



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Shola Olatoye
Director, HCDD

SUBJECT: Ordinance to Amend the Rent
Adjustment Ordinance to Alleviate
Rent Program Backlog

DATE: August 14, 2020

City Administrator Approval

Date: September 1, 2020

RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance Amending The Rent Adjustment Ordinance (O.M.C. 8.22.010 Et Seq) To Create Efficiency And Reduce Appeal Times By 1) Authorizing A Single Appeal Office To Hear Select Appeals; 2) Establishing More Stringent Attendance Requirements For Board Members; 3) Limiting Oral Argument Time On Appeals; And 4) Requiring Parties To Serve Petitions.

EXECUTIVE SUMMARY

The Rent Adjustment Program (Rent Program) has a history of a continual backlog of appeals based on inefficient processes. While the program is catching-up on Rent Board appeals matters, notwithstanding the impact COVID-19 has had on the program, it is clear that there is a need to adopt certain streamlining measures to prevent future backlogs and promote efficient adjudication of cases falling under the Rent Ordinance.

To address these issues, staff recommend that the City Council adopt the following amendments to the Rent Adjustment Ordinance, Oakland Municipal Code (O.M.C.) Chapter 8.22:

- (1) Authorize a single appeal hearing officer to hear select appeals as determined by the Board and staff;
- (2) Establish more stringent attendance requirements for Board members;
- (3) Limit oral argument time on appeals; and
- (4) Require the parties to serve a copy of the petition and all responses on the opposing party and attach a proof of service to any petition related documents filed with the Rent Program.

City Council
September 15, 2020

BACKGROUND / LEGISLATIVE HISTORY

During the past few years, the Rent Program has seen a rise in the number of cases presented to the Rent Board for hearings (see **Table 1** below). This increase in cases, as well as lack of a quorum of the Rent Board at a number of meetings, has resulted in an increase in the backlog of cases. This extreme backlog has made it difficult for appeals to be heard in a timely manner. As of October 5, 2017, 88 appeals were pending with the Rent Program.

To address the backlog, staff scheduled additional Appeal Panel meetings in 2018. Currently, the Board or Appeal Panel schedules meetings four times a month – one regular Board meeting and three Panel meetings. Fewer are scheduled during holiday periods and some meetings are cancelled due to lack of a quorum. Staff tries to schedule three appeals per meeting, which results in a maximum of 12 appeals that can be heard in a month. Because of the holiday periods, loss of quorums, and continuances of cases, fewer than three cases are typically being heard in a meeting.

The Rent Ordinance includes the goal that an appeal will be heard 30 days after a party appeals a decision; decisions are generally issued 60 to 90 days after a hearing. However, some appeals were not heard for more than one year after the petition was filed. The delay in hearing appeals was due to multiple factors: the volume of appeals, limited Board meeting dates, loss of meeting quorum (sometimes due to lack of a landlord or tenant representative), and continuances granted to parties, in some cases due to conflicts of interest with one or more Board members. In some cases, a new petition on a new issue and appeal is filed for the same unit before the prior appeal is decided, causing much confusion and difficulty in addressing the rent for the unit. In other circumstances, tenants and landlords are left in limbo, with some tenants electing to vacate rather than take the risk of owing a substantial amount of back rent or facing an eviction over the rent.

Tables 1 and 2 below provide information regarding the number of petitions, appeals and hearings.

Table 1: Rent Program Petition and Appeal Data by Year

Fiscal Year	# of Petitions	# of Appeals
2011-2012	385	19
2012-2013	411	39
2013-2014	551	82
2014-2015	739	93
2015-2016	864	95
2016-2017	1020	97
2017-2018	904	83
2018-2019	754	61

Table 2: Rent Program Petition and Appeal Data from July 1, 2018 to June 30, 2019

Month/Year	# of Petitions Filed	# of Appeals Filed	# of Appeals Heard
July 2018	66	5	6
August 2018	56	9	6
September 2018	66	11	8
October 2018	54	9	14
November 2018	49	7	15
December 2018	55	7	5
January 2019	53	5	12
February 2019	41	6	9
March 2019	78	10	12
April 2019	96	17	12
May 2019	86	9	12
June 2019	80	2	12
Total	754	97	123

To address these issues, staff recommend that the City Council adopt the following amendments to the Rent Adjustment Ordinance O.M.C. Chapter 8.22:

- (1) Authorize a single appeal hearing officer to hear simple appeals, as determined by the Bboard and staff;
- (2) Establish more stringent attendance requirements for Board members;
- (3) Limit oral argument time on appeals; and
- (4) Require the parties to serve a copy of the petition and all responses on the opposing party and attach a proof of service to any petition related documents filed with the Rent Program.

ANALYSIS AND POLICY ALTERNATIVES

The following is an analysis of how the proposed amendments will serve to address appeal backlogs and increase efficiencies in operating the Rent Program.

