

ORDINANCE NO. 0-15310
(New Series)

August 22, 1980

AN ORDINANCE OF THE CITY OF SAN DIEGO, CALIFORNIA, ORDERING, CALLING, PROVIDING FOR AND GIVING NOTICE OF A SPECIAL ELECTION TO BE HELD IN THE CITY ON NOVEMBER 4, 1980, FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO ONE PROPOSITION RELATING TO AN INITIATIVE MEASURE ADDING SECTION 43.2 TO THE CHARTER OF THE CITY OF SAN DIEGO.

WHEREAS, the City Clerk has certified to the City Council that an initiative petition to amend the City Charter by adding to Article V a new Section 43.2 entitled, "Fair Rent Boards," has a sufficient number of signatures to qualify the initiative for the ballot under Sections 34459, 34460, 34461 and 34462 of the California Government Code; and

WHEREAS, the Council desires to submit the aforementioned initiative to the qualified voters of the City of San Diego at a special municipal election to be held in the City on November 4, 1980; and

WHEREAS, at a meeting held on August 22, 1980, the City Council of The City of San Diego adopted Resolution No. R-252482 requesting the Board of Supervisors of the County of San Diego to order the consolidation of a special municipal election to be held on November 4, 1980 with the statewide general election to be held on the same date; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, California, as follows:

Section 1. A special municipal election is hereby called and ordered to be held in the City of San Diego, California, on November 4, 1980, and pursuant to the provisions of Sections 23 and 223 of the Charter of The City of San Diego, the provisions of Section 3 of Article XI of the Constitution of the State of California and the provisions of Sections 34450 and 34459 of the California Government Code dealing with Charter amendments, the Council of The City of San Diego, being the legislative body thereof, hereby submits to the qualified voters of the City at such special municipal election the following proposition:

PROPOSITION _____

Amend Article V of the Charter of The City of San Diego by adding thereto Section 43.2 to read as follows:

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Section 43.2.

FAIR RENT BOARDS.

Subdivision 1.

STATEMENT OF PURPOSE:

A serious shortage of rental housing units exists in the City of San Diego resulting in a low vacancy rate and rapidly rising rents exploiting this situation, the deterioration in a significant portion of existing housing and a significant percentage of tenants paying an excessive portion of their incomes for rent. In addition, speculation in the purchase and sale of existing residential housing units results in further rent increases. These conditions adversely affect the health and well-being of San Diego tenants, especially low and moderate income families, minorities, senior citizens, military personnel and students. The purpose of this Article, therefore, is to alleviate the hardship caused by this serious housing shortage by establishing Fair Rent Boards empowered to regulate residential housing in the City of San Diego so that rents will not be increased unreasonably and so that landlords will receive only a fair return on their investment.

Subdivision 2.

DEFINITIONS:

- (A) Boards: The eight (8) Local Boards and the one (1) Central Board established by Subdivision 4 of this Article.
- (B) Rental Units: Any building, structure, or part thereof, land appurtenant thereto, or any real property, rented or offered for rent for living or dwelling purposes, including houses, apartments, rooming and boarding house units, or space rented for a mobile home or trailer

(as defined in California Civil Code #789.4) together with all housing services supplied in connection therewith, with the exception of:

- (1) rental units which a government unit, agency or authority owns, operates, or manages, if the provisions of this Article come into actual conflict with applicable Federal and/or State law or administrative regulation;
 - (2) motels, hotels, inns, tourist homes and boarding houses which are rented for transient occupancy which would be subject to tax under Section 7280 of the Revenue and Taxation Code;
 - (3) rental units in any hospital, convent, monastery, extended medical care facility, asylum, non-profit or charitable home for the aged, or dormitory owned and operated by an institution of higher learning;
 - (4) owner occupied buildings consisting of three (3) units or less;
 - (5) rental units, the construction of which was completed on or after the date of passage of this article;
 - (6) rental units which have been vacant for at least six (6) consecutive months and are rehabilitated after the date of passage of this Article by improvements amounting to at least one third (1/3) of the appraised value of the rental premises.
- (C) Landlord: An owner, lessor, sublessor or any person entitled to charge or receive rent for the use and occupancy of any rental unit or any agent or successor for any of the foregoing persons.
- (D) Tenant: A renter, subtenant, lessee, sublessee, or any person entitled under the terms of a lease, contract or rental agreement, whether

written, oral or implied by law or statute to the use or occupancy of any rental unit, including the surviving spouse of the foregoing persons.

- (E) Interim Boards: The appointed interim boards appointed under Subdivision 3-J of this Article.
- (F) Rent: All periodic payments and all nonmonetary consideration, including but not limited to, the fair market value of goods or services rendered to or for the benefit of the landlord under an agreement concerning the use or occupancy of a rental unit and premises, including all payments and consideration demanded or paid for parking, pets, furniture and cleaning.
- (G) Fair Market Rent: The maximum allowable rent established under Subdivision 7 of this Article.

Subdivision 3.

COMPOSITION AND ELECTION OF FAIR RENT BOARDS:

- (A) Local Boards: There shall be eight (8) Local Boards commensurate with the eight (8) City Council Districts, each board consisting of five (5) members. The ballot shall be divided between landlord candidates and tenant candidates. The voter shall choose two (2) from each group. The four (4) elected members shall choose a fifth member within thirty (30) days who shall be a homeowner who is a resident of the respective district and who is neither a landlord, as defined in Subdivision 2-C hereof, nor a tenant, as defined in Subdivision 2-D hereof. The fifth, chosen, member shall serve as Chairperson and shall vote only in the

case of a tie. Elected members shall serve a term of four (4) years except on the first election at which time the landlord and tenant candidates who receive the highest number of votes in their respective categories shall serve four (4) years and the other elected landlord and tenant candidates shall serve for two (2) years. The fifth, chosen, member shall serve a term of two (2) years but may be re-elected by the Board. No board member shall serve more than two (2) consecutive terms. The first elections shall be held at the Municipal Primary election and elections shall thereafter be held at the Municipal Primary elections.

- (B) Quorum: A quorum of the Board shall consist of three (3) members. Decisions of the Local Boards shall be made upon a majority vote of those Board members present.
- (C) Vacancy: In the event that a vacancy occurs on the Local Boards, it shall be filled by appointment by a majority vote of the Central Board, maintaining the tenant-landlord balance and eligibility requirements, within thirty (30) days.
- (D) Recall: Recall of a Board member shall be considered upon petition of five (5) percent of the registered voters of the respective member's council district. In all other respects the recall of a Board member shall be in accordance with the recall provisions of the Elections Code of the City of San Diego, with the exception that the election for recall of a Board member and election of a successor, as appropriate, shall be done on a council district basis, as provided under Subdivision 2-A of this Article.
- (E) Central Board: There shall be one (1) Central Board consisting of seventeen (17) members, one (1) tenant representative and one (1) landlord representative from each of the eight (8) Local Boards, which

representatives shall be selected by the Local Boards from among themselves. The sixteen (16) selected members shall then choose the seventeenth member who shall be neither a tenant nor a landlord, and who shall serve as Chairperson and shall vote only in the case of a deadlocked vote. The members of the Central Board shall be selected immediately upon the appointment of the Interim Local Boards and shall thereafter commence their duties as set forth in Subdivision 6 of this Article. Upon establishment of the first Board, members from the even-numbered City Council Districts shall serve for a period of one (1) year, and members from the odd-numbered Districts shall serve for a period of two (2) years. Thereafter, all appointments shall be for a period of two (2) years.

- (F) Quorum: Nine (9) members shall constitute a quorum for the Central Board. A minimum of five (5) votes shall be required for a decision of the Central Board.
- (G) Vacancy: In the event that a vacancy occurs on the Central Board, it shall be filled by appointment by a majority vote of the Local Board whose seat on the Central Board became vacant, maintaining the tenant-landlord balance and eligibility requirements, within thirty (30) days. A vacancy on the Central Board of its Chairperson shall be filled by the Central Board itself in accordance with section E, above.
- (H) Compensation: All Board members shall be compensated at a rate of \$25 per meeting attended, not to exceed \$2000 per year, to be adjusted annually in accordance with the Consumer Price Index and with the approval of the City Council. Nothing in this section shall be construed to permit any Board to refuse to hold any hearings and/or meetings which this Article may require, nor to limit the Board's power to delegate its authority to conduct hearings to staff members.

