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INTRODUCED BY COUNCILMEMBER KAPLAN

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

### ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**ORDINANCE AMENDING CHAPTER 8.22 (RENT ADJUSTMENT PROGRAM) OF THE OAKLAND MUNICIPAL CODE TO: (1) INCREASE THE NUMBER OF ALTERNATE BOARD MEMBERS; (2) CHANGE THE LENGTH OF THE BOARD MEMBER HOLDOVER PERIOD; AND (3) AUTHORIZE MORE CASES BE HEARD BY BOARD APPEALS PANELS**

**WHEREAS**, the City of Oakland intends to have fair and timely resolution of Rent Program cases in the interest of justice; and

**WHEREAS**, when appeals are not heard timely, or when appeal hearings are cancelled, it causes hardship to the public in Oakland, including to landlords and tenants; and

**WHEREAS**, in order to minimize Rent Board meeting cancellations, it will be helpful to have a sufficient number of available Board members; and

**WHEREAS**, in order to solve and prevent a backlog of cases, the use of Appeal Panels should be encouraged; and

**WHEREAS**: this action is exempt from the California Environmental Quality Act ("CEQA") under the following, each as a separate and independent basis, including but not limited to, the following: CEQA Guidelines Section 15378 (regulatory actions), Section 15061 (b) (3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning);

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Modification of Chapter 8.22 of the Oakland Municipal Code.** Relevant sections of Title 8 of the Oakland Municipal Code are hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

Chapter 8.22 - RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS

## 8.22.020 - Definitions.

As used in this chapter, Article I:

"1946 notice" means any notice of termination of tenancy served pursuant to California Civil Code Section 1946. This notice is commonly referred to as a thirty (30) or sixty (60) day notice of termination of tenancy, but the notice period may actually be for a longer or shorter period, depending on the circumstances.

"1946 Termination of tenancy" means any termination of tenancy pursuant to California Civil Code § 1946.

"Anniversary date" is the date falling one year after the day the tenant was provided with possession of the covered unit or one year after the day the most recent rent adjustment took effect, whichever is later. Following certain vacancies, a subsequent tenant will assume the anniversary date of the previous tenant (Section 8.22.080).

"Appeal panel" means a three-member panel of Board members authorized to hear appeals of Hearing Officer decisions. Appeal panels must be comprised of one residential rental property owner, one tenant, and one person who is neither a tenant nor a residential rental property owner. Appeal panels may be made up of all regular board members, all alternates, or a combination of regular board members and alternates.

"Banking" means any CPI Rent Adjustment (or any rent adjustment formerly known as the Annual Permissible Rent Increase) the owner chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in the regulations.

"Board" and "Residential Rent Adjustment Board" means the Housing, Residential Rent and Relocation Board.

"Capital improvements" means those improvements to a covered unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the tenant rather than the owner.

"CPI—All items" means the Consumer Price Index—All items for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics for the twelve (12) month period ending on the last day of February of each year.

"CPI—Less shelter" means the Consumer Price Index—All items less shelter for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics for the twelve (12) month period ending on the last day of February of each year.

"CPI Rent Adjustment" means the maximum rent adjustment (calculated annually according to a formula pursuant to Section 8.22.070 B.3) that an owner may impose within a twelve (12) month period

without the tenant being allowed to contest the rent increase, except as provided in Section 8.22.070B.2 (failure of the owner to give proper notices, decreased housing services, and uncured code violations).

"Costa-Hawkins" means the California state law known as the Costa-Hawkins Rental Hawkins Act codified at California Civil Code § 1954.50, et seq. (Appendix A to this chapter contains the text of Costa-Hawkins).

"Covered unit" means any dwelling unit, including joint living and work quarters, and all housing services located in Oakland and used or occupied in consideration of payment of rent with the exception of those units designated in Section 8.22.030A as exempt.

"Ellis Act Ordinance" means the ordinance codified at O.M.C. 8.22.400 (Chapter 8.22, Article III) setting out requirements for withdrawal of residential rental units from the market pursuant to California Government Code § 7060, et seq. (the Ellis Act).

"Fee" means the Rent Program Service Fee as set out in O.M.C. 8.22.500 (Chapter 8.22, Article IV).

