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2016 DEC 29 PM 2:43

  
CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL  
13418  
ORDINANCE NO. \_\_\_\_\_ C.M.S.

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AN ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (ARTICLE I OF O.M.C CHAPTER 8.22) TO (1) FACILITATE IMPLEMENTATION OF THE REQUIREMENTS FOR OWNER PETITIONS FOR RENT INCREASES IN EXCESS OF THE CPI RENT ADJUSTMENT AND BANKING; (2) ENHANCE THE REPORTING REQUIREMENTS DUE FROM THE OWNER TO A TENANT WHERE THE OWNER IS NOT PERMITTED TO SET THE INITIAL RENT AT THE COMMENCEMENT OF A TENANCY; AND (3) MAKE CLARIFYING AMENDMENTS FOR INTERNAL CONSISTENCY AND EFFICIENT PROGRAM OPERATION.

**WHEREAS**, the City of Oakland is experiencing a severe housing affordability crisis; and

**WHEREAS**, the housing affordability crisis threatens the public health, safety and/or welfare of our citizenry; and

**WHEREAS**, 60 percent of Oakland residents are renters, who would not be able to locate affordable housing within the city if displaced (U.S. Census Bureau, ACS 2014 Table S1101); and

**WHEREAS**, to address Oakland's housing affordability crisis, the Oakland City Council and Oakland's voters amended the Rent Adjustment Ordinance (Article I of O.M.C Chapter 8.22) ("Rent Adjustment Ordinance") on several occasions, most recently June 7, 2016 (Ordinance No. 13373 C.M.S.), September 20, 2016 (Ordinance No. 13391 C.M.S.), and November 8, 2016 (Ballot Measure JJ); and

**WHEREAS**, both ordinances and the voter enacted measure make numerous changes to the Rent Adjustment Ordinance, the most significant of which requires owners to file petitions for all rent increases except those permitted by the CPI increase and banking as of February 1, 2017; and

**WHEREAS**, other adopted amendments to the Rent Adjustment Ordinance include: changing the deadline for tenants to file petitions; changing the amortization

for capital improvements to the useful life of the improvement; requiring the owner to provide certain notices at commencement of the tenancy to be in English, Spanish, and Chinese; requiring owners to obtain a certificate of exemption before a property is considered exempt from the Rent Adjustment Program following substantial rehabilitation of the property; and requiring that for the owner-occupancy exemption for duplexes and triplexes, the owner must occupy a unit for two years, instead of one; and

**WHEREAS**, to implement the changes to the Rent Adjustment Ordinance enacted in Ordinance No. 13373 C.M.S., Ordinance No. 13391 C.M.S., and Ballot Measure JJ, staff recommends additional amendments to the Rent Adjustment Ordinance, as shown in Exhibit A; and

**WHEREAS**, the amendments in Exhibit A will amend the Rent Adjustment Ordinance to: (1) facilitate implementation of the requirements for owner petitions for rent increases in excess of the CPI rent adjustment and banking; (2) enhance the reporting requirements due from the owner to a tenant where the owner is not permitted to set the initial rent at the commencement of a tenancy; and (3) make other clarifying amendments for internal consistency and efficient program operation; and

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

**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.** The City Council hereby adopts the amendments to the Rent Adjustment Ordinance attached to this Ordinance as Exhibit A. Additions are shown in double-underlined text (example), and deletions are shown in strike-through text (~~example~~).

**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.** The amendment to the Rent Adjustment Ordinance set out in Exhibit A shall be effective immediately on final adoption if it

receives six (6) 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: § 15378 (regulatory actions), § 15061(b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning).