- (I) Absences: Three (3) consecutive unexcused absences shall constitute grounds for removal from the Board.
- (J) Interim Boards: No later than thirty (30) days after adoption of this Article, the San Diego City Council shall appoint persons to the Local Boards in accordance with the provisions of Subdivision 3-A of this Article. The Interim Boards shall exercise all the powers and duties of the Local Boards as set forth in Subdivision 5 of this Article, until such time as the Local Boards are elected in accordance with the provisions of the Subdivision and assume office.

Subdivision 4.

ELIGIBILITY AND ELECTION:

- (A) Tenant Candidate: Any person who is a tenant as defined in Subdivision 2-D and who is not a landlord as defined in Subdivision 2-C of this Article, shall be eligible as a tenant candidate.
- (B) Landlord Candidate: Any person who is a landlord, as defined in Subdivision 2-C of this Article, shall be eligible as a landlord candidate.
- (C) Election: Candidates for election to the Local Boards shall be subject to the same conditions and requirements, including residence requirements, as City Council candidates, with the exception that nominating fees shall be twenty dollars (\$20) per candidate.
- (D) Disclosure Requirements: Every candidate for a Local Board shall be subject to the same campaign disclosure requirements as City Council candidates.

Subdivision 5.

POWERS AND DUTIES OF LOCAL BOARDS:

Each Local Board shall have the following powers and duties:

- (A) To establish the Fair Market Rent for all rental units located within the district of the respective Local Board.
- (B) To accept the registration of all rental units located within the district of the respective Local Board pursuant to Subdivision 6-G of this Article.
- (C) Upon receipt of a petition by a landlord and/or tenant, or upon its own motion, to make adjustments in the Fair Market Rent of individual rental units in accordance with the provisions of this section A.
- (D) To set rents at fair and equitable levels in order to achieve the intent of this Article.
- (E) To issue permits for the removal of any rental unit(s) from the rental housing market as herein set forth. Any landlord who desires to remove any rental unit(s), as defined in Subdivision 2-B of this Article, from the rental housing market by demolition or conversion from a housing use to a non-rental housing use, or other means is required to obtain a permit from the Local Board in whose boundaries the rental unit(s) is (are) located prior to their removal from the rental housing market. In order to approve such a permit, the appropriate Local Board is required to make each of the following findings, after holding public hearings according to the provisions of Subdivision 4-F of this Article:
 - (1) That the rental unit(s) sought to be converted is (are) not

occupied by a person or family of low income, very low income or moderate income.

- (2) That the rent of the rental unit(s) sought to be converted is (are) not at a level affordable by a person or family of very low income, low income or moderate income.
- (3) That the rental unit(s) sought to be converted is (are) not occupied by a person or family with special needs, including but not limited to the elderly, the handicapped as defined in Health and Safety Code #41041, or tenants with minor children.
- (4) That the removal of the rental unit(s) sought to be converted will not adversely affect the supply of rental housing in the City of San Diego.
- (5) That the landlord cannot make a fair return on investment by retaining the rental unit(s) in the rental housing market.

Notwithstanding the foregoing provisions of this paragraph, the appropriate Local Board may approve such a permit if it finds that the rental unit(s) sought to be converted or demolished is (are) uninhabitable and is (are) incapable of being made habitable in an economically feasible manner.

Furthermore, nothing in this section shall limit or otherwise condition the rights of a landlord to institute legal proceedings against a tenant(s) for recovery of possession of the rental unit(s) in question.

(F) Hearing Procedures:

- (1) The appropriate Local Board shall notify the landlord or tenant by registered mail within five (5) days of the filing of a petition, including a copy of the petition with the Notice. The affected

Landlord or tenant shall then have ten (10) days from the date of the Board's notice, within which to file a written answer with the appropriate Local Board, with a copy thereof to the landlord or tenant, whichever is appropriate.

- (2) Each respective Local Board may use Hearing Officers to conduct its rent adjustment hearings. Such Hearing Officers shall make proposed findings of facts and conclusions of law in writing and shall file a copy thereof with the appropriate Local Board within ten (10) days after the conclusion of the hearing. Within ten (10) days after receiving a copy of the Hearing Officer's proposed decision, the Local Board shall adopt the decision in its entirety or decide the matter itself based upon the transcript, with or without taking additional evidence. If the decision of the Local Board differs materially from the proposed decision of the Hearing Officers, a copy of the Hearing Officer's proposed decision shall be served upon all affected parties along with a copy of the decision of the Board itself.
- (3) Each respective Local Board shall notify all parties as to the time, date and place of the hearing. Hearings shall be scheduled for times which are convenient for all parties, including evenings and weekends when necessary, and may be continued upon request and a showing of good cause for the continuance.
- (4) All petitions pertaining to tenants occupying the same building, project or complex may be consolidated for hearing at the discretion of the appropriate Local Board, unless there is a showing of good cause not to consolidate such petitions.

- (5) The Board or Hearing Officer may require either party to a hearing to provide it with any books, records and papers deemed pertinent in addition to that information contained in registration statements and is authorized to administer oaths and affirmations and subpoena witnesses.
- (6) All hearings shall be open to the public.
- (7) All Parties to a hearing may have assistance in presenting evidence and developing their position from attorneys, legal workers, tenant union representatives or any other person(s) designated by the parties.
- (8) The Board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be a public record and shall be obtainable for the cost of copying. The record of the hearing shall include all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings, a list of participants present, a summary of all testimony accepted in the proceedings, a statement of all materials officially noticed, all recommended decisions, orders and/or rulings and the reasons for each final decision, order and/or ruling.
- (9) No individual rent adjustment shall be approved unless supported by the preponderance of the evidence submitted at the hearing. All parties to a hearing shall be sent a notice of the Board's decision showing the findings of fact and conclusions of law upon which the decision is based. At the same time, the parties to the

proceedings shall also be notified of their right to judicial review pursuant to Subdivision 12 of this Article.

- (10) In making individual Fair Market Rent adjustments, all relevant factors shall be considered on a case-by-case basis, including but not limited to those specified in Subdivision 8 of this Article.
- (11) Where the Board approves an upward rent adjustment, such approval may be ordered effective retroactive to the date of the filing of the petition by the landlord where necessary, in the Board's opinion, to avoid undue hardship to the landlord, and the amount of such approved upward adjustment shall be amortized over future monthly rental payments of the affected tenant(s) to the affected landlord so as to avoid undue hardship on the tenant(s).
- (12) The rules and regulations adopted by the Central Board shall provide for final Local Board action on any individual rent adjustment petition within sixty (60) days following the date of filing of the petition for hearing, except that petitions filed within the first three (3) months after appointment of the Interim Board shall be processed to a final decision within four (4) months of the date of filing of the tenant's petition. Where no decision of a Local Board upon a individual request for either an upward or downward rent adjustment is rendered within the time limits herein specified, such request shall be deemed denied.

Subdivision 6.