"Housing services" means all services provided by the owner related to the use or occupancy of a covered unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.

"Owner" means any owner, lessor or landlord, as defined by state law, of a covered unit that is leased or rented to another, and the representative, agent, or successor of such owner, lessor or landlord.

"Owner of record" means a natural person, who is an owner of record holding an interest equal to or greater than thirty-three percent (33%) in the property, but not including any lessor, sublessor, or agent of the owner of record.

"Just Cause for Eviction Ordinance" means the ordinance adopted by the voters on November 5, 2002 (also known as Measure EE) and codified at O.M.C. 8.22.300 (O.M.C. Chapter 8.22, Article II).

"Rent" means the total consideration charged or received by an owner in exchange for the use or occupancy of a covered unit including all housing services provided to the tenant.

"Rent Adjustment Program" means the department in the city that administers this chapter and also includes the board.

"Regulations" means the regulations adopted by the board and approved by the City Council for implementation of this chapter, Article I (formerly known as "Rules and Procedures") (After regulations are approved, they will be attached to this chapter as Appendix B).

"Security deposit" means any payment, fee, deposit, or charge, including but not limited to, an advance payment of rent, used or to be used for any purpose, including but not limited to the compensation of an owner for a tenant's default in payment of rent, the repair of damages to the premises caused by the tenant, or the cleaning of the premises upon termination of the tenancy exclusive of normal wear and tear.

"Tenant" means a person entitled, by written or oral agreement to the use or occupancy of any covered unit.

"Uninsured repairs" means that work done by an owner or tenant to a covered unit or to the common area of the property or structure containing a covered unit which is performed to secure compliance with any state or local law as to repair damage resulting from fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds.

#### **8.22.040 - Composition and functions of the Board.**

##### **A. Composition**

1. Members. The Board shall consist of seven regular members appointed pursuant to Section 601 of the City Charter. The Board shall be comprised of two residential rental property owners, two tenants, and three persons who are neither tenants nor residential rental property owners. The Board shall also have ~~three-six~~ six alternate members, ~~one-two~~ two residential rental property owners, ~~one-two~~ two tenants and ~~one-two~~ two persons who ~~is-are~~ is-are neither a tenants nor residential rental property owners appointed pursuant to Section 601 of the Charter. An alternate member may act at Board meetings in the absence of a regular Board member of the same category.
2. Appointment. A Board member is deemed appointed after confirmation by the City Council and upon taking the oath of office.
3. Board members serve without compensation.

##### **B. Vacancies and Removal**

1. A vacancy on the Board exists whenever a Board member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the City Council within two City Council meetings of nomination by the Mayor.
2. Removal for Cause. A Board member may be removed pursuant to Section 601 of the City Charter. Among other things, conviction of a felony, misconduct, incompetency, inattention to or inability to perform duties, or absence from three consecutive regular meetings except on account of illness or when absent from the city by permission of the Board, constitute cause for removal.
3. Report of Attendance. To assure participation of Board members, attendance by the members of the Board at all regularly scheduled and special meetings of the Board shall be recorded, and such record shall be provided ~~semiannually~~ annually to the Office of the Mayor and to the City Council.

##### **C. Terms and Holdover**

1. Terms. Board members' terms shall be for a period of three years beginning on February 12 of each year and ending on February 11 three years later. Board members shall be appointed to staggered terms so that only one-third of the Board will have terms expiring each year, with no more than one Board member who is neither a residential rental property owner nor a tenant, and no more than one rental property owner and no more than one tenant expiring each year. Terms will commence upon the date of appointment, except that an appointment to fill a vacancy shall be for the unexpired portion of the term only. No person may serve more than two consecutive terms as a board member, nor more than two consecutive terms as an alternate.

Time served as a board member shall be considered separately from time served as an alternate.

2. Holdover. A Board member whose term has expired may remain as a Board member for up to ~~one~~ two years following the expiration of his or her term or until a replacement is appointed whichever is earlier. The City Clerk shall notify the Mayor, the Rent Program, the Board, and affected Board member when a Board member's holdover status expires. Prior to notification by the City Clerk of the end of holdover status, a Board member may fully participate in all decisions in which such Board member participates while on holdover status and such decisions are not invalid because of the Board member's holdover status.

