

ORDINANCE NO. _____

ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA ADDING CHAPTER 6-90 TO THE SANTA ROSA MUNICIPAL CODE CONCERNING, AS TO CERTAIN RESIDENTIAL RENTAL UNITS IN THE CITY, (A) RENT STABILIZATION, LIMITATIONS ON THE TERMINATION OF TENANCIES AND THE PAYMENT OF RELOCATION ASSISTANCE AND REPEALING IN THEIR ENTIRETY ORDINANCE NUMBERS 4067, 4069 AND ~~{4070, IF ADOPTED ON AUGUST 16}~~

WHEREAS, community members have reported (a) to the City Council at City Council meetings, (b) to the City Council in written communications, (c) and through the press that in the City there have been substantial increases in rent and there have been a substantial number of terminations of tenancies without cause; and

WHEREAS, in response, the City Council directed City staff to analyze various tenant protection policy options, including legislation to establish rent control/stabilization and/or just cause eviction policies; and

WHEREAS, community members also reported that the City Council's discussion and direction to study rent stabilization and just cause eviction policy options have created market uncertainty and concern among some property owners that if they do not immediately increase rents and/or take action to terminate tenancies without just cause, they could face a loss of income and/or loss of property value; and

WHEREAS, in Santa Rosa, approximately 47% of its residents are renters; and

WHEREAS, according to the U.S. Census Bureau, 2009-2013 American Community Survey, 9% of families in Santa Rosa live below the poverty level and the number of persons living below the poverty level in Santa Rosa has increased since 2000; and

WHEREAS, according to C-STAR (2015 Q-2), the monthly rent and occupancy rates of market rate units of apartment buildings of fifty or more units in Santa Rosa have increased 9% in the past year and more than 20% in the past 2.5 years; and

WHEREAS, according to the U.S. Census Bureau, 2009-2013 American Community Survey, 47.1% of Santa Rosa renter households are "overpaying households", meaning a household which pays 30% or more of its household income on housing costs; and

WHEREAS, the vacancy rate for residential rental units in the City of Santa Rosa is approximately one percent and therefore there is not enough supply of vacant units to offer tenants a meaningful choice in the residential rental market; and

WHEREAS, increasing poverty in Santa Rosa, decreasing median income and increasing rents have created a growing "affordability gap" between household incomes and rents as demonstrated by the increase in "overpaying renter households"; and

WHEREAS, the Section 8 Housing Choice Voucher program, through which tenants can obtain affordable housing, has a wait list of over 4500 households, with an average wait time of over seven years in which to obtain a Voucher; and

WHEREAS, given this increased housing cost burden faced by many City of Santa Rosa residents, excessive rental increases threaten the public health, safety, and welfare of the City's residents, including seniors, those on fixed incomes, those with very low-, low-, or moderate-incomes, 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; and

WHEREAS, on May 3, 2016, following several meetings of a Council committee that considered a number of tenant protection options, the City Council directed City staff to present to the Council legislation that would limit annual rent increases and limit termination of tenancies to situations where there is "just cause" for terminating a tenancy; and

WHEREAS, on May 17, 2016, in light of numerous concerns about rising rents and other adverse impacts resulting from a substantial decrease of affordable rental housing within the City, the City Council determined that it was in the interest to preserve immediately the public health, safety and general welfare to adopt interim Ordinance No. 4063, imposing a 45 day moratorium on rent increases with the City of Santa Rosa, and directed staff to draft a comprehensive rent stabilization program; and

WHEREAS, on July 7, 2016, the City Council adopted Ordinance No. 4067, an urgency ordinance enacting a further 90 day moratorium on certain residential rent increases within the City of Santa Rosa, that superseded Ordinance No. 4063, and on July 19, 2016, the City Council adopted Ordinance No. 4069, an urgency ordinance correcting certain clerical errors in Ordinance No. 4067; and

WHEREAS, for the reasons expressed in these Recitals, on July 19, 2016, the City Council found and determined that the lack of a just cause eviction requirement put some tenants at risk of evictions by landlords seeking to increase rents in the face of the recently adopted moratorium on rent increases and Council determined that it was in the interest to preserve the public health, safety and general welfare to introduce an ordinance to prohibit landlords from terminating certain tenancies without just cause to do so; and

WHEREAS, on August 2, 2016, the City Council voted to continue the Just Cause Eviction Ordinance second reading to the August 16, 2016 Council session; and

WHEREAS, on August 16, 2016 the City Council ~~may~~ adopted the Just Cause Eviction Ordinance by vote at the second reading; and

WHEREAS, the City Clerk published and posted a notice of a public hearing for the City Council's regular meeting on August 16, 2016 for the purposes of considering this Ordinance and other tenant protection measures; and

WHEREAS, the City Council has considered the staff reports, public testimony and documentary evidence presented at its September 1, 2015, January 26, 2016, May 3, 2016,

May 17, 2016, July 7, 2016, July 19, 2016, and August 16, 2016 meetings; and

WHEREAS, the City Council finds and determines that if an ordinance limiting the percentages and frequency of rent increases were not enacted now, as to those rental units to which the City may impose such limitations, the public peace, health and safety will be threatened because landlords will have an immediate incentive to increase rents thereby (a) imposing an undue burden on the finances of many Santa Rosa residents and (b) compelling such residents either to pay the increased rent or face the choice, due to a critically low vacancy factor, of either finding housing elsewhere and at a higher rent or not paying for food, clothing and medical care for themselves and their families; and

WHEREAS, the City Council finds and determines that if an ordinance limiting the grounds for terminating tenancies without cause were not enacted now, the public peace, health and safety will be threatened because landlords will have an immediate incentive to serve notices to terminate certain tenancies without cause, thereby displacing many tenants in the City who, because of a critically low vacancy factor in the City, will be compelled to find housing elsewhere and at a higher rent; and

WHEREAS, the City Council finds and determines that if an ordinance compelling the payment of relocation assistance to certain displaced tenants were not enacted now, the public peace, health or safety will be threatened because tenants who are displaced through no fault of their own may not have the financial wherewithal to pay for relocation costs, such as a first and last month's rent at a different rental unit and for moving expenses, thereby causing significant economic hardship to those tenants; and

WHEREAS, the City Council likewise recognizes that rental property owners have the right to receive a fair, just and reasonable return on their properties and that this ordinance provides a process that protects and satisfies those rights; and

WHEREAS, the City Council finds and determines that the Recitals herein are true and correct; and

WHEREAS, adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each a separate and independent basis: CEQA Guidelines, Section 15378 (not a project) and Section 15061(b)(3) (no significant environmental impact).

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1. Chapter 6-90 is hereby added the Santa Rosa Municipal Code to read as follows:

“CHAPTER 6-90 RESIDENTIAL RENT STABILIZATION AND OTHER TENANT PROTECTIONS

6-90.010. Title.

This Ordinance shall be known as the "City of Santa Rosa Residential Rent Stabilization and

Other Tenant Protections Ordinance."

6-90.015. Definitions.

