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AGENDA REPORT

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SUBJECT: Amendments to Rent Adjustment Program

DATE: June 16, 2016

RECOMMENDATION

Councilmembers Kalb, Gibson McElhaney, and Guillen recommend that the City Council adopt:

ORDINANCE AMENDING CHAPTER 8.22 (RENT ADJUSTMENT PROGRAM) OF THE OAKLAND MUNICIPAL CODE TO: (1) MODIFY THE RENT ORDINANCE EXEMPTION FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES; (2) REQUIRE THAT OWNERS FILE PETITIONS FOR RENT INCREASES IN EXCESS OF THE ANNUAL CONSUMER PRICE INDEX INCREASE (3) CHANGE THE AMORTIZATION PERIOD FOR CAPITAL IMPROVEMENTS TO THAT OF THE USEFUL LIFE OF THE IMPROVEMENT; (4) CLARIFY THAT CERTAIN TYPES OF WORK ARE NOT CAPITAL IMPROVEMENTS; (5) AMEND TIMELINES FOR FILING PETITIONS; (6) REQUIRE OWNERS TO PAY INTEREST ON SECURITY DEPOSITS; AND (7) PERMIT TENANTS TO CHOOSE TO PAY THEIR PORTION OF THE PROGRAM FEE EITHER IN A LUMP SUM OR IN SIX MONTHLY INSTALLMENTS

INTRODUCTION & SUMMARY

Many residents in our city are facing unusually high rents coupled with an insufficient housing stock that is affordable to most people. Displacement of long-time residents has

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become a big problem that impacts not only individuals, but the very character and diversity of Oakland.

After participating in the Mayor's Housing Cabinet, hearing from constituents—renters and property owners alike—and carefully considering analysis provided by staff, Councilmembers Kalb, Gibson McElhaney and Guillen request that the City Council approve new provisions in law to help renters and that concentrate on the following principles:

Stability for tenants: An effective rent stabilization system should prevent large rent increases, unjust pass-throughs and construction improvements evictions that lead tenants to be displaced from their home. Regulations must recognize that it is particularly burdensome for lower income and vulnerable tenants to find replacement housing in Oakland.

Fair and efficient processes: A fair rent stabilization system recognizes that city regulations should not disincentivize needed repairs and reasonable upgrades. Regulations need to allow landlords to make a fair return on their investment. Laws, regulations, administrative processes and relevant technology need to be updated as much as possible to encourage more efficient processing of inquiries and adjudication of disputes. We all lose when tenants are denied their rights by unnecessary administrative burdens or landlords are denied income for months due to unsubstantiated complaints.

BACKGROUND/LEGISLATIVE HISTORY

Legislative History

In recent years, pieces of legislation were adopted to ease the burden of rent increases on Oakland tenants, strengthen tenants' rights, and contribute to increasing the stock of affordable housing. These include the Tenant Protection Ordinance (TPO), Rent Adjustment Program Ordinance & Regulations, and the Oakland Affordable Housing Trust Fund set-aside. However, rapidly rising demand for housing in Oakland continues to drive rental

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rates up, which contributes to the ongoing displacement of long-term residents of Oakland, and make it more difficult for people who work here to live here. This and other problems were described in detail in several city reports that came out over the last two years. The Housing Equity Roadmap ("Roadmap"), was one of the first comprehensive reports drafted by the City Administration in conjunction with PolicyLink, Enterprise Foundation, and the Urban Strategies Council. It was adopted by the City Council as a framework for action on September 21, 2015.

Many residents, community activists, and the City Council recognize the mounting housing, rent, and displacement crisis, which is felt especially strongly by vulnerable populations and lower income working communities. In response, on April 4, 2016 the City Council adopted a 90-day moratorium on rent increases:

INTERIM EMERGENCY ORDINANCE TO TEMPORARILY: 1) ELIMINATE THE EXEMPTIONS FROM RENT CONTROL FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES AND SUBSTANTIALLY REHABILITATED PROPERTIES; 2) PLACE A MORATORIUM ON RENT INCREASES ABOVE THE ANNUAL CPI ADJUSTMENT; 3) AFFIRM THE CITY'S PROHIBITION ON ILLEGAL EVICTIONS; 4) AFFIRM THE CITY'S DUTY TO PUBLICIZE CITY POLICIES ESTABLISHING TENANT RIGHTS; AND 5) DIRECT THE CITY ADMINISTRATOR TO EVALUATE POTENTIAL PERMANENT RENT STABILIZATION MEASURES.