#### D. Duties and Functions

1. Appeals. The Board or an Appeal Panel hears appeals from decisions of hearing officers under the procedures set out in O.M.C. Section 8.22.120.
2. Regulations. The Board may develop or amend the regulations, subject to City Council approval.
3. Reports. The Board shall make such reports to the City Council or committees of the City Council as may be required by this chapter, by the City Council or City Council Committee.
4. Recommendations. The Board may make recommendations to the City Council or appropriate City Council committee pertaining to this chapter or City housing policy when requested to do so by the City Council or when the Board otherwise acts to do so.
5. Regular Meetings. The Board or an Appeal Panel shall meet regularly on the second and fourth Thursdays of each month unless cancelled. Rent Program staff is authorized to schedule these regular meetings either for the full Board or for an Appeal Panel.
6. Special Meetings. The Board or an Appeal Panel may meet at additional times as scheduled by the Board Chair or Rent Program staff.
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#### E. Appeal Panels

1. Appeal Panels shall hear appeals of Hearing Officer decisions.
2. Rent Program staff shall determine whether an appeal should be heard by an Appeal Panel or the full Board. A party to an appeal may, however, elect not to have his/her case heard by a panel and instead to be heard by the full Board. A party may so elect by notifying the Rent Adjustment Program not less than five (5) days prior to the first scheduled date for the appeal hearing.
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3. All Appeal Panel members must be present for a quorum. A majority of the Appeal Panel is required to decide an appeal.
4. Membership on an Appeal Panel is determined by Rent Program staff. Membership need not be permanent but may be selected for each panel meeting.

#### 8.22.120 - Appeal procedure.

A. Filing an Appeal.

1. Either party may appeal the Hearing Officer's decision, including an administrative decision, within fifteen (15) days after service of the notice of decision by filing with the Rent Adjustment Program a written notice on a form prescribed by the Rent Adjustment Program setting forth the grounds for the appeal.
2. The matter shall be set for an appeal hearing and notice thereof shall be served on the parties not less than ten days prior to such hearing.

B. Appeal Hearings. The following procedures shall apply to all Board and Appeal Panel appeal hearings:

1. The Board or Appeal Panel shall have a goal of hearing the appeal within thirty (30) days of filing the notice of appeal.
2. All appeal hearings conducted by the Board or Appeal Panel shall be public and recorded.
3. Any party to a hearing may be assisted by an attorney or any person so designated.
4. Appeals shall be based on the record as presented to the Hearing Officer unless the Board or Appeal Panel determines that an evidentiary hearing is required. If the Board or Appeal Panel deems an evidentiary hearing necessary, the case will be continued and the Board or Appeal Panel shall issue a written order setting forth the issues on which the parties may present evidence. All evidence submitted to the Board or Appeal Panel must be submitted under oath.
5. Should the appellant fail to appear at the designated hearing, the Board or Appeal Panel may dismiss the appeal.

C. Board or Appeal Panel's Decision Final. The Board's decision is final. Parties cannot appeal to the City Council. Parties cannot appeal the decision of an Appeal Panel to the full Board.

D. Court Review. A party may seek judicial review of a final decision of the Board pursuant to California Civil Code Section 1094.5 within the time frames set forth therein.

**SECTION 2. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 3. Effective Date.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

**SECTION 4.** This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: section 15378 (regulatory actions), section 15061(b)(3) (no significant environmental impact), and section 15183 (consistent with general plan and zoning).

**SECTION 5.** The Rent Adjustment Board shall propose changes to the Rent Board regulations to conform the regulations to the changes hereby made to the Ordinance and propose such changes to the City Council within 90 days of the adoption of this ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT  
GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

**ORDINANCE AMENDING CHAPTER 8.22 (RENT ADJUSTMENT PROGRAM) OF THE OAKLAND MUNICIPAL CODE TO: (1) INCREASE THE NUMBER OF ALTERNATE BOARD MEMBERS; (2) CHANGE THE LENGTH OF THE BOARD MEMBER HOLDOVER PERIOD; AND (3) AUTHORIZE MORE CASES BE HEARD BY BOARD APPEALS PANELS**

The Ordinance amends the Oakland Municipal Code to: increase the number of alternate board members, change the length of the board member holdover period, and authorize and provide for more cases to be heard by appeal panels.