Unless the context requires otherwise, the terms defined in this Ordinance shall have the following meanings:

- A. "Allowable annual adjustment" means a rent increase that on a cumulative basis over the 12 months preceding the effective date of a proposed rent increase is 3%.
- B. Base rent. "Base rent" is the rent that the tenant is required to pay to the landlord in the month immediately preceding the effective date of the rent increase.
- C. Base Rent Year. "Base Rent Year" means 2015.
- D. Capital improvement. "Capital improvement" means an improvement or repair to a rental unit or property that materially adds to the value of the property, appreciably prolongs the property's useful life or adapts the property to a new use, and has a useful life of more than one year and is required to be amortized over the useful life of the improvement under the straight line depreciation provisions of the Internal Revenue Code and the regulations issued pursuant thereto.
- E. Capital improvement plan. "Capital improvement plan" means a plan that meets the criteria of a capital improvement as defined above and also meets the following four criteria: (1) is submitted by a landlord (a) on the landlord's own initiative or (b) as a result of the landlord's obligation to comply with an order of a local, state or federal regulatory agency, such as the City's building or fire department, or (c) in order for the landlord to repair damage to the property as a result of fire, flood, earthquake or other natural disaster, (2) the cost of which improvement is not less than the product of eight times the amount of the monthly rent multiplied by the number of rental units to be improved, (3) the implementation of which may render one or more rental units uninhabitable and (4) is approved by the Program Administrator.
- F. City. "City" means the City of Santa Rosa.
- G. Condominium. "Condominium" means the same as defined in Section 783 and 1351 (f) of the California Civil Code.
- H. Consumer Price Index. "Consumer Price Index" means the Consumer Price Index for All Urban Consumers ("CPI-U") for the San Francisco-Oakland-San Jose CA Region, published by the U.S. Department of Labor, Bureau of Labor Statistics.
- I. Costs of Operation. "Costs of operation" means all reasonable expenses incurred in the operation and maintenance of the rental unit and the building(s) or complex of buildings of which it is a part, together with the common area, if any, and include but are not limited to property taxes, insurance, utilities, professional property management fees, pool and exterior building maintenance, supplies, refuse removal, elevator service and security services or system, but costs of operation exclude debt service, depreciation, attorneys and expert witness fees incurred in seeking rent increases that exceed the allowable annual adjustment and capital improvements to the extent those costs have been recovered through a capital improvement plan.

- J. Council. “Council” means the City Council of the City of Santa Rosa.
- K. Debt service. “Debt service” means the periodic payment or payments due under any security financing device that is applicable to the rental unit or building or complex of which it is a part, including any fees, commissions or other charges incurred in obtaining such financing.
- L. Housing and Community Services Director. “Housing and Community Services Director” means the Housing and Community Services Director of the City, or his/her designee.
- M. Housing services. “Housing services” means those services provided and associated with the use or occupancy of a rental unit including, but not limited to, repairs, replacement, maintenance, painting, lighting, heat, water, elevator service, laundry facilities and privileges, janitorial services, refuse removal, allowing pets, telephone, parking, storage, computer technologies, entertainment technologies including cable or satellite television services and any other benefits, privileges or facilities.
- N. Housing unit. “Housing unit” means a room or group of rooms that includes a kitchen, bathroom and sleeping quarters, designed and intended for occupancy as a dwelling unit by one or more persons as separate living quarters, but does not mean a room or rooms in a single dwelling unit, condominium or stock cooperative.
- O. Landlord. “Landlord” means an owner, lessor, sub-lessor or any other person or entity entitled to offer any rental unit for rent or entitled to receive rent for the use and occupancy of any rental unit, and includes an agent, representative or successor of any of the foregoing
- P. Net operating income. “Net operating income” means the gross revenues that a landlord has received in rent or any rental subsidy in the twelve months prior to serving a tenant with a notice of a rent increase less the costs of operation in that same twelve month period.
- Q. Notice to vacate. “Notice to vacate” means a notice to vacate a rental unit that a landlord serves on a tenant under Section 1946.1 of the California Civil Code and Section 1162 of the California Code of Civil Procedure.
- R. Party. “Party” means a landlord or tenant.
- S. Programs. “Programs” mean the programs created by this Ordinance.
- T. Program Administrator. “Program Administrator” is a person designated by the City to administer one or more of the Programs.
- U. Program fee. “Program fee” means the fee the City imposes on each property owner or landlord to cover the costs to provide and administer the programs.
- V. Rent. “Rent” means a fixed periodic compensation including any amount paid for utilities, parking, storage, pets or any other fee or charge associated with the tenancy that a tenant pays at fixed intervals to a landlord for the possession and use of a rental unit and related housing services; as to any landlord whose rental unit was but is no longer exempt from this Ordinance under paragraph (3) of subsection B of Section 6-90.020, rent shall include the subsidy amount, if any, received as part of the base rent.

- W. Rent Dispute Hearing Officer. “Rent Dispute Hearing Officer” or “Hearing Officer” means a person designated by the Program Administrator to hear rent dispute petitions under this Ordinance.
- X. Rent increase. “Rent increase” means any upward adjustment of the rent from the base rent.
- Y. Rental unit. “Rental unit” means a housing unit offered or available for rent in the City of Santa Rosa, including apartments, condominiums, stock cooperatives, single dwelling units, multi-family units, and those accommodations identified in subsection C of Section 6-90.020 where the same tenant occupies a room for more than 30 consecutive days.
- Z. Single dwelling unit. “Single dwelling unit” means a single detached structure containing one dwelling unit for human habitation, any accessory buildings appurtenant thereto, and any second dwelling unit as defined in section 20-70.020 of the City Code, all located on a single legal lot of record.
- AA. Stock cooperative. “Stock cooperative” means the same as defined in section 4190 of the California Civil Code.
- BB. Subsidy amount. “Subsidy amount” means the amount of money that a landlord receives from any government program, such as the Section 8 Voucher Program, so that in conjunction with money the landlord receives from a tenant the landlord receives fair market rent as determined by that government program.
- CC. Tenancy. “Tenancy” means the right or entitlement of a tenant to use or occupy a rental unit.
- DD. Tenant. “Tenant” means a tenant, subtenant, lessee, sub-lessee or any other person or entity entitled under the terms of a rental agreement or lease agreement for the use and occupancy of any rental unit, and includes a duly appointed legal guardian or conservator of any of the foregoing.

Section 6-90.020 Exemptions from the Ordinance.

The following shall be exempt from this Ordinance.

- A. Rental units (1) that are (a) duplexes, (b) triplexes if an owner of the property resides in one of the units as the owner’s principal place of residence, (c) separately alienable from the title of any other dwelling, e.g., a single dwelling unit, a condominium or a stock cooperative, (2) for which a certificate of occupancy was issued after February 1995, and (3) that are exempt under the Costa-Hawkins Housing Act (California Civil Code, section 1954.50 and following) or under any other applicable state or federal law.
- B. Governmental agency owned, subsidized or regulated rental units. All rental units (1) owned, operated or subsidized by any governmental agency except those rental units occupied by recipients of tenant based rental assistance where the tenant based rental assistance program establishes the tenant’s share of base rent as a fixed percentage of a tenant’s income, such as the Housing Choice Voucher Program and (2) all rental units, regardless of ownership, for which the rents are regulated by federal law (to the extent such law preempts this Ordinance) or by regulatory

agreements between a landlord and (1) the City or; (2) the Housing Authority of the City of Santa Rosa ~~or (3) any agency of the State of California or the Federal Government~~; provided, however, if the rental unit no longer qualifies for the exemption, for example, the landlord withdraws from a subsidy program or a regulatory agreement expires, the rental unit will immediately cease to be exempt.