POWERS AND DUTIES OF THE CENTRAL BOARD:

The Central Board shall have the following powers and duties:

- (A) To hire and compensate necessary staff, including Hearing Officers, to conduct hearings, issue orders, rules and regulations and charge fees as set forth in Subdivision 16 of this Article.
- (B) The Central Board shall issue and follow such rules and regulations, including those which are contained in this Article, as will further the purposes of this Article. The Central Board shall publicize its rules and regulations prior to promulgation in at least one (1) newspaper with general circulation in the City of San Diego. The Central Board shall hold at least one (1) public hearing to consider the views of interested parties prior to the adoption of such rules and regulations, prior to the adoption of general adjustments of Fair Market Rents under section I of this Subdivision and prior to any determination to suspend or reimpose the requirements and procedures of this Article under Subdivision 10 herein. All rules and regulations, internal staff memoranda and written correspondence explaining the decisions, orders and policies of the Central Board or any Local Board shall be kept in the office of the Central Board and shall be available to the public for inspection and copying (at the expense of the person requesting the copying). The Central Board shall publicize this Article so that all residents of the City of San Diego will have the opportunity to become informed of their rights and duties hereunder. The Central Board shall propose, as soon as is practicable, a brochure which fully describes the legal rights and duties of landlords and tenants in the City of San Diego under this Article. The brochure shall be available to the public. The Central Board shall require that each tenant of a rental unit(s) be given a copy of the brochure by his/her landlord.
- (C) To make such studies, surveys and investigations, conduct such hearings

and obtain such information as is necessary to carry out its powers and duties.

- (D) To report annually to the San Diego City Council on the status of the rental housing market which is subject to the provisions of this Article.
- (E) To suspend application of the rent adjustment hearing requirements of this Article, as set forth in Subdivision 10 of this Article.
- (F) To administer oaths and affirmations and subpoena witnesses.
- (G) Within ninety (90) days after adoption of this Article, the Central Board shall require the registration of all rental units with each Local Board in whose jurisdiction the rental unit(s) is (are) located and their re-registration at annual intervals. The initial registration shall include the rent in effect at the time of this Article, the rent in effect as of August 3, 1977, the address of the rental unit(s), the name and address of the landlord, the housing services provided to the rental unit(s), a statement indicating all operating cost increases since August 3, 1977 and any other information deemed relevant by the Central Board. If the Central Board, after the landlord has proper notice and after a hearing by the appropriate Local Board, determines that a landlord had willfully and knowingly failed to register a rental unit(s), the Central Board may authorize the tenant of such a non-registered rental unit(s) to withhold all or a portion of the rent for the unit(s) until such time as the rental unit(s) is properly registered. After a rental unit is properly registered, the Board shall determine what portion, if any, of the withheld rent is owed to the landlord for the period in which the rental unit(s) was not properly registered. Whether or not the Central Board allows such withholding,

no landlord who has failed to register properly shall be entitled at any time to a rent increase for a rental unit(s) until such unit(s) are properly registered.

- (H) To issue annual reports on the status of rental housing and the existing vacancy rates in the City of San Diego.
- (I) The Central Board may, after holding those public hearings prescribed by section B of this Subdivision, set and adjust upward or downward, the Fair Market Rent for all rental units in general and/or for particular classes, categories or areas of rental units. The Board may order that such adjustment not take effect immediately, where necessary, to avoid undue hardship. In making general adjustments of the Fair Market Rent, the Board shall consider the purposes of this Article and shall specifically consider those factors specified in Subdivision 8 of this Article. The Central Board shall establish and publish guidelines for the determination of particular classes, categories or areas of rental unit(s) which may be required by this section and/or by Subdivision 10 of this Article, which are consistent with the purposes of this Article and which shall consider such factors as economics, location, size, housing services furnished, age and physical condition.

Subdivision 7.

FAIR MARKET RENTS:

Beginning with the date of this Article, no landlord shall charge rent for any rental unit(s) in an amount greater than the rent in effect on August 3, 1977, until and unless such rent is adjusted under Subdivisions 5 and 6 of this Article. If there was no rent in effect on August 3, 1977, the rent shall be that charged on the first date that rent was charged following

August 3, 1977. As soon as the landlord is aware of the Fair Market Rent, the landlord shall post it for each unit in a prominent place in or about the affected rental unit. The Central Board may require that other information it deems relevant also be posted.

Subdivision 8.

FACTORS:

The Central Board shall make its determinations upon general Fair Market Rent adjustments based upon all relevant factors, including but not limited to the following:

- (A) Increases or decreases in property taxes, unavoidable increases or decreases in operating and maintenance expenses, capital improvement of the rental unit(s) as distinguished from repair, replacement and maintenance.
- (B) Increases or decreases in living space, furniture and fixtures, amenities, services and facilities.
- (C) Substantial deterioration of the rental unit(s) other than as a result of ordinary wear and tear, or failure on the part of the landlord to provide adequate housing services.
- (D) Failure on the part of the landlord to comply substantially with applicable housing, health and safety codes.
- (E) Federal and State income tax benefits, whether or not the property was acquired or is held as a long-term or short-term investment and the landlord's rate of return on investment.
- (F) The amount of hardship on affected landlords and tenants.

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It is the intent of this Article that rent increases be allowed only when demonstrated necessary to the landlord making a fair return on investment. No rent increase shall be authorized by this Article because a landlord has a negative cash flow if at the time the landlord acquired the rental unit(s), the landlord could reasonably have foreseen a negative cash flow based upon the rent schedule then in existence within the one (1) year period following acquisition of the rental units acquired after the date of this Article.

Subdivision 9.

EVICTIONS:

No landlord shall bring any action to recover possession of a rental unit(s) subject to this Article unless:

- (A) The tenant has failed to pay the rent to which the landlord is entitled under the rental housing agreement.
- (B) The tenant has violated a material obligation or covenant of his/her tenancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation after having received written notice thereof from the landlord in the manner required by law.
- (C) The tenant is committing or expressly permitting to exist a nuisance in, or is causing substantial damage to, the rental unit, or is creating a substantial interference with the comfort, safety or enjoyment of the landlord or other occupants or neighbors of the rental unit(s).
- (D) The tenant is convicted of using or expressly permitting a rental unit to be used for any illegal purpose.
- (E) The tenant gives written notice of his intention to terminate the

tenancy, or makes a written offer to surrender which is accepted in writing by the landlord, but fails to deliver up possession at the time specified in said written notice, without the permission of his/her landlord, or the successor in estate of the landlord, if any.

- (F) The tenant, whose rental agreement has been terminated, has refused, after written request or demand by the landlord, to execute a written extension or renewal thereof for a further term of like duration and in such terms as are not inconsistent with or violative of any provisions of this Article and are materially the same as in the previous agreement.
- (G) The tenant has refused the landlord reasonable access to the rental unit for the purpose of making necessary repairs or improvements required by the laws of the United States, the State of California or any subdivision thereof, or for the purpose of showing the rental unit to any prospective purchaser or mortgagee.
- (H) The tenant holding at the end of the term of the rental agreement is a subtenant not approved by the landlord.
- (I) The landlord seeks to recover possession in good faith for use and occupancy of himself or herself, or his/her children, parents, brothers, sisters, father-in-law, mother-in-law, son-in-law or daughter-in-law.
- (J) The landlord seeks to recover possession to demolish or otherwise remove the rental unit(s) from rental housing use after having obtained all proper permits from the City of San Diego and the appropriate Local Boards established by this Article.

Notwithstanding the above provisions, possession shall not be granted to the

landlord if it is determined that the eviction is in retaliation for the tenant exercising his/her rights under this Article, for reporting violations of this Article, including the right to withhold rent upon authorization of an appropriate Local Board or for organizing other tenants. In any action brought to recover possession of a rental unit(s), the landlord shall allege and prove compliance with this Subdivision.

Subdivision 10.

DETERMINATION OF APPLICABILITY OF ARTICLE:

The Central Board shall conduct an annual survey of rental housing in the City of San Diego upon which it shall determine vacancy rate. If the average annual rate in any category, classification, or area of rental units, as determined by the Board in accordance with the guidelines established pursuant to Subdivision 6 of this Article, exceeds five (5) percent, the Central Board is empowered, at its discretion and in order to achieve the objectives of this Article, to suspend application of the rent regulation provisions of this Article to any such category, classification or area. The Central Board must determine such categories, classifications or areas for the purpose of this section consistent with the objectives of this Article. In determining the vacancy rate for any category, classification or area of rental units, the Central Board shall consider all available data and shall conduct its own survey. If the rent regulation provisions and requirements of this Article are suspended under this paragraph with respect to any category, classification or area of rental units, the Central Board shall reimpose said provisions and requirements of this Article if it finds that the average annual rate has thereafter fallen below five (5) percent for such category, classification or area.