Prior to enactment of the moratorium, some Councilmembers participated in the Housing Cabinet assembled by the Mayor. The Cabinet aimed to develop a comprehensive and well researched set of specific recommendations for legislative and administrative action to mitigate and prevent further expansion of the housing crisis in the City of Oakland. As a result of several months of meetings with a diverse range of stakeholders and following extensive research, the Housing Cabinet released the "Oakland at Home" report with specific recommendations and timelines for their implementation. Some of those recommendations are reflected in this legislation.

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ANALYSIS

The current Rent Adjustment Program does not adequately address the needs of tenants and landlords.

1. Ordinance Components

(1) Modify the rent ordinance exemption for owner-occupied duplexes and triplexes;

Rental units covered by rent control within duplexes and triplexes can become vulnerable to losing rent control protections. This is the case when the owner moves into one unit of their previously non-owner occupied duplex or triplex. Under current law, only one year after the owner moves into one of their units, the renters in the remaining one unit for a duplex or two units for a triplex are no longer protected under our rent stabilization law..

Going forward, this legislation will extend the one-year owner occupancy requirement to three years. In other words, if the current owner moves in or sells the building followed by the new owner moving in, then the new owner would have to live in that building as their primary residence for three years before the remaining units would come out from under the rent control. In addition, to prevent fraudulent owner move-ins this regulation requires building owners to provide a proof of residency at the building on an annual basis.

(2) Require that owners file petitions for rent increases in excess of the annual Consumer Price Index (CPI) increase

As noted in the previous staff reports from the city administration, the current enhanced notice system provides inadequate protection for tenants. Since the notice does not appear to effectively inform tenants of their rights, vulnerable tenants may still fear harassment or retaliation. Tenants may also lack the expertise to competently evaluate capital improvement claims.

This proposed legislation shifts the petition requirement from tenants to landlords in cases where landlords intend to (1) pass along the cost of capital improvements or (2) impose

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other rent increases that exceed the annual CPI. To ease the burden on the current administrative systems as well as allow for adjustments and potential increase in staffing, this legislation proposes to implement this change first for all covered buildings with 5 and more units on July 1st, 2017 and apply these same requirements to all covered buildings with two to four units on July 1st, 2018.

(3) Require owners to petition for exemption from rent control for substantial rehabilitation and make this process cost-recovering.

The permanent removal of a rental building from the rent stabilized housing stock represents a serious change in the status of a property. This exemption reflects the City's need to continue to improve its dilapidated housing stock. However, tenants should not be forced to contest this action. An owner who stands to permanently benefit from this exemption should be required to petition the City and should also bear the full cost of the associated administrative process.

(4) Change the amortization period for capital improvements to that of the Useful Life of the improvement;

Landlords should be able to recoup a portion of their cost of major capital improvements. However, according to the staff report presented at the June 14 Community and Economic Development Committee, some tenants under the current system receive rent increases that translate to over a thousand dollars per year. This is too large of a burden for many of the tens of thousands of renters in households who gross less than forty thousand dollars a year. The intention of the proposed legislation is that an amortization schedule based on the useful life of improvements will spread out the rent increases over more years and reduce the potential for displacement. This will still allow landlords to recoup their costs, but in the slightly slower timeframe. Moreover, it is logical that recouping the cost of a capital improvement expenditure would coincide with the useful life of that improvement.

(5) Clarify that certain types of work are not capital improvements;

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When it comes to the Capital Improvement pass-throughs, Oakland law is mute on the so-called subject of "gold-plating." "Gold-Plating" is generally referred to as a capital improvement that is well beyond what is necessary and/or what was there previously, making the improvement significantly more expensive. In the effort to increase rent and nudge existing tenants out, some landlords may excessively improve their buildings or units (improvements that are substantially greater in character or quality than what already exists). To prevent this from happening, this ordinance states that unless tenant provides written agreement in advance to significant improvements and the portion of pass-throughs that are associated with those improvements, landlords may only pass through costs comparable to the level of an equivalent, albeit newer, replacement.

(6) Amend timelines for filing petitions;

The Council and Rent Adjustment Board have repeatedly heard that the current 60-day limit to file a tenant-initiated petition is too short and an additional month is needed for tenants to adequately prepare to submit a petition. Lengthening the statute of limitations for tenants to challenge a rent increase from 60 to 90 days will help ensure that all tenants who have received a rent increase will have time to petition the Rent Adjustment Program for relief. This will also allow additional time for many tenants to become educated about their tenant rights and to obtain services in their language of choice. As the requirement for landlord-initiated petitions phase in, this 90-day provision may become less critical.