- C. Accommodations in hotels, motels, inns, tourist homes, rooming or boarding houses, provided that such accommodations are not occupied by the same tenant or tenants for more than 30 consecutive days.
- D. Commercial units, such as office condominiums or commercial storage units.
- E. Institutional facilities. Housing accommodations in any hospital, convent, monastery, extended care facility, asylum, non-profit home for the aged, fraternity or sorority house, housing accommodations owned, operated or managed by a bona fide education institution for occupancy its students or rental units that require intake, case management or counseling and an occupancy agreement as part of that occupation.
- F. Rooms rented to boarders. A rental unit in which the landlord owns the rental unit, shares kitchen or bath facilities with one or more tenants, and occupies the rental unit, or a rental unit in the same building, as the landlord's principal residence.
- G. Second dwelling units as defined in section 20-70.020 of the City Code.
- H. Mobile homes subject to the Mobilehome Residency Law (California Civil Code, Chapter 2.5)
- I. Transient occupancies defined by California Civil Code section 1940 (b).

Section 6-90.025 Limitations on Rent Following a Termination of Tenancy.

This Ordinance does not impose limitations on the amount of the rent a landlord may charge following a termination of tenancy except as otherwise provided in Section 6-90.125 G (violation of owner move in provisions), 6-90.125 I (temporary termination during capital improvement work), 9.24.125 J (violation of withdrawal of the unit from the rental market policy) and 6-90.125 ~~K~~ (tenant returning to the rental unit after landlord's compliance with a governmental order).

6-90.030 Notices and Materials to be Provided to Current and Prospective Tenants.

- A. In addition to any other notice required to be given by law or this Ordinance, a landlord shall provide to a current tenant and to a prospective tenant (1) a written notice that the rental unit is subject to this Ordinance, receipt of which shall be acknowledged in writing by the tenant/prospective tenant, (2) a written copy of this Ordinance as such Ordinance exists at the time such notice is provided (3) a written copy of the then current City regulations promulgated to implement, this Ordinance and (4) a written copy of the then current informational brochure(s) that the City provides that explains this Ordinance. ~~A landlord may satisfy paragraphs (2), (3) and (4) of this subsection by directing a tenant or prospective tenant to the City's website that provides this information if the tenant/prospective tenant so chooses to receive this information in that way.~~
- B. For current tenants, a landlord shall comply with the requirements of subsection A of this Section 6-90.030 no later than 15 days from the date on which the landlord first receives the payment of rent from the tenant following the effective date of this Ordinance and annually thereafter. For a prospective tenant, a landlord shall comply with the requirements of subsection A of this Section 6-90.030 prior to the landlord and tenant entering into any agreement concerning the rental unit.

6-90.035 Disclosures.

- A. A landlord shall in writing disclose to a potential purchaser of the rental unit or of property that has one or more rental units that such rental unit or property is subject to this Ordinance and all regulations that the City promulgates to implement this Ordinance.
- B. The failure of a landlord to make the disclosure set forth in subsection A of this Section 6-90.035 shall not in any manner excuse a purchaser of such rental unit or property of any of the obligations under this Ordinance.

6-90.040 Documents That the Landlord Must File with the Program Administrator.

In addition to any other notice required to be filed with the Program Administrator by law or this Ordinance, a landlord shall file with the Program Administrator a copy of the following:

- A. Where charges or fees have been unbundled or increased, information showing what charges or fees have been unbundled or increased and documentation showing that the amount of the increased charges and fees have been included in the calculation of the annual allowable adjustment. (Section 6-90.045);
- B. The notice to the tenant that the landlord is proposing a rent Increase of more than 3% and has initiated the process to have the Program Administrator review the rent increase as required by Section 6-90.070;

- ~~C.~~ The terms of any agreement as to the rent increase reached between the landlord and the tenant when the landlord has requested the Program Administrator to review the rent increase but agreement is reached before the Program Administrator has completed such review. (Section 6-90.70 D);
- ~~D.~~C. The petition when the landlord disagrees with the decision of the Program Administrator and files a petition to have the rent increase or a rent adjustment heard by a Rent Dispute Hearing Officer. (Section 6-90.095, ~~6-90.100~~);
- ~~E.~~D. Certain notices to terminate a tenancy (Section 6-90.125 G, H, I, J and K; Section 6-90.135);
- ~~F.~~E. The name and relationship of the person who is moving into the rental unit when the current tenancy is terminated due to an “owner move in” and documentation that the landlord is a “natural person” (Section 6-90.125 ~~GF~~);
- ~~G.~~F. Written notice that the landlord or the enumerated person who was intended to move into a rental unit either did not move into the rental unit within 90 days after the tenant vacated the rental unit or that the landlord or the enumerated person who moved into the rental unit did not remain in the rental unit for one year (Section 6-90.125 ~~G.5F.6~~).
- ~~H.~~G. The requisite documents initiating the process to withdraw the rental unit from rent or lease permanently under Government Code, section 7060 et seq. (Section 6-90.125 J); and
- ~~I.~~ Written proof of the relocation assistance provided to the tenant if different than as provided in Section 6-90.130 (Section 6-90.130C).
- ~~J.~~H. Requests for a rent increase in conjunction with a capital improvement plan.

6-90.045 Limitations on Revising What is Included in the Rent and the Keeping of Pets.

- A. As to any lease or month to month tenancy in which charges or fees for utilities, parking, storage, pets or any other fee or charges associated with the tenancy that the tenant pays at fixed intervals to the landlord for the possession and use of the rental unit that are not (or were not) identified separately within a lease or rental agreement, a landlord shall not unbundle such fees or charges or increase the amount of any of such charges or fees during the tenancy except for increased charges or fees that the tenant pays directly to the landlord for either utilities that are separately metered or charges for utilities that are pro-rated among the tenants pursuant to a Ratio Utility Billing System or a similar cost allocation system. To the extent a landlord unbundles or increases any of such charges or fees as part of a new or renewed lease, or as part of the terms of a revised month to month tenancy, the amount of such charges or fees shall be included in calculating the allowable annual adjustment. The landlord must submit to the Program Administrator what charges or fees have been unbundled or increased and documenting that the amount of such charges or fees have been included in calculating the allowable annual adjustment.
- B. Notwithstanding subsection A of this section 6-90.045, to the extent that a tenant requests housing services that were not included in the terms of an existing tenancy,

such as a parking space or an additional parking space, storage space or additional storage space, a pet or an additional pet, or to the extent that either utilities are separately metered or the amount of such utility charges are pro-rated among the tenants pursuant to a ratio utility billing system or other similar cost allocation system but the charges are paid directly to the landlord, such fees for housing services or charges for utilities shall not be included in calculating the allowable annual adjustment.

