be the final decision of the Commission, unless an aggrieved party has timely sought an appeal to the Commission. The decision of the Commission on appeal shall be final unless an aggrieved party has timely sought judicial review pursuant to law.

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

(m) **Right to Fair Return Guaranteed.** No provision of this Chapter shall be applied so as to prohibit the Commission from granting an Individual Rent Adjustment that is demonstrated by the Landlord to be necessary to provide the Landlord with a fair rate of return.

#### **20.04.130 JUDICIAL REVIEW**

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

#### **20.04.140 NON-WAIVABILITY**

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

#### **20.04.150 REMEDIES**

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

(a) **Landlord's Demand for or Retention of Excessive Rent.** When a Landlord demands, accepts, receives, or retains any payment or payments in excess of the lawful Rent pursuant to this Chapter and the regulations promulgated hereunder, including in violation of the provisions ensuring compliance with habitability standards and maintenance of Housing Services, the Tenant may file a Petition pursuant to Section 20.04.110 or file a civil suit against the Landlord. A Landlord who demands, accepts, receives, or retains any payment of Rent in excess of the lawful Rent shall be liable to the Tenant in the amount by which the payment or payments have exceeded the lawful Rent. In such a case, the Rent shall be adjusted to reflect the lawful Rent pursuant to this Chapter and its implementing regulations.

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

(c) **Additional Relief for Landlord's Violation of Eviction Rules.** If it is shown that the event which the Landlord claims as grounds to recover possession under 20.04.110(a)(6)-(9) is not initiated within two (2) months after the Tenant vacates the Rental Unit, or it is shown that the Landlord's claim was false or in bad faith, the Tenant shall be entitled to regain possession of the Rental Unit at same Rent that was lawfully in effect when the Tenant vacated, in addition to the relief described in Subsection (b) above.

(d) **Defense to Action to Recover Possession.** A Landlord's failure to comply with any of the provisions of this Chapter or regulations promulgated hereunder shall serve as a

complete affirmative defense in an unlawful detainer or other action brought by the Landlord to recover possession of the Rental Unit. Any and all violations of this Chapter by the Landlord shall constitute such an affirmative defense, including but not limited to the demand or retention of payment in excess of the lawful Rent, failure to serve any of the notices required pursuant to this Chapter on the Tenant or the Commission, failure to pay the Rental Housing Fee, and a decrease in Housing Services or maintenance without a corresponding reduction in Rent. It is the intent of this Chapter to construe this Subsection to the broadest extent permissible under the law to ensure maximum compliance with this Chapter and avoid unlawful evictions.

(e) **Commission or City Attorney Enforcement Action.** If the Tenant fails to bring a civil or administrative action to enforce the Tenant's rights under this Chapter within one hundred and twenty (120) days after the date of the violation, the Commission or the City Attorney may bring such an action or settle the claim on the Tenant's behalf. If the Commission or City Attorney brings such an action, the Tenant shall be provided the right to opt in or out of the action. In the case of an opt-in, the Tenant on whose behalf the Commission acted is barred from bringing a separate action against the Landlord in regard to the same violation, and the Commission or City Attorney shall be entitled to recuperate the costs it incurred from any monetary recovery from the Landlord, with the remainder to go to the Tenant against whom the violation has been committed. In the case of an opt-out, the Tenant shall retain all rights relating to his or her right to private action. The Commission or City Attorney may take other such enforcement action as necessary to ensure compliance with this Chapter.

(f) **Remedies Not Exclusive.** The remedies available in this Chapter are not exclusive and may be used cumulatively with any other remedies in this Chapter or otherwise available at law.

(g) **Jurisdiction.** The appropriate court in the jurisdiction in which the Rental Unit is located shall have jurisdiction over all actions brought under this Chapter.

#### **20.04.160 INJUNCTIVE AND OTHER CIVIL RELIEF**

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

#### **20.04.170 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 that 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.

#### **20.04.180 "MEASURE T" REPEALED**

This Ordinance shall supersede and invalidate any limitations imposed by prior City ordinances that relate to or concern the subject matter addressed herein. This includes, but is not limited to, Burlingame City Ordinance 1356, also known as "Measure T," which was passed by the voters in 1987. It is the intent of the voters of the City of Burlingame to hereby repeal in its entirety said Measure T. By repealing and superseding any prior limitations on the City's authority to regulate the subject matter addressed herein, the People of the City of Burlingame



specifically intend for the City to retain authority to promote and preserve affordable housing to the maximum extent permitted by state law, including but not limited to the authority to enact rent stabilization, just cause for eviction, relocation assistance, inclusionary housing policies, and all other regulatory and land use policies that relate to affordable housing.

**20.04.190                    CODIFICATION**

The City Clerk and the City Attorney shall take all steps necessary to ensure the proper and efficient codification of this Chapter into the Municipal Code, including making revisions to numbering and similar non-substantive items contained herein. In exercising this authority, the City Clerk and City Attorney shall not alter the substantive provisions of this Chapter nor take any action that contradicts express terms and purpose of this Ordinance.

**20.04.200                    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 Chapter to give evidence of its adoption by the voters.

**FULL TEXT ENDS**