(6) Require owners to pay interest on security deposits;

Other jurisdictions in California, including San Francisco and Berkeley, already require landlords to pay interest on security deposits to tenants annually. To ease the potential burden on landlords, this legislation only requires landlords to pay the accumulated interest once when the tenancy is terminated. This provision does not affect a property owner's ability to keep any portion of a security deposit to cover verifiable costs of damage to the property, beyond normal wear-and-tear.

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(7) Permit tenants to choose to pay their portion of the program fee either in a lump sum or in six monthly installments

With so many families in Oakland living paycheck to paycheck, even a seemingly small amount of money might mean choosing between buying essentials like food or paying rent. If a landlord decides to pass through half of the Rent Adjustment Program fee, this provision will allow tenants to pay their portion of that fee in six installments rather than in one lump sum.

(8) Ensure that all rental adjustment program forms and notices conform to the Equal Access Ordinance.

Oakland is one of the most diverse cities in United States, with over 100 languages spoken by Oakland residents.

In addition, there is a great need for tenant and landlord education. Many tenants do not know their rights and are unaware of resources available to them. Many are afraid to challenge their landlords or go to authorities for support. This is especially the case for those who fear threats regarding their immigration status or face language barriers. Some landlords don't have clarity on their responsibilities as business owners. Unfortunately, there are some bad actors that knowingly take advantage of their tenants' vulnerabilities to benefit themselves.

This provision will insure that tenants have a better chance to gain knowledge and feel more empowered to advocate for their rights under the Oakland law.

2. Scope of the Problem - Current Oakland Housing Landscape

As identified in housing reports to date, in the wake of recent development, Oakland is facing soaring rental rates and the subsequent displacement of historic communities. From 1990 and 2011, Oakland's median monthly rent increased by 30 percent. During this time period, Oakland's African-American population dropped from 43 percent to 26 percent, the

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largest of any group. Since 2011, housing costs have continued to rise with 12.1 percent increase in Oakland's rental property rates from 2014 to 2015, contributing to further displacement of vulnerable communities. In addition to the direct impacts on historic residents, displacement affects the City's diversity, community identity, cohesion, and culture.

3. Staff Involvement

Collaboration for this effort has included the Mayor's Office, the Office of Councilmember Kalb, Council President Gibson McElhaney, Councilmember Guillen, and vice-mayor Campbell Washington, the City Administrator's Office, the Housing and Community Development staff, and community stakeholders at different points in the process.

PUBLIC OUTREACH/INTEREST

Councilmembers met with and continue to meet with various constituents, community-based organizations and stakeholder groups.

Besides the required posting of this report to the City's website, there has been community outreach to obtain feedback about this legislation. Councilmembers heard from stakeholders representing diverse interests and perspectives. In addition, many of the topics addressed in the proposed legislation were discussed in the numerous public forums and stakeholder meetings.

COORDINATION

Collaboration for this effort has included the Offices of Councilmembers Kalb, Gibson McElhaney, Guillen, Campbell Washington, the City Administrator's Office, the Housing and Community Development Department, the Planning and Building Department, the Office of the City Attorney, and many community stakeholders at different points in the process.

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COST SUMMARY/ IMPLICATIONS

The ordinance does require potentially significant changes to current systems within the Rent Adjustment Program, especially switching the responsibility of petitioning from tenants to landlords. The City will have to develop new forms and information as needed through the Rent Adjustment Program, Bureau of Building of the Planning and Building Department, Equal Access Division, the Housing and Community Development Department, and other departments as needed.

Therefore additional staff time will be required to implement requirements put forth in this legislation and additional staff cost must be requested. Finally, the preparation of permanent revisions to the regulations would take staff time and resources to produce.

SUSTAINABLE OPPORTUNITIES

Economic: The ordinance is intended to protect the economic vitality of Oakland by helping to keep existing renters in their homes, thereby maintaining the economic security of tenants who reside in two-and three-unit buildings and not subjecting them to evictions related to the change in ownership or change in rent control.

Environmental: Minimal

Social Equity: The ordinance is intended to promote social equity by protecting Oakland renters, who are less economically secure than Oakland homeowners and are somewhat more likely to be persons of color.

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For questions regarding this report, please contact the Office of Councilmember Kalb at 510-238-7001, the Office of Council President Lynette Gibson McElhaney at 510-238-7003, or the Office of Councilmember Abel Guillen at 510-238-7002.


Respectfully submitted,



Councilmember Kalb



Council President Gibson McElhaney



Councilmember Guillen

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