B-C. Notwithstanding subsection A of this section 6-90.045, if a landlord permitted a tenant to have one or more pets (with or without a pet deposit), the tenant may continue to have a pet(s) notwithstanding that the landlord's policy of allowing tenants to have pets has changed such that pets are prohibited or that a tenant is required to provide a pet deposit in an amount greater than the amount the tenant previously deposited .

6-90.050 Establishment of Base Rent and Limitations on the Amount and Frequency of Rent Increases.

- A. Beginning the effective date of this Ordinance, the initial rental rate for any rental unit shall be in an amount no greater than the rent in effect as of January 1, 2016. If there were no rent in effect on January 1, 2016, but rent was in effect prior to the effective date of this Ordinance, the initial rental rate shall be the rent that was charged on the first date that rent was charged after January 1, 2016. For tenancies that begin on or after the effective date of this Ordinance, the initial rental rate shall be the rent in effect on the date the tenancy begins.
- B. The initial rental rate, as established in subsection A of this Section 9.24.050, shall be the reference point from which the allowable annual adjustment shall be adjusted upward or from which rent shall be adjusted downward.
- C. Except as provided in Section 6-90.080 or 6-90.085,, (1) no landlord shall impose a rent increase greater than the allowable annual adjustment, (2) for rental units that were rented as of January 1, 2016 (which the rents have been rolled back), no landlord shall impose any rent increase earlier than January 1, 2017 and (3) for rental units that were not rented as of January 1, 2016, no landlord shall impose any rent increase for 12 months after the start of the tenancy.
- D. No landlord shall impose a rent increase more than once in any twelve-month period.

6-90.055 Notice of Review Procedures for Rent Increases; Exceptions.

- A. In addition to the notice of a rent increase required by Civil Code, section 827 (b), at the time a landlord provides such notice to the tenant, the landlord shall also provide to the tenant a notice that the landlord has requested the Program Administrator to review the rent increase when the rent increase is more than the allowable annual adjustment.
- B. Any notice of rent increase or a rent increase in violation of Section 6-90.065 shall be void and a landlord shall take no action to enforce such an invalid rent increase; provided, however, a landlord may cure the violation by re-serving the tenant with the notice that complies with the provisions of Section 6-90.065. A tenant may use as evidence in a tenant's defense to an unlawful detainer action based on the tenant's failure to pay the

illegal rent increase of the landlord's violation of Section 6-90.65, or any other violation of this Ordinance.

6-90.060 Information in and Service of the Notice.

All notices of the rent review procedures under this Ordinance shall be in writing and shall provide the name, address, phone number and email address of the landlord. The landlord shall serve notice that the landlord has requested the Program Administrator to review the rent increase concurrently with, and in the same manner as, the notice of rent increase.

6-90.065 Content of Notice When the Rent Increase is Greater than the Allowable Annual Adjustment.

In addition to all other information that the landlord is required to provide to a tenant concerning the rent review procedures established by this Ordinance, if the rent increase is greater than the allowable annual adjustment, the notice shall state:

“NOTICE: Under Civil Code, section 827 (b), a landlord must provide a tenant with 30 days’ notice prior to a rent increase of 10% or less and must provide a tenant with 60 days’ notice of a rent increase greater than 10%. Because your landlord proposes a rent increase that is greater than the allowable annual adjustment (as defined in subsection A of Section 6-90.015 of the Santa Rosa Municipal Code), under Chapter 6-90 of the Santa Rosa Municipal Code your landlord must at the same time provide this Notice that advises you that the landlord has requested the City’s Program Administrator to review the rent increase. At the earliest, the rent increase will not go into effect until the Program Administrator reviews and approves the rent increase.

~~**Unless you and your landlord agree otherwise, the rent increase will not go into effect until the Program Administrator reviews and approves the rent increase.**~~

~~**If you and your landlord reach agreement as to the rent increase before the Program Administrator completes the review, you and your landlord must provide written confirmation to the Program Administrator concerning the terms of such agreement.**~~

After consulting with your landlord and you, tThe Program Administrator will make a decision concerning the rent increase. You and yYour landlord may agree to accept the Program Administrator’s decision. If you do not or your landlord does not agree with the Program Administrator’s decision, you or your landlord may file a petition with the Program Administrator within 15 calendar days of the Program Administrator’s decision and have the determination of the rent increase decided by a neutral Rental Dispute Hearing Officer whose decision is final and binding. If you do not or your landlord does not agree with the Program Administrator’s decision and you do not or your landlord does not file a timely petition, the Program Administrator’s decision will be binding on you and your landlord.

~~The Program Administrator will advise you of the outcome of the Program Administrator's review, decision and whether or not your landlord has accepted the decision.~~

It is illegal for a landlord to retaliate against a tenant for the tenant's lawfully and peacefully exercising his or her rights concerning a tenant's tenancy. Civil Code, section 1942.5. A landlord's efforts to evict a tenant within six months of a tenant's participating in the City's rent review process may be used as evidence of a retaliatory eviction."

6-90.070 Landlord's Request for Rent Review; Effective Date of Rent Increase.

- A. A landlord must comply with all the notice provisions of this Ordinance and must request the Program Administrator to review a rent increase when the landlord proposes a rent increase by more than the allowable annual adjustment.
- B. A landlord must within 15 calendar days from the date the landlord serves on the tenant the notice of rent increase either (a) mail or e-mail the written request for rent review to the Program Administrator and (b) submit to the Program Administrator a copy of the notice of rent increase.
- C. A landlord's failure to comply with subsections A and B of this Section 6-90.070 shall render the rent increase null and void and the landlord shall neither take any action to enforce such rent increase nor notice another rent increase for twelve months from the date the proposed rent increase was to become effective.
- ~~D. If, prior to the Program Administrator's determination concerning the rent increase, the landlord and tenant reach agreement as to the rent increase, the landlord and the tenant must inform the Program Administrator in writing concerning the terms of the agreement as to the rent increase.~~
- E.D. If the requested rent increase is more than the allowable annual adjustment, regardless of the effective date of the rent increase in the notice of rent increase, ~~unless the landlord and tenant reach agreement otherwise,~~ the rent increase will be effective only as provided in subsections D and E of Section 6-90.080 (following the Program Administrator's decision).

6-90.075 Tenant's Request for an Adjustment of Rent.

A tenant may request an adjustment of rent for reasons including, but not limited to, an error in the calculation used for the rent increase, a loss of or reduction in housing services, a disagreement whether the rental unit is exempt from the Ordinance or a violation of this Ordinance, by submitting such request to the Program Administrator. In any twelve month period, a tenant shall make no more than one request for a rent adjustment based on the same, or substantially the same, reasons as the previous request. ~~Concerning an error in the calculation used for the rent increase, a disagreement whether the rental unit is exempt from the Ordinance or a violation of this Ordinance, a tenant shall have 30 days from the date of the error, the disagreement or the alleged violation to file a request with the Program Administrator. As to a request for an adjustment of rent~~

~~based on a loss of or reduction in housing services, two or more tenants must make such request and no request as to a rental property shall be made more than once every twelve months.~~

6-90.080 Program Administrator's Review and Decision Concerning a Landlord's Request for a Rent Increase that Exceeds the Allowable Annual Adjustment for Reasons Unrelated to a Capital Improvement Plan.