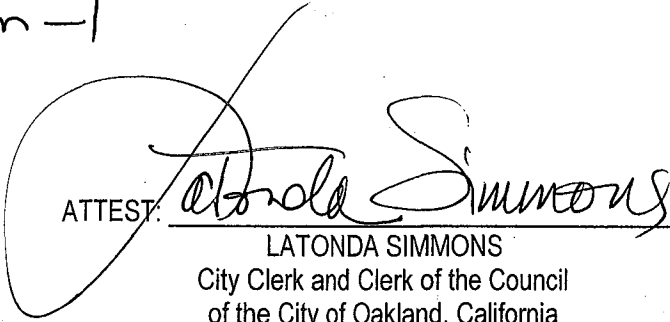
IN COUNCIL, OAKLAND, CALIFORNIA,  
PASSED BY THE FOLLOWING VOTE:

FEB 07 2017

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, AND REID — 7

*Excused - Campbell Washington - 1*  
NOES - 0

ABSENT - 0  
ABSTENTION - 0

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

Introduction Date  
1/17/17

Date of Attestation: 2-16-17

## Chapter 8.22 - RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS

### Sections:

Footnotes:

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Prior ordinance history: Ords. 11758, 11872, 12030 and 12273.

### Article I. - Residential Rent Adjustment Program

#### 8.22.010 - Findings and purpose.

- A. The City Council finds that a shortage of decent, safe, affordable and sanitary residential rental housing continues to exist in Oakland. This shortage is evidenced by a low vacancy rate among such units throughout the city and a continually increasing demand for such housing. Many residents of Oakland pay a substantial amount of their monthly income for rent. The present shortage of rental housing units and the prevailing rent levels have a detrimental effect on the health, safety, and welfare of a substantial number of Oakland residents, particularly senior citizens, persons in low and moderate income households, and persons on fixed incomes. Stability in their housing situation is important for individuals and families in rental housing. In particular, tenants desire to be free from the fear of eviction motivated by a rental property owner's desire to increase rents. Rental property owners desire the ability to expeditiously terminate the tenancies of problem tenants.
- B. Further, the welfare of all persons who live, work, or own residential rental property in the City depends in part on attracting persons who are willing to invest in residential rental property in the city. It is, therefore, necessary that the City Council take actions that encourage investment in residential housing while also protecting the welfare of residential tenants.
- C. Among the purposes of this chapter are providing relief to residential tenants in Oakland by limiting rent increases for existing tenants; encouraging rehabilitation of rental units, encouraging investment in new residential rental property in the city; reducing the financial incentives to rental property owners who terminate tenancies under California Civil Code Section 1946 ("Section 1946") or where rental units are vacated on other grounds under state law Civil Code Sec. 1954.50, et seq. ("Costa-Hawkins") that permit the city to regulate initial rents to new tenants, and allowing efficient rental property owners the opportunity for both a fair return on their property and rental income sufficient to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities, and other costs of operation.
- D. The City Council also wishes to foster better relations between rental property owners and tenants and to reduce the cost and adversarial nature of rent adjustment proceedings under this chapter. For these reasons, this chapter includes options for rental property owners and tenants to mediate rent disputes that would otherwise be subject to a hearing process, and to mediate some evictions.
- E. Terminations of Tenancies: On November 5, 2002, Oakland voters passed the Just Cause for Eviction Ordinance (Measure EE). The enactment of the Just Cause for Eviction

Ordinance by the electorate makes unnecessary the need for the eviction restrictions in this chapter, Article I (Rent Adjustment Ordinance) for a tenant whose tenancy is terminated by California Civil Code Section 1946 and also overrides portions of the Rent Adjustment Ordinance.

