

CITY OF OAKLAND



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CITY COUNCIL
Oakland, California

RE: RENT ORDINANCE EXEMPTION TO ALLOW LANDLORDS TO RESTORE MARKET RATE RENTS AFTER PROVIDING TEMPORARY BELOW MARKET RENTS TO PERSONS DISPLACED BY HURRICANE KATRINA

Dear President De La Fuente, and Members of the Council:

I. INTRODUCTION

At its September 8, 2005 special meeting, the City Council discussed ways in which the City could support, aid and assist persons who have been displaced by Hurricane Katrina. The Rental Housing Association advised Council that a number of landlords would provide housing at below market rates if the Council exempted the discounted rent rates from the Rent Adjustment Ordinance's rent increase restrictions. The Rental Housing Association expressed its belief that landlords would not be able to restore market rate rents if they provided temporary discounted rents to persons displaced by Hurricane Katrina.

The Council asked this Office whether an exemption would be necessary. This opinion letter answers the Council's question.

II. ISSUE

Can the City Council exempt temporarily discounted rents from the Ordinance's rent increase restrictions thereby allowing landlords to restore rents to market rates after providing temporary rent relief to persons displaced by Hurricane Katrina?

III. SUMMARY CONCLUSION

Yes, however, the Council must amend the Rent Adjustment Ordinance to allow landlords to restore market rents after they provide temporary discounted rents to persons displaced by Hurricane Katrina. The Rent Adjustment Ordinance allows landlords to charge market rents to a new tenant if the prior tenant voluntarily vacated the unit or if the prior tenant was evicted for a "just cause" in which the tenant was at fault. If the tenant remains in the unit, the landlord cannot increase the rent to market rates without giving the tenant notice and the opportunity to contest the rent increase and require that the landlord justify the increase based on cost increases.

IV. DISCUSSION

California cities may regulate rents and establish the grounds for eviction pursuant to their police powers.¹ The method of regulation is generally left to each individual city, except that a city's rent control law must give landlords the opportunity to make a fair return.² Any rent control law must comply with state law, the Costa-Hawkins Rental Housing Act.³ Costa-Hawkins provides that landlords are entitled to charge market rate rents to new tenants; however, cities can control tenants' rent increases. Accordingly, the Costa-Hawkins Rental Housing Act requires that all rent control laws permit landlords to set the initial rent for a new tenant.

The City of Oakland regulates both rent increases (Rent Adjustment Ordinance) and evictions from rental properties (Just Cause for Eviction Ordinance.). Under Oakland's Rent Adjustment Ordinance⁴ and the Just Cause for Eviction Ordinance,⁵ if a landlord sets a rental rate for a new tenant, even for a temporary period, the landlord cannot thereafter raise the tenant's rent to market levels without giving the tenant notice and the opportunity to contest the rent increase; nor can the landlord evict the tenant in order to raise the rent.

Oakland's Rent Adjustment Ordinance allows the landlord to increase the initial rent annually based on a consumer price index ("CPI") formula; rent increases above the CPI formula are permitted if the landlord documents specific types of cost increases. The tenant may challenge a rent increase in excess of the annual amount and require that the landlord justify the cost increase. A landlord cannot raise the rent to a sitting tenant above the annual allowance without giving the tenant notice and the opportunity to contest the increase and compel the landlord to justify the rent increase in a hearing proceeding. Cities also have the option of exempting certain types of rental units or tenancies. For example, Berkeley and Santa Monica exempt rental units that are rented

¹ *Birkenfeld v. City of Berkeley*, 17 Cal.3d 129 (1976)

² *Fisher v. City of Berkeley* 37 Cal.3d 644 (1984)

³ Cal. Civil Code §1954.50, *et seq.*

⁴ O.M.C. 8.22.100, *et seq.*

⁵ O.M.C. 8.22.300, *et seq.*

by tenants who have a permanent residence elsewhere. Oakland exempts units in buildings of three units or less where one of the units is owner-occupied. Therefore, we believe the City Council could create special rent controls for persons displaced by Hurricane Katrina.

The Council could amend the Rent Adjustment Ordinance to permit landlords to offer below market rent to persons displaced by Hurricane Katrina for a temporary period and then raise the rent to market levels. As noted above, the Just Cause for Eviction Ordinance does not permit a landlord to evict a tenant at the end of a temporary tenancy term; tenants may be evicted only for "just cause"⁶.

A landlord cannot evict a tenant simply because the tenant agrees to a temporary tenancy; nor can a landlord evict a tenant at the end of a lease term without cause. The Just Cause for Eviction Ordinance provides that a landlord may evict a tenant only for one or more of the causes specified in the ordinance. The causes include non-payment of rent, breach of the lease, illegal activities and other fault of the tenants and the landlord's need to recover the unit for major repairs or owner/relative occupancy. At the end of a lease term the landlord must offer the tenant a new rental agreement on the same terms (subject to rent increases allowed by the Rent Adjustment Ordinance).

V. CONCLUSION

For the reasons discussed in this opinion letter, the City Council must amend the Rent Adjustment Ordinance if it wishes to allow landlords to restore market rate rent to a unit after providing temporary below market rents to persons displaced by Hurricane Katrina. The Council could amend the Rent Adjustment Ordinance to permit a landlord to set the initial rent below market rates and then increase the rent to market rates after a specific period of time.

Respectfully submitted,



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Attorney Assigned:
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cc: Mayor Jerry Brown
City Administrator Deborah Edgerly

⁶ The Just Cause for Eviction Ordinance was an initiative measure that the Oakland electorate passed in 2002. Only the voters can amend initiative measures.