- A. The Program Administrator will review the landlord's request for a rent increase that exceeds the allowable annual adjustment for reasons unrelated to a capital improvement plan and will ~~provide~~afford the landlord with an opportunity to explain and/or provide documentation in support of the landlord's request. The Program Administrator will contact the tenant(s) affected by the landlord's request for such rent increase and will provide the tenant with an opportunity to respond to the request.
- B. The Program Administrator may take into consideration any factors that may assist the Program Administrator in determining a fair resolution concerning the rent increase taking into account the purposes of this Ordinance to eliminate imposing excessive rents increases while providing landlords with a just and reasonable return on property. Such factors may include, but not be limited to:
1. ~~T~~he frequency, amount and the presence or absence of prior rent increases, including that the landlord could not impose an allowable annual adjustment during 2016,
 2. ~~T~~he landlord's costs of operation including, as to special historical or architectural buildings as so designated under Section 18-64.020 of the City Code, that costs to repair or maintain may be higher than comparable costs for ~~other non-historic~~ buildings not so designated,
Capital improvements unrelated to a capital improvement plan
 - 4.3. ~~A~~ny increases or decreases in housing services since the last rent increase,
 - 5.4. ~~T~~he existing market value of rents to rental units similarly situated,
 - 6.5. ~~T~~he vacancy rate in the building or complex in comparison to comparable buildings or complexes in the same general area,
 7. ~~the physical condition of the rental unit or the building/complex of which the rental unit is part,~~
~~the quality and quantity of maintenance and repairs to the rental unit or the building/complex of which the rental unit is part, and~~
 - 9.6. ~~T~~he existence of extraordinary circumstances such as a special relationship between the landlord and the tenant, ~~mental incapacity~~, the failure to increase rents over multiple years or other circumstances unrelated to market conditions that have resulted in the rent being significantly below those of comparable rental units in the same general area, and:-
 - 10.7. PProviding the landlord with a just and reasonable return on property; provided, however, the Program Administrator shall not determine just and reasonable return solely by the application of a fixed or mechanical accounting formula but there is a

rebuttable presumption that maintenance of net operating income, as adjusted by inflation over time, provides a landlord with a just and reasonable return on property.

- C. The Program Administrator will render a decision concerning the rent increase.
- D. If the landlord and tenant agrees with the Program Administrator's decision, the landlord and tenant shall sign a document, in a form to be provided by the Program Administrator, to that effect. The document will reflect~~Program Administrator shall advise the tenant of~~ the amount of the rent increase and the effective date thereof.
- E. If the landlord or the tenant does not agree with the Program Administrator's decision, the landlord or the tenant may file a petition for further review of the rent increase as set forth in Section 6-90.095. If the landlord or the tenant does not file a timely petition, the Program Administrator's decision will be binding on the landlord and the tenant and the rent increase shall be effective upon the expiration of the time to file the petition. If the landlord or the tenant files a petition, the rent increase shall take effect only as provided in subsection D of Section 6-90.095.

6-90.085 Program Administrator's Review and Decision Concerning a Landlord's Request for a Rent Increase that Exceeds the Allowable Annual Adjustment in Connection with a Capital Improvement Plan.

- A. A landlord that is seeking a rent increase that exceeds the allowable annual adjustment for capital improvements that satisfy the criteria under the City's Policy Concerning Capital Improvement Plans for Rental Units in Santa Rosa must first submit to the Program Administrator a capital improvement plan as set forth in that Policy .
- B. The Program Administrator's review and decision concerning such rent increase shall be as set forth in the Policy and shall be final and binding.

Section 6-90.090 Program Administrator's Review and Decision Concerning a Tenant's Request for an Adjustment of Rent

- A. The Program Administrator will review a tenant's request for an adjustment in rent and will afford the tenant the opportunity to explain and/or provide documentation in support of the adjustment.
- B. The Program Administrator will contact the landlord and provide the landlord with the opportunity to respond to~~discuss~~ the tenant's request. The Program Administrator may take into consideration any factors that assist the Program Administrator in determining a fair resolution concerning the adjustment.
- C. Such factors may include, but not be limited to: a miscalculation of the rent, a material reduction in housing services, a substantial deterioration of the rental unit other than ordinary wear and tear or due to the actions of the tenant or the tenant's guests, the landlord's failure to comply with this Ordinance, the landlord's failure to comply with applicable housing, health and safety codes, and a determination whether that the rental unit is subject to this Ordinance.
- D. The Program Administrator will make a decision concerning the request for an adjustment of the rent and advise the tenant and the landlord.

- E. If the tenant and the landlord agree with the decision, they will sign a document, in a form to be provided by the Program Administrator, that will set forth the adjusted rent, if any, and the effective date thereof.
- F. If either the tenant or the landlord does not agree with the Program Administrator's decision, either the tenant or the landlord may file a petition for further review of the adjustment as set forth in Section 6-90.095 or 6-90.100. If either the tenant or the landlord does not file a timely petition, then the Program Administrator's decision will be final and binding and the adjustment of rent, if any, will be effective upon the expiration of the time to file a petition. If a petition is filed, the adjustment, if any, will take effect only as provided in subsection D of Section 6-90.095 or subsection D of Section 6-90.100.

6-90.095. Petitions Filed by Landlords Following the Program Administrator's Decision.

- A. Any landlord who does not agree with the Program Administrator's decision under either Section 6-90.080 or Section 6-90.090 may initiate a hearing process by filing a petition with the Program Administrator provided that the landlord shall also notify in writing all tenants subject to such proposed rent increase or adjustment of rent that the landlord has filed such petition. The landlord shall include with the petition a list of names and addresses of all such tenants.
- B. Petitions must be filed on a form prescribed by the Program Administrator and must be accompanied by such supporting material as the Program Administrator may prescribe including, but not limited to, a copy of the landlord's notice of the rent increase.
- C. If the landlord does not file the petition and the prescribed documentation within 15 calendar days of the date of the Program Administrator's decision and, as to the Program Administrator's decision as to an adjustment of rents, the tenant has not filed a timely petition, the Program Administrator's decision will be binding on the landlord.
- D. Provided that a petition has been filed as provided in this Section 6-90.095 or Section 6-90.100, the rent increase or adjustment of rent shall not take effect until 60 days after a decision of a Hearing Officer or, if that decision is judicially challenged, until there is a final judgment from a court of competent jurisdiction or other resolution, such as a settlement.

6-90.100 Petitions Filed by Tenants Following the Program Administrator's Decision.

- A. Any tenant who does not agree with the Program Administrator's decision under Section 6-90.080 or Section 6-90.090 may initiate a hearing process by filing a petition with the Program Administrator provided the tenant shall also notify in writing the landlord that the tenant has filed such petition.
- B. Petitions must be filed on a form prescribed by the Program Administrator and must be accompanied by such supporting material as the Program Administrator may prescribe.