- F. The City Council believes that the relationship between landlords and tenants in smaller owner-occupied rental properties involve special relationships between the landlord and the tenants residing in the same smaller property. Smaller property owners also have a difficult time understanding and complying with rent and eviction regulation. The Just Cause for Eviction Ordinance recognizes this special relationship and exempts from its coverage owner-occupied properties divided into a maximum of three units. For these reasons, the City Council believes owner-occupied rental properties exempt from the Just Cause for Eviction Ordinance should similarly be exempt from the Rent Adjustment Program so long as the property is owner-occupied. In order to permit tenants to adjust to the possibility of unregulated rents and to address the potential for abuse of the owner-occupancy exemption by landlords who are motivated to move into a property to gain an exemption just to increase rent and not to reside in the property, this exemption should not take effect for one year after the amendment to This chapter exempting these rental units is adopted, or one year after the landlord begins owner-occupancy, whichever is later.
- G. The City Council desires to provide efficient and effective program services to rental property owners and tenants. The City Council recognizes there must be an adequate funding source in order to accomplish this objective. To provide adequate funding for the program and services provided to rental property owners and tenants under this chapter, an annual fee has been established, as set out in the Master Fee Schedule. The funds provided from this fee shall be dedicated to the administrative, public outreach, enforcement, and legal needs of the programs and services set out in this chapter and not for any other purposes. This fee is to be paid by the rental property owner not as the owner of real property, but instead as the operator of the business of renting residential units, with a reimbursement of fifty (50) percent of the fee from the tenant as provided in this chapter. The fee will sunset after two years unless the City Council acts to extend it. With the enactment of the Just Cause for Eviction Ordinance, the City Council desires to extend the Rent Program Service Fee to all residential rental units covered by either Residential Rent Adjustment Program or the Just Cause for Eviction Ordinance and, therefore, moves the section of Article I pertaining to the fee to a new Chapter 8.22, Article IV.

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### 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. Capital improvement costs that may be passed through to tenants include seventy percent (70%) of actual costs, plus imputed financing. Capital improvement costs shall be amortized over the useful life of the improvement as set forth in an amortization schedule developed by the Rent Board. Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements ("gold-plating" "over-improving") excluding: improvements approved in writing by the tenant, improvements that bring the unit up to current building or housing codes, or the cost of a substantially equivalent replacement.

"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.

(Ord. No. 13373, § 1, 6-7-2016; Ord. No. 13221, § 1(Exh. A), 4-1-2014; Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### 8.22.030 - Exemptions.

- A. Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this chapter, Article I only (the Just Cause for Eviction Ordinance (Chapter 8.22, Article II) and the Ellis Act Ordinance (Chapter 8.22, Article II)) have different exemptions:
1. Dwelling units whose rents are controlled, regulated (other than by this chapter), or subsidized by any governmental unit, agency or authority.

2. Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses, provided that such accommodations are not occupied by the same tenant for thirty (30) or more continuous days.
3. Housing accommodations in any hospital, convent, monastery, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by an educational institution.
4. Dwelling units in a nonprofit cooperative, owned, occupied, and controlled by a majority of the residents.
5. Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. This exemption does not apply to any newly constructed dwelling units that replace covered units withdrawn from the rental market in accordance with O.M.C. 8.22.400, et seq. (Ellis Act Ordinance). To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential.
6. Substantially rehabilitated buildings.
7. Dwelling units exempt pursuant to Costa-Hawkins (California Civil Code § 1954.52).
8. A dwelling unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by an owner of record as his or her principal residence. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the state of California.

B. Exemption Procedures.

1. Certificate of Exemption:

- a. A certificate of exemption is a determination by the Rent Adjustment Program that a dwelling unit or units qualify for an exemption and, therefore, are not covered units. For units exempt as new construction, or by state law, an owner may obtain a certificate of exemption by claiming and proving an exemption in response to a tenant petition or by petitioning the Rent Adjustment Program for such exemption. For units exempt based on substantial rehabilitation, an owner must obtain a certificate of exemption by petitioning the Rent Adjustment Program for such an exemption. A certificate of exemption may be granted only for dwelling units that are permanently exempt from the Rent Adjustment Ordinance as new construction, substantial rehabilitation, or by state law (Costa Hawkins)
- b. For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner. A certificate of exemption is a final determination of exemption absent fraud or mistake.
- c. Timely submission of a certificate of exemption previously granted in response to a petition shall result in dismissal of the petition absent proof of fraud or mistake regarding the granting of the certificate. The burden of proving such fraud or mistake is on the tenant.

2. Exemptions for Substantially Rehabilitated Buildings.

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new



construction for a rehabilitation project and performed substantial work on each of the units in the building.

- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.
  - c. An Owner seeking to exempt a property on the basis of substantial rehabilitation must first obtain a certificate of exemption after completion of all work and obtaining a certificate of occupancy. If no certificate of occupancy was required to be issued for the property, in lieu of the certificate of occupancy an owner may provide the last finalized permit. For any property that has a certificate of occupancy issued on or before the date of enactment of this subparagraph O.M.C 8.22.30B.2.c. for which an Owner claims exemption as substantially rehabilitated, the Owner must apply for such exemption not later than June 30, 2017 or such exemption will be deemed to be vacated.
- C. Controlled, Regulated, or Subsidized Units. The owner of a dwelling unit that is exempt because it is controlled, regulated (other than by this chapter), or subsidized by a governmental agency (Section 8.22.030A.1) must file a notice with the Rent Adjustment Program within thirty (30) days after such dwelling unit is no longer otherwise controlled, regulated, or subsidized by the governmental agency. Once the dwelling unit is no longer controlled, regulated, or subsidized, the dwelling unit ceases to be exempt and becomes a covered unit subject to this chapter, Article I. Such notice must be on a form prescribed by the Rent Adjustment Program.
- D. Exemptions for Owner-Occupied Properties of Three or Fewer Units. Units in owner-occupied properties divided into three or fewer units will be exempt from this chapter, Article I under the following conditions:
1. Two-Year Minimum Owner Occupancy. A qualifying owner of record must first occupy one of the units continuously as his or her principal residence for at least two years. This requirement does not apply to any property in which the owner resides in the premises on or before August 1, 2016.
  2. Continuation of Exemption. The owner-occupancy exemption continues until a qualifying owner of record no longer continuously occupies the property.
  3. Rent Increases. The owner of record qualifying for this exemption may notice the first rent increase that is not regulated by this chapter, Article I two years after the date the qualifying owner of record starts residing at the affected property as his or her principal place of residence.
  4. An owner claiming such exemption must provide information to the Rent Program on when the owner occupancy began and documentation showing the minimum of two years continuous occupancy. Staff shall develop a form for this purpose.

(Ord. 12781 § 1 (part), 2007; Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

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

##### A. Composition.

1. Members. The Board shall consist of seven (7) regular members appointed pursuant to Section 601 of the City Charter. The Board shall be comprised of two (2) residential

rental property owners, two (2) tenants, and three (3) persons who are neither tenants nor residential rental property owners. The Board shall also have six (6) alternate members, two (2) residential rental property owners, two (2) tenants and two (2) persons who 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, and at appeal panels meetings without such an absence.

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 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 (3) years beginning on February 12 of each year and ending on February 11 three (3) years later. Board members shall be appointed to staggered terms so that only one-third ( $\frac{1}{3}$ ) 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 (2) consecutive terms as a board member, nor more than two (2) 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 year 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.

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~~more than ~~fifteen~~ten (1510) days after the notice of the panel hearing is mailed.
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. Appeal Panels may be comprised solely of Alternate Board Members.

(Ord. No. 13373, § 1, 6-7-2016; Ord. 12706 § 1, 2005; Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

8.22.050 - Summary of notices required by this chapter, Article I.

The following is a summary of notices required by this chapter, Article I (the Just Cause for Eviction Ordinance (Chapter 8.22, Article II) and the Ellis Act Ordinance (Chapter 8.22, Article III) may require other or different notices). Details of the requirements for each notice are found in the applicable section.

- A. Notice at the Commencement of a Tenancy. Existence and scope of this chapter (Section 8.22.060).
- B. Change in Terms of Tenancy or Rent Increase. Notice of tenant's right to petition. (Section 8.22.070H).

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

8.22.060 - Notice of the existence of this chapter required at commencement of tenancy.