Subdivision 11.

NON-WAIVERABILITY:

Any provision, whether oral or written, in or pertaining to a rental housing agreement whereby any provision of this Article for the benefit of any party affected by this Article is waived, shall be deemed to be against public policy and shall be void.

Subdivision 12.

JUDICIAL REVIEW:

A Landlord or Tenant aggrieved by any action or decision of any Local Board may seek judicial review by appealing to the appropriate court within the jurisdiction.

Subdivision 13.

CIVIL REMEDIES:

- (A) Any landlord who accepts any payment of rent in excess of the rent designated by the appropriate Local Board shall be liable to the tenant for reasonable attorney's fees and cost as determined by the court, plus damages of three (3) times the amount by which the payment exceeded the lawful rent, or \$200, whichever is greater.
- (B) In lieu of filing a civil action as provided in the preceding paragraph, the Central Board shall establish by rule and regulation a hearing procedure similar to that set forth in Subdivision 5-F of this Article for determination, by the appropriate Local Board, of the amount of the

penalties the tenant is entitled to pursuant to Subdivision 8-A of this Article. After said determination, the tenant may deduct the penalty from future rent payments in the manner provided by the Board.

- (C) If the tenant from whom such excessive payment accepted in violation of the foregoing provisions of this Article fails to bring a civil or administrative action as provided for in Subdivision 7-A or B within one hundred and twenty (120) days from the date of occurrence of the violation, the appropriate Local Board may assert on behalf of the tenant the claim arising out of the violation. Thereafter, the tenant on whose behalf the Board acted is barred from also bringing an action against the landlord in regard to the same violation for which the Board has made a settlement or brought an action. In the event the Board settles said claim, it shall be entitled to retain the costs it incurred in settlement thereof and the tenant against whom the violation has been committed shall be entitled to the remainder.
- (D) Any landlord who violates any provision of this Article, other than as set forth in section (A) of this Subdivision, shall be liable to any aggrieved tenant for such tenant's actual damages caused by the landlord's violation, plus reasonable attorney's fees and a maximum of \$250 exemplary damages.
- (E) The appropriate court in the jurisdiction in which the affected rental unit(s) is (are) situated shall have jurisdiction over all actions brought under this Subdivision.

Subdivision 14.

CRIMINAL REMEDIES:

Any landlord who willfully and knowingly violates this Article shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this Article shall be punished by a fine of not more than one thousand dollars(\$1000).

Subdivision 15.

DECLARATORY AND INJUNCTIVE RELIEF:

The respective Local Boards, the Central Board and Tenants and Landlords of Rental Units, may seek relief from the appropriate court within the jurisdiction within which the affected Rental Units are located to restrain or enjoin any violation of this Article and of the rules, regulations, ordered and/or decisions of the respective Boards, and/or to obtain a judicial declaration of the rights and responsibilities of the affected parties under any provision of this Article and under any of the rules, regulations, orders and/or decisions of any of the respective Boards established under this Article.

Subdivision 16.

FUNDING:

The City of San Diego shall use available federal funds for the administration of the provisions of this Article whenever possible. Monies from the General Fund of the City of San Diego shall be utilized for the purpose of this Article only when necessary.

All Landlords under the jurisdiction of this Article shall pay an annual fee of two dollars (\$2.00) per rental unit, which amount may be adjusted upward or downward by the Central Board after holding at least one (1) public

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hearing when necessary to assure proper administration of this Article. Each party who files a petition pursuant to Subdivision 5 of this Article shall pay one dollar (\$1.00) upon filing of each petition.

Subdivision 17.

PARTIAL INVALIDITY:

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

Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 4 of this ordinance.

Section 3. The polls for this special municipal election shall be open at 7 a.m. (local time) on November 4, 1980, and remain open continuously until 8 p.m. (local time) on the same day at which time the polls shall be closed, except as provided in Section 14301 of the Elections Code of the State of California.

Section 4. Since this election is being consolidated with the statewide general election and since the Board of Supervisors of the County of San Diego is hereby authorized to canvass returns of this election, and since only one form of ballot is

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authorized, the method of voting upon the proposition shall be as provided in the Elections Code of the State of California; and, on the ballots to be used at this special municipal election, in addition to any other matters required by law, there shall be printed substantially the following:

<p>PROPOSITION _____. CITY OF SAN DIEGO CHARTER AMENDMENT INITIATIVE. AMENDS CHARTER OF THE CITY OF SAN DIEGO BY ADDING A NEW SECTION 43.2 ENTITLED, "FAIR RENT BOARDS."</p>	<p>YES</p>	
<p>Shall the Charter be amended to do, among other things, the following: to create eight (8) local boards of five (5) members to review complaints with respect to rent increases, with various powers, including the power to limit the increases to fair and equitable levels and to disapprove excessive increases; to create a central board consisting of 17 members made up of one (1) landlord and one (1) tenant member from each of the local boards and a 17th member selected by them with various powers, including the power to suspend the rent adjustment provision of the amendment, make studies, report to the Council on the rental market and subpoena witnesses; to provide for rent increases only when demonstrated necessary to the landlord making a fair return on investment; and to limit the landlord's right to recover possession?</p>	<p>NO</p>	

Section 5. An appropriate mark placed in the voting square after the word "YES," shall be counted in favor of the adoption of the proposition. An appropriate mark placed in the voting square after the word "NO," in the manner hereinbefore provided, shall be counted against the adoption of the proposition.

Section 6. The special municipal election called for November 4, 1980 in the City of San Diego is hereby ordered consolidated with the statewide general election to be held on the same date. Within the City of San Diego the precincts, polling places and officers of the election for the special municipal election shall be the same as those provided for in the statewide general election.

Section 7. The Board of Supervisors of the County of San Diego is hereby authorized to canvass the returns of the special municipal election and these elections shall be held in all respects as if there were only one election, and within the City only one form of ballot shall be used. The Board of Supervisors shall certify the results of the canvass of the returns of this special municipal election to the Council of The City of San Diego which shall then declare the results of the election.

Section 8. The proposition submitted by this ordinance shall be designated on the ballot by a letter printed on the left margin of the square containing the description of the measure as provided in Section 10219 of the Elections Code of the State of California.

Section 9. Except as otherwise provided in this ordinance, the special municipal election shall be conducted as provided by law for other municipal elections of the City.

Section 10. The City Clerk shall cause this ordinance to be published once in the official newspaper. No other

notice of the election need be given.

Section 11. Pursuant to Section 17 of the Charter,
this ordinance relating to elections shall take effect on
August 22, 1980, being the day of its introduction
and passage.

APPROVED: JOHN W. WITT, City Attorney

By Stuart H. Swett
Stuart H. Swett
Chief Deputy City Attorney

SHS:rc:930.43
8/18/80
Or. Dept.: Council

0-15310

Passed and adopted by the Council of The City of San Diego on AUG 22 1980
 by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Lowery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fred Schnaubelt	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Larry Stirling	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lucy Killea	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON
 Mayor of The City of San Diego, California.

(Seal)

CHARLES G. ABDELNOUR
 City Clerk of The City of San Diego, California.

By Ellen Boward, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on AUG 22 1980, said ordinance being of the kind and character authorized for passage on its introduction by Section 16 of the Charter.

~~I FURTHER CERTIFY that the final reading of said ordinance was in full.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
 City Clerk of The City of San Diego, California.

(Seal)

By Ellen Boward, Deputy.

Office of the City Clerk, San Diego, California	
Ordinance Number <u>0-15310</u>	Adopted <u>AUG 22 1980</u>

CERTIFICATE OF PUBLICATION

San Diego, City of
12th floor City Admin. Bldg.
202 C St., San Diego, CA 92101
ATTN: Barbara Berridge

IN THE MATTER OF

NO.

AN ORDINANCE OF THE CITY OF SAN DIEGO, CALIFORNIA, ORDERING, CALLING, PROVIDING FOR AND GIVING NOTICE OF A SPECIAL ELECTION TO BE HELD IN THE CITY ETC.