- C. If the tenant does not file the petition and the prescribed documentation within 15 calendar days of the date of the Program Administrator’s decision, the Program Administrator’s decision will be binding on the tenant unless the landlord has filed a timely petition concerning the adjustment of rent.
- D. Provided that a petition has been filed as provided in this Section 6-90.100 or as provided in Section 6-90.095, the adjustment of rent shall not take effect until 60 days after a decision of the Hearing Officer or, if that decision is judicially challenged, until there is a final judgment from a court of competent jurisdiction or other resolution, such as a settlement.

6-90.105 Hearing Process.

- A. The Housing and Community Services Director shall assign a Rent Dispute Hearing Officer to decide any petition, including its timeliness and other procedural matters, which is filed under this Ordinance.
- B. The parties in the hearing shall be the petitioning party, i.e., the landlord, the tenant or both and the Program Administrator. The non-petitioning party may also participate in the hearing.
- C. The Hearing Officer shall endeavor to hold the hearing within 30 days of the filing of the petition or within such time as the Hearing Officer, after consultation with the parties, so orders.
- D. The Hearing Officer shall conduct the hearing employing the usual procedures in administrative hearing matters, i.e., the proceeding will not be governed by the technical rules of evidence and any relevant evidence will be admitted. Hearsay evidence may be admitted solely for the purpose of supplementing or explaining other evidence.
- E. The petitioning party shall have the burden of proof and the Hearing Officer shall use the preponderance of evidence test, i.e., that what the petitioning party is required to prove is more likely to be true than not and, after weighing all of the evidence, if the Hearing Officer cannot decide that something is more likely to be true than not true, the Hearing Officer must conclude that the petitioning party did not prove it.
- F. The petitioning party, a non-petitioning party and the Program Administrator may offer such documents, testimony, written declarations, or other evidence as may be pertinent to the proceeding. Each party shall comply with the Hearing Officer’s request for documents and information and shall comply with anythe other party’s reasonable requests for documents and information. The Hearing Officer may proceed with the hearing notwithstanding that a party has failed to provide the documents or information requested by the Hearing Officer or a party has failed to provide documents or information requested by anythe other party. The Hearing Officer may take into consideration, however, the failure of a party to provide such documents or information.
- G. The hearing will be recorded by a certified court reporter for purposes of judicial

review.

6-90.110 Hearing – Findings and determination.

Within 30 days of the close of the hearing, the Hearing Officer shall make a determination, based on the preponderance of evidence and applying the criteria set forth in Section 6-90.115, whether the proposed rent increase or adjustment or rent is reasonable under the circumstances or not, and shall make a written statement of decision upon which such determination is based. The Hearing Officer's allowance or disallowance of any rent increase or portion thereof, or allowance or disallowance of any adjustment of rent may be reasonably conditioned in any manner necessary to effectuate the purposes of this Ordinance. Copies of the statement of decision concerning rent increases or an adjustment of rent shall be served on the landlord, the tenant and the Program Administrator ~~and concerning an adjustment of rent shall be served on the landlord, the tenant and the Program Administrator.~~

6-90.115 Criteria to be applied to rent increases and adjustments of rent.

In determining whether or not a rent increase or an adjustment of rent is reasonable, the Hearing Officer shall take into account the purposes of this Ordinance to eliminate imposing excessive Rent increases while providing landlords with a just and reasonable return on property, and may consider the non-exclusive factors set forth in Sections 6-90.080 and 6-90.090 regardless of whether the Program Administrator considered any or all of such factors. The Hearing Officer shall not determine just and reasonable rate of return solely by the application of a fixed or mechanical accounting formula but there is a rebuttable presumption that maintenance of net operating income for the base year, as adjusted by inflation over time, provides a landlord with a just and reasonable rate of return on property.

6-90.120. Rent Dispute Hearing Officer's Decision—Final Unless Judicial Review is Sought.

The Hearing Officer's decision shall be final and binding on the landlord and ~~in the case of tenant's request for an adjustment of rent, on~~ the tenant, unless judicial review is sought within 60 days of the date of the Hearing Officer's decision. If judicial review is timely sought, the Hearing Officer's decision is stayed.

Section 6-90.125 Terminations of Tenancies.

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, refusing to renew a tenancy, serving any notice to quit or other notice to terminate a tenancy, e.g. an eviction notice, bringing any action to recover possession or be granted possession of a rental unit except on one of the following grounds:

- A. Failure to pay rent. The tenant upon proper notice to quit or pay rent has failed to quit or to pay the rent to which the landlord is entitled under a written or oral agreement; provided, however, that the "failure to pay rent" shall not be cause for terminating the tenancy if (i) the

tenant cures the failure to pay rent by tendering the full amount of the rent due within the time frame in the notice but the landlord refuses or fails to accept the rent, (ii) the tenant tenders some or all of the rent due and the landlord accepts some or all of the rent or (iii) the rent the landlord is requiring the tenant to pay is a result of a violation of this Ordinance or is a rent amount in excess of the rent permitted by this Ordinance.

- B. Habitual late payment of rent. The tenant habitually pays the rent late or provides checks that are frequently returned because of insufficient funds in the account on which the checks are drawn. For purposes of this subsection B, habitual late payment of rent ~~and the frequent return of checks due to insufficient funds~~ means, ~~respectively,~~ that on more than five occasions within any consecutive twelve month period, the tenant has paid the payment of rent 10 or more days later than the date on which the rent is due; checks are frequently returned because of insufficient funds in the account on which the checks are drawn means that on more than five occasions within any consecutive twelve month period, the tenant's more than five times and the return of check has been returneds due to insufficient funds ~~more than five times.~~
- C. Violation of the obligations of the tenancy. The tenant has continued, after the landlord has served the tenant with a written notice to cease, to violate a lawful, material and substantial obligation or covenant of the tenancy, other than the obligation to surrender possession upon proper notice as provided by law, provided, however, that the landlord need not serve a written notice to cease if the violation is for conduct that is violent or physically threatening to landlord, other tenants or members of the tenant's household, guests or neighbors, ~~or if the tenant is holding over after the expiration of a fixed term lease.~~
1. Notwithstanding any contrary provision in subsection C of this Section 6-90.125, a landlord shall not take action to terminate a tenancy as a result of the addition to the rental unit of a (a) tenant's spouse or registered domestic partner, (b) a tenant's parent, grandparent, child or grandchild, regardless of whether that person is related to the tenant by blood, birth, adoption or registered domestic partnership or (c) the foster child or grandchild of the tenant or any of the individuals described in subparagraphs (a) or (b) of this paragraph, 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 and Safety Code, section 17922.
 2. Before taking any action to terminate a tenancy based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with the opportunity to cure the violation within 14 calendar days. The tenant may cure the violation by making a written request to add occupants to which request the landlord reasonably concurs or by using other reasonable means, to which the landlord reasonably concurs, to cure the violation including, but not limited to, causing the removal of any additional or unapproved occupant.
- D. 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 on the rental unit or to the

common area of the rental complex, or to create a substantial interference with the comfort, safety or enjoyment of the landlord, other tenants or members of a tenant's household or neighbors, provided, however, a landlord need not serve a notice to cease if the tenant's conduct is illegal activity, has caused substantial damage to the rental unit or the common area of the rental complex, or poses an immediate threat to public health or safety.