- A. Notice at Commencement of Tenancy. The owner of any covered unit is required to comply with the following notice requirements at the commencement of any tenancy:
1. On or before the date of commencement of a tenancy, the owner must give the tenant a written notice in a form prescribed by the Rent Adjustment Program which must include the following information:
    - a. The existence and scope of this chapter; and
    - b. The tenant's rights to petition against certain rent increases;
    - c. Whether the Owner is permitted to set the initial Rent to the new Tenant without limitation (such as pursuant to the Costa-Hawkins Act (California Civil Code Sec. 1954.52)):
    - d. If the Owner is not permitted to set the initial Rent to the new Tenant (such as after an eviction noticed pursuant to California Civil Code Sec. 1946), the Owner must state the Rent in effect when the prior Tenant vacated, and if the initial Rent is in excess of the Rent to the prior Tenant the basis for any Rent in excess of the Rent to the prior tenant (which can only be based on the CPI Rent Adjustment, Banking, and/or a final a final decision in an Owner's petition).
  2. The Owner must give the initial notice in ~~four~~three languages: English, Spanish, Mandarin, and ~~Cantonese~~Chinese.
- B. Evidence of Giving Notice. When filing an owner's response to a tenant petition or an owner's petition for a rent increase, the owner must submit evidence that the owner has given the notice required by this section to the affected tenants in the building under dispute in advance of the filing. When responding to a tenant petition, the owner may allege that the affected dwelling units are exempt in lieu of providing evidence of complying with the notice requirement. If an owner fails to submit the evidence and the subject dwelling unit is not exempt, then the owner's petition or response to a tenant's petition must be dismissed. This evidence can be a statement of compliance given under oath, however, the tenant may controvert this statement at the hearing. An owner's filing the notice in advance of petition or response prevents the owner's petition or response from being dismissed, but the owner may still be subject to the rent increase forfeiture if the notice was not given at the commencement of the tenancy or within the cure period set out in Section 8.22.060(C).
- C. Failing to Give Notice. An owner who fails to give notice of the existence and scope of the Rent Adjustment Program at the commencement of a tenancy, but otherwise qualifies to petition or respond to a petition filed with the Rent Adjustment Program, will forfeit six months of the rent increase sought unless the owner cured the failure to give the notice. An owner may cure the failure to give the notice at the commencement of a tenancy required by this section and not be subject to a forfeiture of a rent increase if the owner gives the notice at least six months prior to serving the rent increase notice on the tenant or, in the case of an owner petition, at least six months prior to filing the petition.

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

8.22.065 - Rent Adjustments In General.

- A. Notwithstanding any other provision of this Chapter, owners may increase rents only for increases based on the CPI Rent Adjustment or Banking, or by filing a petition to increase

rent in excess of that amount. Any rent increase not based on the CPI Rent Adjustment or Banking that is not first approved by the Rent Adjustment Program is void and unenforceable.

- B. Rent increases are subject to the requirements of this Chapter and Regulations.
- C. The changes reflected in this O.M.C. subsection 8.22.065 apply only to rent increases noticed on or after February 1, 2017.

8.22.070 - Rent adjustments for occupied covered units.

This section applies to all rent adjustments for continuously occupied covered units. (Rent increases following vacancies of covered units are governed by Section 8.22.080). Any rent increase for a continuously occupied covered unit must comply with this section.

A. One Rent Increase Each 12 Months; Exceptions and Limitations.

~~(a)~~—1. An owner One Rent Increase Each Twelve (12) Months

a. Except as provided in Paragraph b below, an Owner may increase the rent on a covered unit occupied continuously by the same tenant only once in a 12-month period. If an Owner filed an Owner's Rent Increase petition, the earliest any increase allowed in the Hearing Officer's decision may be effective is the date that a rent increase notice consistent with this Chapter and state law is served on the Tenant after the service date of the decision. Such rent increase cannot take effect earlier than the tenant's anniversary date if the Owner has already increased that tenant's rent within the preceding 12-month period.

b. Upon the occurrence of any of the following, an Owner may increase the Rent on a Covered Unit occupied continuously by the same Tenant, even if rent has already been raised during the preceding twelve (12) months:

i. If the Owner restores housing services, rent may be restored to the original Rent from the level to which rent had been decreased after a rent decrease awarded in a hearing decision by the RAP for housing services; and/or

ii. If, as a result of an appeal to the Rent Board or a writ to the Superior Court, the final decision permits a Rent increase greater than that allowed in the Hearing Officer's decision, the Owner may notice such increase as of the date of the final decision.