Allow Simple Appeals to be Heard by a Single Appeal Hearing Officer and Limit the Types of Appeals to be Heard by the Full Board

Because the full Board requires at least four members for a quorum, with one member representing each category (tenant, landlord, and neutral), Board meetings are more likely to be cancelled due to lack of quorum. The Board must also consider legislative matters such as regulations during full Board meetings.

This legislation would limit appeals to the full Board only to exemption cases and other important cases as determined by staff and the Board. The proposed amendments would also remove the option for a party to elect for an appeal to be heard by the full Board instead of an

Appeal Panel. Because Board meeting time is limited, scheduling only exemption cases and other important cases before the Board will allow more Board time for legislative matters.

This legislation would also allow simple appeals such as appeals from hearing decisions where the landlord or the tenant did not file a response or appear at the hearing. The main issue in these appeals is whether the party had good cause to not file a response or appear at the hearing. A single appeal hearing officer can decide these appeals without having to take up Board or Appeal Panel time.

Establish More Stringent Attendance Requirements

The proposed amendments would establish more stringent attendance requirements for Board members to ensure quorum at Board and Appeal Panel meetings. Currently, Board members must be absent from three consecutive meetings to constitute good cause for removal. This means that a member may attend four out of twelve Board meetings and would still not be subject to removal for lack of attendance. This legislation would amend the attendance requirements to define cause for removal as absence from three meetings in six months. This legislation would also create an attendance requirement for alternates to be available for at least half of Appeal Panel meetings in a six-month period. Under Section 601 of the City Charter, the City Council may remove Board members for cause and these changes would provide the cause.

Increase the Number of Appeals the Board or Appeal Panel Can Address at One Meeting by Reducing the Time for Appeal Hearing Presentations

Currently the Rent Board or Appeal Panels hear only two to three appeals per meeting, and sometimes only one. Under current Rent Program regulations, parties have the right to a full appeal hearing for every case, including fifteen (15) minutes on each side for arguments, rebuttals, and responses or questions from the board. The Board then has approximately fifteen (15) minutes to discuss and decide the appeal. The extended time for appeal hearings means that only three appeals may be heard during each Board or Appeal Panel meeting, and a maximum of twelve appeals are heard each month assuming that no appeals are continued, and no meetings are cancelled for lack of quorum. When the Board hears fewer than three appeals per meeting, it is generally due to continuances or the Board needing to conduct other business, such as regulations.

San Francisco's rent program has about double the number of cases as Oakland's program. Despite the case load, the rent board in San Francisco usually hears appeals within two months by limiting the time allocated to consideration of individual appeals. San Francisco's rent board hears about 10-15 appeals per month in a single meeting because the parties are limited to the time allowed for the public comment on an agenda item – three minutes.

The proposed ordinance would reduce the time limits parties have for appeal hearings to six minutes per party. The Board or Appeal Panel can increase the time if needed for a particular case. This will permit the Board or Appeal Panel to hear more appeals per meeting.

Require the parties to serve a copy of the petition and all responses on the opposing party and attach a proof of service to any petition-related documents filed with the Rent Program.

Currently, the Rent Program staff mails a copy of the petition and attachments (e.g., list of alleged decreased housing services), and all responses to the opposing party with a proof of service. Additionally, all related evidence is filed with the Rent Program office, but it is not required to be served on the other side. If a party wishes to view the evidence lodged against them, they must make an appointment for a file review. Parties are not permitted to remove originals from the files but may request copies.

Staff has determined that this process is not only inefficient, but with the current volume of petitions, it requires extensive staff resources to maintain. For example, if an owner files a petition for a rent increase based on capital improvements for a multiple-unit building which may contain an excess of 50 units, staff would be required to send copies of all case related documents to each of the 50 tenants, and would have to potentially accommodate separate file review appointments.

Requiring the parties to serve a copy of the petition and all related documents on the opposing party, with a proof of service regarding all petition related documents filed with the Rent Program, will relieve staff of this time-consuming task, resulting in increased efficiency, and prevent a processing backlog from resulting.

FISCAL IMPACT

The proposed amendment to the Rent Adjustment Ordinance has no fiscal impact.

COORDINATION

This report and legislation were prepared in coordination with the City Attorney's Office and the Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

Race and Equity: Approval of this ordinance will help ensure the City's ability to address some of Oakland's most pressing issues in a strategic and equitable manner. Once adopted, these recommendations will improve the efficiency and accessibility of the Rent Program and enable the City to provide better services.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt An Ordinance Amending the Rent Adjustment Ordinance (O.M.C. 8.22.010 Et Seq) To Create Efficiency And Reduce Appeal Times By 1) Authorizing A Single Appeal Office To Hear Select Appeals; 2) Establishing More Stringent Attendance Requirements For Board Members; 3) Limiting Oral Argument Time On Appeals; And 4) Requiring Parties To Serve Petitions.

For questions regarding this report, please contact Chanée Franklin Minor at 510.238.3262.

Respectfully submitted,



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