- E. Refusal to renew a tenancy. The tenant has refused to agree to a new lease or a month to month tenancy upon expiration of a prior lease, after written request by the landlord to do so, but only where the new tenancy has provisions that are substantially the same as the provisions under the prior tenancy and is not inconsistent with local, state or federal laws.
- F. Failure to provide access. The tenant has continued to refuse, after the landlord has served the tenant with a written notice, to provide the landlord with reasonable access to the rental unit for the purpose of inspection or of making necessary repairs or improvements required by law, for the purpose of showing the rental unit to any prospective purchaser or mortgagee, or for any other reasonable purpose as permitted or required by the lease or by law.
- G. Owner or relative move in. The landlord seeks in good faith to recover possession of the rental unit for use and occupancy as a primary residence by (1) the landlord, (2) the landlord's spouse or registered domestic partner, (3) the landlord's parent, grandparent, brother, sister, child or grandchild, whether that person is related to the landlord by blood, birth, adoption, marriage or registered domestic partnership or (4) as to a building or complex of four or more rental units, a resident manager.
 - 1. For purposes of this subsection G, a "landlord" shall include only a landlord who is a natural person and has at least a 50% ownership interest in the property. The landlord shall provide to the Program Administrator documentation that the landlord meets the definition of landlord as provided in this paragraph. For purposes of this paragraph, a "natural person" means a human being but may also include a living, family or similar trust where the natural person is identified in the title of the trust.
 - 2. No action to terminate a tenancy based on an "owner move-in" may take place if (a) there is a vacant rental unit on the property and the vacant rental unit is comparable in size and amenities to the rental unit for which the action to terminate the tenancy is sought or (b) the landlord or one of the enumerated persons in (2) or (3) of subsection G above already occupies one of the rental units on the property.
 - 3. The notice terminating the tenancy under this subsection G shall set forth the name and relationship to the landlord of the person intended to occupy the rental unit.
 - 4. The landlord or the enumerated person must intend in good faith to move into the rental unit within 90 days after the tenant vacates and to occupy the rental unit as that person's primary residence for at least one year.
 - 5. If the landlord or enumerated person specified on the notice terminating the

tenancy fails to occupy the rental unit within 90 days after the tenant vacates or if the landlord or enumerated person vacates the rental unit without good cause before occupying the rental unit as that person's primary residence for one year, the landlord shall:

- a) Notify the Program Administrator in writing;
 - b) Offer the rental unit to the tenant who vacated it and at the same rent that was in effect at the time the tenant vacated the rental unit; and
 - c) Pay to the tenant all reasonable and documented expenses incurred in moving to and from the rental unit, to the extent such expenses exceed the relocation assistance the landlord has already paid to the tenant as provided in Section 6-90.1340.
- H. Demolition. The landlord seeks in good faith to take action to terminate a tenancy to demolish the rental unit and remove the property permanently from residential rental housing use; provided, however, the landlord shall not take any action to terminate such tenancy until the landlord has obtained all necessary and proper demolition and related permits from the City.
- I. Capital Improvement Plan. The landlord seeks in good faith to take action to terminate a tenancy in order to carry out an approved capital improvement plan and where that capital improvement plan permits the landlord to terminate a tenancy.
- J. Withdrawal from the rental market. The landlord seeks in good faith to take action to terminate a tenancy by filing with the Program Administrator the requisite documents to initiate the process to withdraw the rental unit from rent or lease under Government Code, section 7060 et seq. with the intent of completing the withdrawal process and, as to only the rental unit or units on the property, going out of the residential rental business permanently.
- K. Compliance with a governmental order. The landlord seeks in good faith to take action to terminate a tenancy to comply with a government agency's order to vacate, or any other order that necessitates the vacating of the building or the rental unit as a result of a violation of the City of Santa Rosa's Municipal Code or any other provision of law, other than a governmental agency's order to vacate the rental unit due to fire, flood, earthquake, other natural disasters or other occurrences that render the rental unit uninhabitable due to no fault of the landlord.
- a. The landlord shall offer the rental unit to the tenant who vacated the rental unit when the landlord has satisfied the conditions of the governmental agency that caused the governmental agency to order the rental unit vacated and at the same rent that was in effect at the time the tenant vacated the rental unit.
 - b. The landlord shall pay to the tenant all reasonable expenses incurred in vacating the rental unit, as provided in Section 6-90.1340 and all reasonable and documented expenses incurred in moving into the rental unit should the Tenant do so.

6-90.130 Required Payment of a Relocation Fee.

A. If the landlord has taken any action to terminate a tenancy on the grounds set forth in subsections G, H, I, J or K of Section 6-90.125, except as to a governmental agency's order to vacate the rental unit due to fire, flood, earthquake, other natural disasters or other occurrences that render the rental unit uninhabitable due to no fault of the landlord, or at the end of a fixed term lease greater than nine months, the landlord shall pay to the tenant, regardless of the length of the tenancy, a relocation fee in an amount of (1) the equivalent of three months' rent (representing a first and last months' rent plus a security deposit) for a market rate rental unit comparable to the rental unit the tenant is vacating, one month's rent, as averaged over the twelve months preceding the serving of the notice to vacate, for each year, or portion thereof, that a tenant has rented the rental unit, to a maximum of two months' rent if the tenant has rented the rental unit for two or more years, plus (2) \$1500. For purposes of this section 6-90.130, a rental unit is comparable based on the number of bedrooms. The Program Administrator will determine what the market rate rent is for a comparable unit. The \$1500 will be adjusted on January 1 of each year based in the percentage change in the Consumer Price Index from the previous January 1.

B. The landlord shall pay the relocation fee as follows:

1. The entire fee shall be paid to a tenant who is the only tenant in the rental unit and if the rental unit is occupied by two or more tenants, then each tenant who is on the lease or has financial responsibility to pay the rent shall be paid a pro-rata share of the relocation fee; provided, however, if a tenant or tenants receive, as part of the eviction, relocation assistance from a governmental agency, then the amount of that relocation assistance shall operate as a credit against any relocation fee to be paid to the tenant(s) under this subsection B..
2. The landlord shall pay one half of the applicable relocation fee when the tenant has informed the landlord in writing that the tenant will vacate the rental unit as set forth in the notice to terminate the tenancy and the other half upon certification that the tenant has vacated the rental unit on the date provided in the notice.

~~Nothing provided herein prohibits a landlord and a tenant from agreeing to relocation assistance different than as provided in this Section, provided the landlord and tenant provide to the Program Administrator written proof of the alternative relocation assistance within 21 days of the tenant's vacating the rental unit.~~

6-90.135. Service and Contents of the Written Notices to Terminate a Tenancy.

- A. In any notice purporting to terminate a tenancy the landlord shall state in the notice the cause for the termination, if any.
- B. If the cause for terminating the tenancy is for the grounds in subsections A, B, C, D, E or F of Section 6-90.125 and a notice to cease is required, the notice shall also

inform the tenant that the failure to cure may result in the initiation of an action to terminate the tenancy; such notice shall also include sufficient details allowing a reasonable person to comply and defend against the accusation.