- 2. ~~No individual~~In no event may rent for any covered unit increase can exceed the existing rent by more than ten percent in any 12-month period for any and all rent increases based on the CPI Rent Adjustment, as set out in O.M.C. 8.22.070B (CPI Rent Adjustment), and any justifications pursuant to O.M.C. 8.22.070C.2 (Rent Increases In Excess of CPI Rent Adjustment) except for the following:
  - a. A rent increase based on the CPI Rent Adjustment for the current year that exceeds ten percent, provided however that such Rent increase may only include a CPI Rent Adjustment;
  - b. The rent increase is required for the owner to obtain a fair return pursuant to O.M.C. 8.22.070C.2.f.
- 3. No series of rent increases in any five-year period can exceed 30 percent for any rent increases based on the CPI Rent Adjustment, as set out in, O.M.C. 8.22.070B

(CPI Rent Adjustment) and any justifications pursuant to O.M.C. 8.22.070C.2 (Rent Increases In Excess of CPI Rent Adjustment) except for the following:

- a. A series of rent increases composed solely of CPI Adjustments may exceed the 30 percent limitation;
  - b. Exceeding the 30 percent limitation is required for the owner to obtain a fair return pursuant to O.M.C. 8.22.070C.2.f.
4. If an owner is entitled to a rent increase or increases that cannot be taken because of the Rent increase limitations pursuant to Subsections 2. or 3. above, the owner may defer the start date of the increase to a future period, provided that in the rent increase notice that limits the owner's ability to take the increases, the owner must identify the justification and the amount or percentage of the deferred increase that may be applied in the future.

B. CPI and Banking Rent Adjustments.

1. Effective Date of this Section. An owner may first impose CPI Rent Adjustments pursuant to this section that take effect on or after July 1, 2002.
2. CPI and Banking Rent Adjustment Not Subject to Petition. The tenant A Tenant may not petition to contest a rent increase justified in an amount up to and including the CPI Rent Adjustment and/or any Banking Rent increase unless the tenant alleges one or more of the following:
  - a. The owner failed to provide the notice required at the commencement of tenancy and did not cure such failure (Section 8.22.060);
  - b. The owner failed to provide the notice required with a rent increase (Section 8.22.070 H);
  - c. The owner decreased housing services;
  - d. The covered unit has uncured health, safety, fire, or building code violations pursuant to Section 8.22.070 D.7);
  - e. Any or all of a Banking Rent increase is not correctly calculated or the Owner is not eligible for a Banking Rent increase;
  - f. The Rent increase exceeds the limitations set out in Section 8.22.090A.3;
  - g. The Rent increase is inoperative pursuant to Section 8.22.090D.7;
  - h. The Owner has increased the rent once during the preceding twelve (12) month period without qualifying for an exception pursuant to Section 8.22.070.A.1.
3. Calculation of the CPI Rent Adjustment. Beginning in 2002, the CPI Rent Adjustment is the average of the percentage increase in the CPI—All items and the CPI—Less shelter for the twelve (12) month period starting on March 1 of each calendar year and ending on the last day of February of the following calendar year calculated to the nearest one tenth of one percent.
4. Effective Date of CPI Rent Adjustments. An owner may notice a rent increase for a CPI Rent Adjustment so that the rent increase is effective during the period from July 1 following the Rent Adjustment Program's announcement of the annual CPI Rent Adjustment through June 30 of the next year. The rent increase notice must comply with state law and take effect on or after the tenant's anniversary date.