**ORDINANCE NO. O-15310
(New Series)**

AN ORDINANCE OF THE CITY OF SAN DIEGO, CALIFORNIA, ORDERING, CALLING, PROVIDING FOR AND GIVING NOTICE OF A SPECIAL ELECTION TO BE HELD IN THE CITY ON NOVEMBER 4, 1980, FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO ONE PROPOSITION RELATING TO AN INITIATIVE MEASURE ADDING SECTION 43.2 TO THE CHARTER OF THE CITY OF SAN DIEGO.

WHEREAS, the City Clerk has certified to the City Council that an initiative petition to amend the City Charter by adding to Article V a new Section 43.2 entitled, "Fair Rent Boards," has a sufficient number of signatures to qualify the initiative for the ballot under Sections 34459, 34460, 34461 and 34462 of the California Government Code; and

WHEREAS, the Council desires to submit the aforementioned initiative to the qualified voters of the City of San Diego at a special municipal election to be held in the City on November 4, 1980; and

WHEREAS, at a meeting held on August 22, 1980, the City Council of The City of San Diego adopted Resolution No. R-252482 requesting the Board of Supervisors of the County of San Diego to order the consolidation of a special municipal election to be held on November 4, 1980 with the statewide general election to be held on the same date; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, California, as follows:

Section 1. A special municipal election is hereby called and ordered to be held in the City of San Diego, California, on November 4, 1980, and pursuant to the provisions of Sections 23 and 223 of the Charter of The City of San Diego, the provisions of Section 3 of Article XI of the Constitution of the State of California and the provisions of Sections 34459 and 34460 of the California Government Code dealing with Charter amendments, the Council of The City of San Diego, being the legislative body thereof, hereby submits to the qualified voters of the City at such special municipal election the following proposition:
PROPOSITION

Amend Article V of the Charter of The City of San Diego by adding thereto Section 43.2 to read as follows:
Section 43.2. FAIR RENT BOARDS.

Subdivision 1.

STATEMENT OF PURPOSE:

A serious shortage of rental housing units exists in the City of San Diego resulting in a low vacancy rate and rapidly rising rents exploiting this situation, the deterioration in a significant portion of existing housing and a significant percentage of tenants paying an excessive portion of their incomes for rent. In addition, speculation in the purchase and sale of existing residential housing units results in further rent increases. These conditions adversely affect the health and well-being of San Diego tenants, especially low and moderate income families, minorities, senior citizens, military personnel and students. The purpose of this Article, therefore, is to alleviate the hardship caused by this serious housing shortage by establishing Fair Rent Boards empowered to regulate residential housing in the City of San Diego so that rents will not be increased unreasonably and so that landlords will receive only a fair return on their investment.

Camille Simpson

I, _____, am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

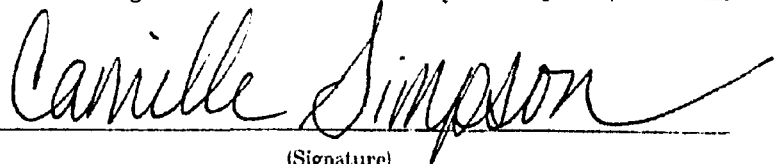
ORDINANCE NO. O-15310 (New Series)

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

September 5, 1980

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 5th day of Sept., 19 80.



(Signature)

Subdivision 2.
DEFINITIONS:

- (A) **Boards:** The eight (8) Local Boards and the one (1) Central Board established by Subdivision 4 of this Article.
- (B) **Rental Units:** Any building, structure, or part thereof, land appurtenant thereto, or any real property, rented or offered for rent for living or dwelling purposes, including houses, apartments, rooming and boarding house units, or space rented for a mobile home or trailer (as defined in California Civil Code #789.4) together with all housing services supplied in connection therewith, with the exception of:
- (1) rental units which a government unit, agency or authority owns, operates, or manages, if the provisions of this Article come into actual conflict with applicable Federal and/or State law or administrative regulation;
 - (2) motels, hotels, inns, tourist homes and boarding houses which are rented for transient occupancy which would be subject to tax under Section 7280 of the Revenue and Taxation Code;
 - (3) rental units in any hospital, convent, monastery, extended medical care facility, asylum, non-profit or charitable home for the aged, or dormitory owned and operated by an institution of higher learning;
 - (4) owner occupied buildings consisting of three (3) units or less;
 - (5) rental units, the construction of which was completed on or after the date of passage of this article;
 - (6) rental units which have been vacant for at least six (6) consecutive months and are rehabilitated after the date of passage of this Article by improvements amounting to at least one third (1/3) of the appraised value of the rental premises.
- (C) **Landlord:** An owner, lessor, sublessor or any person entitled to charge or receive rent for the use and occupancy of any rental unit or any agent or successor for any of the foregoing persons.
- (D) **Tenant:** A renter, subtenant, lessee, sublessee, or any person entitled under the terms of a lease, contract or rental agreement, whether written, oral or implied by law or statute to the use or occupancy of any rental unit, including the surviving spouse of the foregoing persons.
- (E) **Interim Boards:** The appointed interim boards appointed under Subdivision 3-J of this Article.
- (F) **Rent:** All periodic payments and all nonmonetary consideration, including but not limited to, the fair market value of goods or services rendered to or for the benefit of the landlord under an agreement concerning the use or occupancy of a rental unit and premises, including all payments and consideration demanded or paid for parking, pets, furniture and cleaning.
- (G) **Fair Market Rent:** The maximum allowable rent established under Subdivision 7 of this Article.

Subdivision 3.

COMPOSITION AND ELECTION OF FAIR RENT BOARDS:

- (A) **Local Boards:** There shall be eight (8) Local Boards commensurate with the eight (8) City Council Districts, each board consisting of five (5) members. The ballot shall be divided between landlord candidates and tenant candidates. The voter shall choose two (2) from each group. The four (4) elected members shall choose a fifth member within thirty (30) days who shall be a homeowner who is a resident of the respective district and who is neither a landlord, as defined in Subdivision 2-C hereof, nor a tenant, as defined in Subdivision 2-D hereof. The fifth, chosen, member shall serve as Chairperson and shall vote only in the case of a tie. Elected members shall serve a term of four (4) years except on the first election at which time the landlord and tenant candidates who receive the highest number of votes in their respective categories shall serve four (4) years and the other elected landlord and tenant candidates shall serve for two (2) years. The fifth, chosen, member shall serve a term of two (2) years but may be re-elected by the Board. No board member shall serve more than two (2) consecutive terms. The first elections shall be held at the Municipal Primary election and elections shall thereafter be held at the Municipal Primary elections.
- (B) **Quorum:** A quorum of the Board shall consist of three (3) members. Decisions of the Local Boards shall be made upon a majority vote of those Board members present.
- (C) **Vacancy:** In the event that a vacancy occurs on the Local Boards, it shall be filled by appointment by a majority vote of the Central Board, maintaining the tenant-landlord balance and eligibility requirements, within thirty (30) days.
- (D) **Recall:** Recall of a Board member shall be considered upon petition of five (5) percent of the registered voters of the respective member's council district. In all other respects the recall of a Board member shall be in accordance with the recall provisions of the Elections Code of the City of San Diego, with the exception that the election for recall of a Board member and election of a successor, as appropriate, shall be done on a council district basis, as provided under Subdivision 2-A of this Article.
- (E) **Central Board:** There shall be one (1) Central Board consisting of seventeen (17) members, one (1) tenant representative and one (1) landlord representative from each of the eight (8) Local Boards, which representatives shall be selected by the Local Boards from among themselves. The sixteen (16) selected members shall then choose the seventeenth member who shall be neither a tenant nor a landlord, and who shall serve as Chairperson and shall vote only in the case of a deadlocked vote. The members of the Central Board shall be elected immediately upon the appointment of the Interim Local Boards and shall thereafter commence their duties as set forth in Subdivision 8 of this Article. Upon establishment of the first Board, members from the even-numbered City Council Districts shall serve for a period of one (1) year, and members from the odd-numbered Districts shall serve for a period of two (2) years. Thereafter, all appointments shall be for a period of two (2) years.