- C. If the cause for terminating the tenancy is for the grounds in subsections G, H, I, J or K of Section 6-90.125, the notice shall also inform the tenant that the tenant is entitled to a relocation fee in the amount then in effect.
- D. If the cause for terminating the tenancy is for the grounds in subsection I of Section 6-90.125, the notice shall state the landlord has complied with that subsection by obtaining a City approved capital improvement plan.
- E. The landlord shall file with the Program Administrator within seven calendar days after having served any notice required by subsections G, H, I, J or K of Section 6-90.125 a copy of such notice.

6-90.140 Retaliation Prohibited.

No landlord shall take any action to terminate a tenancy, reduce any housing services or increase the rent where the landlord's intent is to retaliate against the tenant (i) for the tenant's assertion or exercise of rights under this Ordinance or under state or federal law or (ii) for the tenant's participation in litigation arising out of this Ordinance. Such retaliation may be a defense to an action to recover the possession of a rental unit and/or may serve as the basis for an affirmative action by the tenant for actual and punitive damages and/or injunctive relief as provided herein. In an action against the tenant to recover possession of a rental unit, evidence of the assertion or exercise by the tenant of rights under this Ordinance or under state or federal law within 180 days prior to the alleged act or retaliation shall create a rebuttable presumption that the landlord's act was retaliatory; provided, however, a tenant may assert retaliation affirmatively or as a defense to the landlord's action without the presumption regardless of the period of time that has elapsed between the tenant's assertion of exercise of rights under this Ordinance and the alleged action of retaliation.

6-90.145 Program Fee.

- A. There is hereby imposed on each rental unit in the City a program fee. The program fee shall be paid to the City annually. The program fee may be included as a cost of operation and one half of the program fee may be allocated to a tenant, to be paid by the tenant in 12 equal installments, which payment shall not be included in the calculation of the allowable annual adjustment.
- B. The Housing and Community Services Director shall report to the City Council no less than once each year a recommendation as to the amount of the program fee necessary to recover the costs of administering the programs under this Ordinance. The amount of the fee shall be determined by resolution of the City Council adopted from time to time. The fee shall not exceed the amount found by the City Council to be necessary to administer the costs of the programs under this Ordinance, and the City Council's finding in this regard shall be final.
- C. Any landlord responsible for paying the program fee who fails to pay the program fee within 30 calendar days of its due date shall, in addition to the program fee,

pay an additional penalty assessment as determined by resolution of the City Council adopted from time to time.

6-90.150 Actions to Recover Possession.

In any action brought to recover possession of a rental unit, the landlord shall allege and prove by a preponderance of evidence compliance with this Ordinance.

6-90.155 Landlord's Failure to Comply.

A landlord's failure to comply with any requirement of this Ordinance may be asserted as an affirmative defense in an action brought by the landlord to recover possession of the rental unit. Additionally, any attempt to recover possession of a rental unit in violation of this Ordinance shall render the landlord liable to the tenant for actual and punitive damages, including damages for emotional distress, in a civil action for wrongful eviction. The tenant may seek injunctive relief and money damages for wrongful eviction. The prevailing party in an action for wrongful eviction shall recover costs and reasonable attorneys' fees.

6-90.160 Penalties for Violations.

- A. The City may issue an administrative citation to any landlord and to the landlord's agent for a violation of this Ordinance. For the first violation, the violator shall be referred to educational program concerning the Ordinance. Thereafter, the fine for such violations shall be \$250 for the first subsequent offense, a fine of \$500 for a second subsequent offense within a one year period and a fine of \$1000 for three or more subsequent a third offenses within a one year period. In addition, the first two violations of this Ordinance following the educational program shall be deemed infractions and the fines therefor for the first and second subsequent offenses shall be as set forth in the previous sentence. The A third or subsequent violations in any one year period shall constitute a misdemeanor, punishable as set forth in Chapter I of the City Code. If a violation of the Ordinance involves more than one rental unit, the City may issue a separate citation for each rental unit.
- B. Notwithstanding subsection A of Section 6-90.160 it shall constitute a misdemeanor for any landlord to have demanded, accepted, received or retained any rent in excess of the maximum rent allowed by a binding decision of the Program Administrator, a decision of a Rent Dispute Hearing Officer, or by a final judgment of a court of competent jurisdiction should the Rent Dispute Hearing Officer's decision be challenged in court.
- C. In addition to all other remedies provided by law, including those set forth above, as part of any civil action brought by the City to enforce this Ordinance, a court may assess a civil penalty in an amount up to the greater of \$2500 per violation per day or \$10,000 per violation, payable to the City, against any person who commits, continues to commit, operates, allows or maintains any violation of this Ordinance.

The prevailing party in any such civil action shall be entitled to its costs and reasonable attorney's fees.

6-90.165 Waiver.

- A. Any waiver or purported waiver of a tenant of rights granted under this Ordinance prior to the time when such rights may be exercised shall be void as contrary to public policy.
- B. It shall be unlawful for a landlord to attempt to waive or waive, in a rental agreement or lease, the rights granted a tenant under this Ordinance prior to the time when such rights may be exercised.

Section 6-90.170 Implementing Policies and Regulations.

The City Council may adopt by resolution such policies and regulations as necessary to implement this Ordinance.

6-90.175 Annual Review.

The Housing and Community Services Director shall annually prepare a report to the Council assessing the effectiveness of the programs under this Ordinance and recommending changes as appropriate.

6-90.180 Amendment, Suspension or Repeal of Ordinance.

If the annual vacancy rate for all rental units, including those defined in subsection A of Section 6-90.15, exceeds 5% over a twelve-month period, the Housing and Community Services Director shall prepare a report to the City Council in order for the Council to consider whether to amend, suspend or repeal this Ordinance based on that factor. The Housing and Community Services Director may rely on data from reliable sources including but not limited to the State of California's E-5 Population and Housing Estimates for Cities, Counties and the State as published by the State Department of Finance in determining whether the annual vacancy rate for all rental units exceeds 5% over a twelve-month period. The City Council shall consider all available data, as well as any other factors the Council deems relevant, in determining whether to amend, suspend or repeal this Ordinance.”

Section 2. Repeal of Ordinance Numbers 4067 and 4069. Ordinance Numbers 4067, 4069 and ~~{4070—if adopted on August [-], 2016}~~ are hereby repealed in their entirety.

Section 3. Severability. If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

~~Section 4. This Ordinance shall take effect on the 31st day following its adoption, be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.~~

~~Section 5. Environmental Determination. The Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act pursuant to the following, each a separate and independent basis: under CEQA Guidelines, section 15378 (adoption and implementation of the ordinance not a project) and Section 15061(b)(3) in that the Council finds there is (no possibility that the implementation of this ordinance may have significant effects on the environment).~~

~~Section 6. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.~~

~~Section 7. Effective Date. This ordinance shall take effect on the 31st day following its adoption.~~

This ordinance was introduced by the Council of the City of Santa Rosa on August 16, 2016.

~~THIS ORDINANCE WAS IN COUNCIL~~ DULY PASSED AND ADOPTED by the Council of the City of Santa Rosa this ____ day of _____, 2016.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____

City Clerk

APPROVED: _____

Mayor

APPROVED AS TO FORM:

Interim City Attorney