5. Banking. In accordance with rules set out in the regulations, an owner may bank CPI rent adjustments and annual permissible rent adjustments previously authorized by this chapter and notice a Banking Rent increase concurrent with a CPI Rent Adjustment.
  6. Schedule of Prior Annual Permissible Rent Adjustments. Former annual permissible rent adjustments available under the prior versions of this chapter:
    - a. May 6, 1980 through October 31, 1983, the annual rate was ten percent.
    - b. November 1, 1983 through September 30, 1986, the annual rate was eight percent.
    - c. October 1, 1986 through February 28, 1995, the annual rate was six percent.
    - d. March 1, 1995 through June 30, 2002, the annual rate was three percent.
- C. Rent Increases in Excess of the CPI Rent Adjustment or Banking.
1. ~~A tenant may file a petition in accordance with the requirements of Section 8.22.110 contesting any rent increase which exceeds~~For Rent increases based on grounds other than the CPI Rent Adjustment. ~~2. If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond by either claiming an exemption and/or justifying the rent~~or Banking, an Owner must first petition the Rent Program and receive approval for the Rent increase before the Rent increase can be imposed. A Rent increase in excess of the CPI Rent Adjustment or a Banking increase must be justified on one or more of the following grounds:
    - a. ~~Banking;~~b. Capital improvement costs, including financing of capital improvement costs;
    - ~~eb.~~ Uninsured repair costs;
    - ~~ec.~~ Increased housing service costs;
    - ~~ed.~~ The rent increase is necessary to meet constitutional or fair return requirements.
  - ~~3.2.~~ The amount of rent increase allowable for the grounds listed in Section 8.22.070 C.2 are subject to the limitations set forth in the regulations.
  - ~~4. An owner must provide a summary of the justification for a rent increase upon written request of the tenant.~~
- D. Rent Increase Notices and Operative Date of Dates for Rent Adjustment when Petition Filed.Increases
1. ~~{While a tenant petition is pending, a tenant must pay when due, pursuant to the rent increase notice, the amount of the rent increase that is equal to the CPI Rent Adjustment unless:}~~CPI and Banking Increases not subject to a Petition. Rent increase notices for CPI and Banking Rent increases that are not the subject of a Petition shall be operative in accordance with this Chapter and State law.
  2. Owner Petitions.
    - a. An Owner may notice a Rent increase based on a petition after the service date of the decision subject to the limitation of one Rent Increase each twelve (12) months (the effective date of the Rent increase).

- b. Except for any portion of the petitioned-for Rent increase that is based on a CPI Rent or Banking Rent Increase, a Tenant is not required to pay the Rent increase until there is a final decision on the petition pursuant to Section 8.22.070 D.5 (the operative date of the Rent increase). However if the Tenant chooses not to pay the Rent increase, the Tenant owes the increased Rent starting from the effective date of the Rent increase if the final decision upholds the Hearing Officer's decision.
- c. In a decision by the board or an appeals panel, the decision may (or may direct staff to) calculate the amount due and determine a repayment schedule consistent with the rent board regulations for the Tenant to pay any back Rent due or for the Tenant to receive any rent credits if the Tenant paid a Rent increase that is not upheld on appeal. However, a Hearing Officer shall calculate the amount due if there is a factual dispute regarding such amount.
- d. If a final decision permits a greater Rent increase than the amount permitted in the Hearing Officer's decision, the Owner may issue another Rent increase notice up to the amount allowed in the final decision, and such additional notice is not subject to the limitation of no more than one Rent increase with in twelve (12) month period.
- e. If the final decision permits a smaller Rent increase than the amount permitted in the Hearing Officer's decision, the Tenant need only pay the Rent increase based on the amount of the final decision.

### 3. Tenant Petitions.

- a. While a tenant petition is pending, a tenant must pay when due, pursuant to the rent increase notice, the amount of the rent increase that is equal to the CPI Rent Adjustment unless:
  - aj. The tenant's petition claims decreased housing services; or
  - bij. The owner failed to separately state in the rent increase the amount that equals the CPI Rent Adjustment pursuant to Section 8.22.070 H.

~~2.b. The amount of any noticed rent adjustment/increase above the CPI Rent Adjustment and Banking that is the subject of a petition is not operative until the decision of the hearing officer has been made and the time to appeal has passed is final.~~

~~3.4. When a party appeals the decision of a hearing officer, the tenant must continue to pay the amount of the rent adjustment due during the period prior to the issuance of the decision and the remaining amount of the noticed rent increase is not operative until the board has issued its written decision.~~

~~4. Following a final decision, a rent adjustment takes effect on the following dates:~~

- a. ~~In the case of a rent increase, the date the increase would have been effective pursuant to a valid rent increase notice given to the tenant, unless a six month forfeiture applies for an uncured failure to give the required notice at the commencement of tenancy;~~
- b. ~~In the case of a decrease in housing services, on the effective date for a noticed decrease in housing services or, if no notice was given, the date the decrease in housing services occurred.~~