- (F) **Quorum:** Nine (9) members shall constitute a quorum for the Central Board. A minimum of five (5) votes shall be required for a decision of the Central Board.
- (G) **Vacancy:** In the event that a vacancy occurs on the Central Board, it shall be filled by appointment by a majority vote of the Local Board whose seat on the Central Board became vacant, maintaining the tenant-landlord balance and eligibility requirements, within thirty (30) days. A vacancy on the Central Board of its Chairperson shall be filled by the Central Board itself in accordance with Section E, above.
- (H) **Compensation:** All Board members shall be compensated at a rate of \$25 per meeting attended, not to exceed \$2000 per year, to be adjusted annually in accordance with the Consumer Price Index and with the approval of the City Council. Nothing in this section shall be construed to permit any Board to refuse to hold any hearings and/or meetings which this Article may require, nor to limit the Board's power to delegate its authority to conduct hearings to staff members.
- (I) **Absences:** Three (3) consecutive unexcused absences shall constitute grounds for removal from the Board.
- (J) **Interim Boards:** No later than thirty (30) days after adoption of this Article, the San Diego City Council shall appoint persons to the Local Boards in accordance with the provisions of Subdivision 3-A of this Article. The Interim Boards shall exercise all the powers and duties of the Local Boards as set forth in Subdivision 5 of this Article, until such time as the Local Boards are elected in accordance with the provisions of the Subdivision and assume office.

Subdivision 4.

ELIGIBILITY AND ELECTION:

- (A) **Tenant Candidate:** Any person who is a tenant as defined in Subdivision 2-D and who is not a landlord as defined in Subdivision 2-C of this Article, shall be eligible as a tenant candidate.
- (B) **Landlord Candidate:** Any person who is a landlord, as defined in Subdivision 2-C of this Article, shall be eligible as a landlord candidate.
- (C) **Election:** Candidates for election to the Local Boards shall be subject to the same conditions and requirements, including residence requirements, as City Council candidates, with the exception that nominating fees shall be twenty dollars (\$20) per candidate.
- (D) **Disclosure Requirements:** Every candidate for a Local Board shall be subject to the same campaign disclosure requirements as City Council candidates.

Subdivision 5.

POWERS AND DUTIES OF LOCAL BOARDS:

Each Local Board shall have the following powers and duties:

- (A) To establish the Fair Market Rent for all rental units located within the district of the respective Local Board.
- (B) To accept the registration of all rental units located within the district of the respective Local Board pursuant to Subdivision 6-G of this Article.
- (C) Upon receipt of a petition by a landlord and/or tenant, or upon its own motion, to make adjustments in the Fair Market Rent of individual rental units in accordance with the provisions of this Section A.
- (D) To set rents at fair and equitable levels in order to achieve the intent of this Article.
- (E) To issue permits for the removal of any rental unit(s) from the rental housing market as herein set forth. Any landlord who desires to remove any rental unit(s), as defined in Subdivision 2-B of this Article, from the rental housing market by demolition or conversion from a housing use to a nonrental housing use, or other means is required to obtain a permit from the Local Board in whose boundaries the rental unit(s) is (are) located prior to their removal from the rental housing market. In order to approve such a permit, the appropriate Local Board is required to make each of the following findings, after holding public hearings according to the provisions of Subdivision 4-F of this Article:
- (1) That the rental unit(s) sought to be converted is (are) not occupied by a person or family of low income, very low income or moderate income.
 - (2) That the rent of the rental unit(s) sought to be converted is (are) not at a level affordable by a person or family of very low income, low income or moderate income.
 - (3) That the rental unit(s) sought to be converted is (are) not occupied by a person or family with special needs, including but not limited to the elderly, the handicapped as defined in Health and Safety Code #41041, or tenants with minor children.
 - (4) That the removal of the rental unit(s) sought to be converted will not adversely affect the supply of rental housing in the City of San Diego.
 - (5) That the landlord cannot make a fair return on investment by retaining the rental unit(s) in the rental housing market.

Notwithstanding the foregoing provisions of this paragraph, the appropriate Local Board may approve such a permit if it finds that the rental unit(s) sought to be converted or demolished is (are) uninhabitable and is (are) incapable of being made habitable in an economically feasible manner. Furthermore, nothing in this section shall limit or otherwise condition the rights of a landlord to institute legal proceedings against a tenant(s) for recovery of possession of the rental unit(s) in question.

(F) **Hearing Procedures:**

- (1) The appropriate Local Board shall notify the landlord or tenant by registered mail within five (5) days of the filing of a petition, including a copy of the petition with the Notice. The affected Landlord or tenant shall then have ten (10) days from the date of the Board's notice, within which to file a written answer with the appropriate Local Board, with a copy thereof to the landlord or tenant, whichever is appropriate.

- (2) Each respective Local Board may use Hearing Officers to conduct its rent adjustment hearings. Such Hearing Officers shall make proposed findings of facts and conclusions of law in writing and shall file a copy thereof with the appropriate Local Board within ten (10) days after the conclusion of the hearing. Within ten (10) days after receiving a copy of the Hearing Officer's proposed decision, the Local Board shall adopt the decision in its entirety or decide the matter itself based upon the transcript, with or without taking additional evidence. If the decision of the Local Board differs materially from the proposed decision of the Hearing Officers, a copy of the Hearing Officer's proposed decision shall be served upon all affected parties along with a copy of the decision of the Board itself.
- (3) Each respective Local Board shall notify all parties as to the time, date and place of the hearing. Hearings shall be scheduled for times which are convenient for all parties, including evenings and weekends when necessary, and may be continued upon request and a showing of good cause for the continuance.
- (4) All petitions pertaining to tenants occupying the same building, project or complex may be consolidated for hearing at the discretion of the appropriate Local Board, unless there is a showing of good cause not to consolidate such petitions.
- (5) The Board or Hearing Officer may require either party to a hearing to provide it with any books, records and papers deemed pertinent in addition to that information contained in registration statements and is authorized to administer oaths and affirmations and subpoena witnesses.
- (6) All hearings shall be open to the public.
- (7) All Parties to a hearing may have assistance in presenting evidence and developing their position from attorneys, legal workers, tenant union representatives or any other person(s) designated by the parties.
- (8) The Board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be a public record and shall be obtainable for the cost of copying. The record of the hearing shall include all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings, a list of participants present, a summary of all testimony accepted in the proceedings, a statement of all materials officially noticed, all recommended decisions, orders and/or rulings and the reasons for each final decision, order and/or ruling.
- (9) No individual rent adjustment shall be approved unless supported by the preponderance of the evidence submitted at the hearing. All parties to a hearing shall be sent a notice of the Board's decision showing the findings of fact and conclusions of law upon which the decision is based. At the same time, the parties to the proceedings shall also be notified of their right to judicial review pursuant to Subdivision 12 of this Article.
- (10) In making individual Fair Market Rent adjustments, all relevant factors shall be considered on a case-by-case basis, including but not limited to those specified in Subdivision 8 of this Article.
- (11) Where the Board approves an upward rent adjustment, such approval may be ordered effective retroactive to the date of the filing of the petition by the landlord where necessary. In the Board's opinion, to avoid undue hardship to the landlord, and the amount of such approved upward adjustment shall be amortized over future monthly rental payments of the affected tenant(s) to the affected landlord so as to avoid undue hardship on the tenant(s).
- (12) The rules and regulations adopted by the Central Board shall provide for final Local Board action on any individual rent adjustment petition within sixty (60) days following the date of filing of the petition for hearing, except that petitions filed within the first three (3) months after appointment of the Interim Board shall be processed to a final decision within four (4) months of the date of filing of the tenant's petition. Where no decision of a Local Board upon an individual request for either an upward or downward rent adjustment is rendered within the time limits herein specified, such request shall be deemed denied.

Subdivision 6.

POWERS AND DUTIES OF THE CENTRAL BOARD:

The Central Board shall have the following powers and duties:

- (A) To hire and compensate necessary staff, including Hearing Officers, to conduct hearings, issue orders, rules and regulations and charge fees as set forth in Subdivision 16 of this Article.
- (B) The Central Board shall issue and follow such rules and regulations, including those which are contained in this Article, as will further the purposes of this Article. The Central Board shall publicize its rules and regulation prior to promulgation in at least one (1) newspaper with general circulation in the City of San Diego. The Central Board shall hold at least one (1) public hearing to consider the views of interested parties prior to the adoption of such rules and regulations, prior to the adoption of general adjustments of Fair Market Rents under Section 1 of this Subdivision and prior to any determination to suspend or reimpose the requirements and procedures of this Article under Subdivision

10 herein. All rules and regulations, internal staff memoranda and written correspondence explaining the decisions, orders and policies of the Central Board or any Local Board shall be kept in the office of the Central Board and shall be available to the public for inspection and copying (at the expense of the person requesting the copying). The Central Board shall publicize this Article so that all residents of the City of San Diego will have the opportunity to become informed of their rights and duties hereunder. The Central Board shall propose, as soon as is practicable, a brochure which fully describes the legal rights and duties of landlords and tenants in the City of San Diego under this Article. The brochure shall be available to the public. The Central Board shall require that each tenant of a rental unit(s) be given a copy of the brochure by his/her landlord.

- (C) To make such studies, surveys and investigations, conduct such hearings and obtain such information as is necessary to carry out its powers and duties.
- (D) To report annually to the San Diego City Council on the status of the rental housing market which is subject to the provisions of this Article.
- (E) To suspend application of the rent adjustment hearing requirements of this Article, as set forth in Subdivision 10 of this Article.
- (F) To administer oaths and affirmations and subpoena witnesses.
- (G) Within ninety (90) days after adoption of this Article, the Central Board shall require the registration of all rental units with each Local Board in whose jurisdiction the rental unit(s) is (are) located and their re-registration at annual intervals. The initial registration shall include the rent in effect at the time of this Article, the rent in effect as of August 3, 1977, the address of the rental unit(s), the name and address of the landlord, the housing services provided to the rental unit(s), a statement indicating all operating cost increases since August 3, 1977 and any other information deemed relevant by the Central Board. If the Central Board, after the landlord has proper notice and after a hearing by the appropriate Local Board, determines that a landlord had willfully and knowingly failed to register a rental unit(s), the Central Board may authorize the tenant of such a non-registered rental unit(s) to withhold all or a portion of the rent for the unit(s) until such time as the rental unit(s) is properly registered. After a rental unit is properly registered, the Board shall determine what portion, if any, of the withheld rent is owed to the landlord for the period in which the rental unit(s) was not properly registered. Whether or not the Central Board allows such withholding, no landlord who has failed to register properly shall be entitled at any time to a rent increase for a rental unit(s) until such unit(s) are properly registered.
- (H) To issue annual reports on the status of rental housing and the existing vacancy rates in the City of San Diego.
- (I) The Central Board may, after holding those public hearings prescribed by Section B of this Subdivision, set and adjust upward or downward, the Fair Market Rent for all rental units in general and/or for particular classes, categories or areas of rental units. The Board may order that such adjustment not take effect immediately, where necessary, to avoid undue hardship. In making general adjustments of the Fair Market Rent, the Board shall consider the purposes of this Article and shall specifically consider those factors specified in Subdivision 8 of this Article. The Central Board shall establish and publish guidelines for the determination of particular classes, categories or areas of rental unit(s) which may be required by this section and/or by Subdivision 10 of this Article, which are consistent with the purposes of this Article and which shall consider such factors as economics, location, size, housing services furnished, age and physical condition.

Subdivision 7.

FAIR MARKET RENTS:

Beginning with the date of this Article, no landlord shall charge rent for any rental unit(s) in an amount greater than the rent in effect on August 3, 1977, until and unless such rent is adjusted under Subdivisions 5 and 6 of this Article. If there was no rent in effect on August 3, 1977, the rent shall be that charged on the first date that rent was charged following August 3, 1977. As soon as the landlord is aware of the Fair Market Rent, the landlord shall post it for each unit in a prominent place in or about the affected rental unit. The Central Board may require that other information it deems relevant also be posted.

Subdivision 8.

FACTORS:

The Central Board shall make its determinations upon general Fair Market Rent adjustments based upon all relevant factors, including but not limited to the following:

- (A) Increases or decreases in property taxes, unavoidable increases or decreases in operating and maintenance expenses, capital improvement of the rental unit(s) as distinguished from repair, replacement and maintenance.
- (B) Increases or decreases in living space, furniture and fixtures, amenities, services and facilities.
- (C) Substantial deterioration of the rental unit(s) other than as a result of ordinary wear and tear, or failure on the part of the landlord to provide adequate housing services.
- (D) Failure on the part of the landlord to comply substantially with applicable housing, health and safety codes.
- (E) Federal and State income tax benefits, whether or not the property was acquired or is held as a long-term or short-term investment and the landlord's rate of return on investment.

(F) The amount of hardship on affected landlords and tenants. It is the intent of this Article that rent increases be allowed only when demonstrated necessary to the landlord making a fair return on investment. No rent increase shall be authorized by this Article because a landlord has a negative cash flow if at the time the landlord acquired the rental unit(s), the landlord could reasonably have foreseen a negative cash flow based upon the rent schedule then in existence within the one (1) year period following acquisition of the rental units acquired after the date of this Article.

Subdivision 9.

EVICTIONS:

No landlord shall bring any action to recover possession of a rental unit(s) subject to this Article unless:

- (A) The tenant has failed to pay the rent to which the landlord is entitled under the rental housing agreement.
- (B) The tenant has violated a material obligation or covenant of his/her tenancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation after having received written notice thereof from the landlord in the manner required by law.
- (C) The tenant is committing or expressly permitting to exist a nuisance in, or is causing substantial damage to, the rental unit, or is creating a substantial interference with the comfort, safety or enjoyment of the landlord or other occupants or neighbors of the rental unit(s).
- (D) The tenant is convicted of using or expressly permitting a rental unit to be used for any illegal purpose.
- (E) The tenant gives written notice of his intention to terminate the tenancy, or makes a written offer to surrender which is accepted in writing by the landlord, but fails to deliver up possession at the time specified in said written notice, without the permission of his/her landlord, or the successor in estate of the landlord, if any.
- (F) The tenant, whose rental agreement has been terminated, has refused, after written request or demand by the landlord, to execute a written extension or renewal thereof for a further term of like duration and in such terms as are not inconsistent with or violative of any provisions of this Article and are materially the same as in the previous agreement.
- (G) The tenant has refused the landlord reasonable access to the rental unit for the purpose of making necessary repairs or improvements required by the laws of the United States, the State of California or any subdivision thereof, or for the purpose of showing the rental unit to any prospective purchaser or mortgagee.
- (H) The tenant holding at the end of the term of the rental agreement is a subtenant not approved by the landlord.
- (I) The landlord seeks to recover possession in good faith for use and occupancy of himself or herself, or his/her children, parents, brothers, sister, father-in-law, mother-in-law, son-in-law or daughter-in-law.
- (J) The landlord seeks to recover possession to demolish or otherwise remove the rental unit(s) from rental housing use after having obtained all proper permits from the City of San Diego and the appropriate Local Boards established by this Article.

Notwithstanding the above provisions, possession shall not be granted to the landlord if it is determined that the eviction is in retaliation for the tenant exercising his/her rights under this Article, for reporting violations of this Article, including the right to withhold rent upon authorization of an appropriate Local Board or for organizing other tenants, in any action brought to recover possession of a rental unit(s), the landlord shall allege and prove compliance with this Subdivision.

Subdivision 10.

DETERMINATION OF APPLICABILITY OF ARTICLE:

The Central Board shall conduct an annual survey of rental housing in the City of San Diego upon which it shall determine vacancy rate. If the average annual rate in any category, classification or area of rental units, as determined by the Board in accordance with the guidelines established pursuant to Subdivision 6 of this Article, exceeds five (5) percent, the Central Board is empowered, at its discretion and in order to achieve the objectives of this Article, to suspend application of the rent regulation provisions of this Article to any such category, classification or area. The Central Board must determine such categories, classifications or areas for the purpose of this section consistent with the objectives of this Article. In determining the vacancy rate for any category, classification or area of rental units, the Central Board shall consider all available data and shall conduct its own survey. If the rent regulation provisions and requirements of this Article are suspended under this paragraph with respect to any category, classification or area of rental units, the Central Board shall reimpose said provisions and requirements of this Article if it finds that the average annual rate has thereafter fallen below five (5) percent for such category, classification or area.

Subdivision 11.

NON-WAIVERABILITY:

Any provision, whether oral or written, in or pertaining to a rental housing agreement whereby any provision of this Article for the benefit of any party affected by this Article is waived, shall be deemed to be against public policy and shall be void.

Subdivision 12.

JUDICIAL REVIEW:

A Landlord or Tenant aggrieved by any action or decision of any Local Board may seek judicial review by appealing to the appropriate court within the jurisdiction.

Subdivision 13.

CIVIL REMEDIES:

- (A) Any landlord who accepts any payment of rent in excess of the rent designated by the appropriate Local Board shall be liable to the tenant for reasonable attorney's fees and cost as determined by the court, plus damages of three (3) times the amount by which the payment exceeded the lawful rent, or \$200, whichever is greater.

(B) In lieu of filing a civil action as provided in the preceding paragraph, the Central Board shall establish by rule and regulation a hearing procedure similar to that set forth in Subdivision 5-F of this Article for determination, by the appropriate Local Board, of the amount of the penalties the tenant is entitled to pursuant to Subdivision 8-A of this Article. After said determination, the tenant may deduct the penalty from future rent payments in the manner provided by the Board.

(C) If the tenant from whom such excessive payment accepted in violation of the foregoing provisions of this Article fails to bring a civil or administrative action as provided for in Subdivision 7-A of B within one hundred and twenty (120) days from the date of occurrence of the violation, the appropriate Local Board may assert on behalf of the tenant the claim arising out of the violation. Thereafter, the tenant on whose behalf the Board acted is barred from also bringing an action against the landlord in regard to the same violation for which the Board has made a settlement or brought an action. In the event the Board settles said claim, it shall be entitled to retain the costs it incurred in settlement thereof and the tenant against whom the violation has been committed shall be entitled to the remainder.

(D) Any landlord who violates any provision of this Article, other than as set forth in section (A) of this Subdivision, shall be liable to any aggrieved tenant for such tenant's actual damages caused by the landlord's violation, plus reasonable attorney's fees and a maximum of \$250 exemplary damages.

(E) The appropriate court in the jurisdiction in which the affected rental unit(s) is (are) situated shall have jurisdiction over all actions brought under this Subdivision.

Subdivision 14.

CRIMINAL REMEDIES:

Any landlord who willfully and knowingly violates this Article shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this Article shall be punished by a fine of not more than one thousand dollars (\$1000).

Subdivision 15.

DECLARATORY AND INJUNCTIVE RELIEF:

The respective Local Boards, the Central Board and Tenants and Landlords of Rental Units, may seek relief from the appropriate court within the jurisdiction within which the affected Rental Units are located to restrain or enjoin any violation of this Article and of the rules, regulations, orders and/or decisions of the respective Boards, and/or to obtain a judicial declaration of the rights and responsibilities of the affected parties under any provision of this Article and under any of the rules, regulations, orders and/or decisions of any of the respective Boards established under this Article.

Subdivision 16.

FUNDING:

The City of San Diego shall use available federal funds for the administration of the provisions of this Article whenever possible. Monies from the General Fund of the City of San Diego shall be utilized for the purpose of this Article only when necessary. All Landlords under the jurisdiction of this Article shall pay an annual fee of two dollars (\$2.00) per rental unit, which amount may be adjusted upward or downward by the Central Board after holding at least one (1) public hearing when necessary to assure proper administration of this Article. Each party who files a petition pursuant to Subdivision 5 of this Article shall pay one dollar (\$1.00) upon filing of each petition.

Subdivision 17.

PARTIAL INVALIDITY:

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

Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 4 of this ordinance.

Section 3. The polls for this special municipal election shall be open at 7 a.m. (local time) on November 4, 1980, and remain open continuously until 8 p.m. (local time) on the same day at which time the polls shall be closed, except as provided in Section 14301 of the Elections Code of the State of California.

Section 4. Since this election is being consolidated with the statewide general election and since the Board of Supervisors of the County of San Diego is hereby authorized to canvass returns of this election, and since only one form of ballot is authorized, the method of voting upon the proposition shall be as provided in the Elections Code of the State of California; and, on the ballots to be used at this special municipal election, in addition to any other matters required by law, there shall be printed substantially the following:

<p>PROPOSITION — CITY OF SAN DIEGO CHARTER AMENDMENT INITIATIVE. AMENDS CHARTER OF THE CITY OF SAN DIEGO BY ADDING A NEW SECTION 43.2 ENTITLED, "FAIR RENT BOARDS."</p>	<p>YES</p>	
<p>Shall the Charter be amended to do, among other things, the following: to create eight (8) local boards of five (5) members to review complaints with respect to rent increases, with various powers, including the power to limit the increases to fair and equitable levels and to disapprove excessive increases; to create a central board consisting of 17 members made up of one (1) landlord and one (1) tenant member from each of the local boards and a 17th member selected by them with various powers, including the power to suspend the rent adjustment provision of the amendment, make studies, report to the Council on the rental market and subpoena witnesses; to provide for rent increases only when demonstrated necessary to the landlord making a fair return on investment; and to limit the landlord's right to recover possession?</p>	<p>NO</p>	

Section 5. An appropriate mark placed in the voting square after the word "YES," shall be counted in favor of the adoption of the proposition. An appropriate mark placed in the voting square after the word "NO," in the manner hereinbefore provided, shall be counted against the adoption of the proposition.

Section 6. The special municipal election called for November 4, 1980 in the City of San Diego is hereby ordered consolidated with the statewide general election to be held on the same date. Within the City of San Diego the precincts, polling places and officers of the election for the special municipal election shall be the same as those provided for in the statewide general election.

Section 7. The Board of Supervisors of the County of San Diego is hereby authorized to canvass the returns of the special municipal election and these elections shall be held in all respects as if there were only one election, and within the City only one form of ballot shall be used. The Board of Supervisors shall certify the results of the canvass of the returns of this special municipal election to the Council of The City of San Diego which shall then declare the results of the election.

Section 8. The proposition submitted by this ordinance shall be designated on the ballot by a letter printed on the left margin of the square containing the description of the measure as provided in Section 10219 of the Elections Code of the State of California.

Section 9. Except as otherwise provided in this ordinance, the special municipal election shall be conducted as provided by law for other municipal elections of the City.

Section 10. The City Clerk shall cause this ordinance to be published once in the official newspaper. No other notice of the election need be given.

Section 11. Pursuant to Section 17 of the Charter, this ordinance relating to elections shall take effect on August 22, 1980, being the day of its introduction and passage.

Passed and adopted by the Council of The City of San Diego on August 22, 1980, by the following vote:

YEAS: Cleator, Lowery, Stirling, Killia, Wilson.

NAYS: Schnaubelt.

ABSENT: Mitchell, Williams, Gotch.

AUTHENTICATED BY:

PETE WILSON,

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR,

City Clerk of The City of San Diego, California.

(SEAL)

By BARBARA BERRIDGE, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on August 22, 1980, said ordinance being of the kind and character authorized for passage on its introduction by Section 18 of the Charter.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR,

City Clerk of The City of San Diego, California.

(SEAL)

By BARBARA BERRIDGE, Deputy.

Publish September 5, 1980

60-9006