5. ~~A tenant who files a petition following a thirty (30) day rent increase notice and who does not file a petition before the increased rent becomes due, must pay the increased rent when due until the tenant files the petition. Once the tenant files the petition, the portion of rent increase above the CPI Rent Adjustment need not be paid until the decision on the petition is final. Final decision. The decision on a petition is final when any one of the following events have occurred:~~
  - a. A hearing officer decision has been issued and the time for appeal has passed without an appeal being filed;
  - b. An appeal decision is issued and the time to file a writ of administrative mandamus has passed without a writ being filed; or
  - c. When a court issues a final decision, including any further court appeals, on any writ of administrative mandamus contesting a Rent Board appeal decision.
6. ~~A rent increase following an owner's petition is operative on the date the decision is final and following a valid rent increase notice based on the final decision. 7. —No part of any noticed rent increase is operative during the period after the tenant has filed a petition and the applicable covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations as defined by Section 17920.3 of the California Health and Safety Code, excluding any, violation caused by a disaster or where the owner proves the violation was solely caused by the willful conduct of the tenant. In order for such rent increase to be operative the owner must provide proof that the cited violation has been abated. The owner must then issue a new rent increase notice pursuant to California Civil Code Section 827. The rent increase will be operative in accordance with Section 827. However, if an Owner files a petition for a Rent increase, the Tenant must include the allegation of code violations in the response to the petition for this subsection to be considered.~~
  - E. An owner cannot increase the rent for a covered unit except by following the procedures set out in this chapter (including the Just Cause for Eviction Ordinance (O.M.C. Chapter 8.22, Article II) and the Ellis Act Ordinance (O.M.C. Chapter 8.22, Article III)) or where Costa-Hawkins allows an owner to set the initial rent for a new tenant without restriction.
  - F. Decreased housing services. A decrease in housing services is considered an increase in rent. A tenant may petition for an adjustment in rent based on a decrease in housing services under standards in the regulations. The tenant's petition must specify the housing services decreased. Where a rent or a rent increase has been reduced for decreased housing services, the rent or rent increase may be restored in accordance with procedures set out in the regulations when the housing services are reinstated.
  - G. Pass-through of Fee. An owner may pass-through one half of the fee to a tenant in accordance with Section 8.22.500G. The allowed fee pass-through shall not be added to the rent to calculate the CPI Rent Adjustment or any other rent adjustment and shall not be considered a rent increase.
  - H. Notice Required to Increase Rent or Change Other Terms of Tenancy.
    1. All Rent Increase Notices. As part of any notice to increase rent or change any terms of tenancy, an owner must include:
      - a. Notice of the existence of this chapter; and
      - b. The tenant's right to petition against any rent increase in excess of the CPI Rent Adjustment; unless such rent increase is pursuant to an approved Petition.

~~c. For all rent increases other than one solely based on capital improvements when an owner notices a rent increase in excess of the CPI Rent Adjustment, the notice must include a statement that the owner must provide the tenant with a summary of the justification for the amount of the rent increase in excess of the CPI Rent Adjustment if the tenant makes a written request for such summary. Requirements for rent increase notices for capital improvements are set out in subparagraph d. below.~~

~~i. If a tenant requests a summary of the amount of the rent increase in excess of the CPI Rent Adjustment, the tenant must do so within 30 days of service of the rent increase notice;~~

~~ii. The owner must respond to the request with a written summary within 15 days after service of the request by the tenant.~~

~~d. Additional Notice Required for Capital Improvement Rent Increase~~

2. Notices for Rent Increases Based on the CPI Rent Adjustment or Banking. As part of a notice to increase Rent based on the CPI Rent Adjustment or Banking, an Owner must include:

a. The amount of the CPI Rent Adjustment; and

b. The amount of any Banking increase.

~~i. In addition to any other information or notices required by this chapter or its regulations, or by state law a notice for a rent increase~~3. Notices for Rent Increases Based on Owner Petition. As part of a notice to increase rent based on a capital improvement(s) (other than after an owner's petition), an owner must include a summary of the decision in the form provided by the Rent Adjustment Program pursuant to the following:

~~(a) The type of capital improvement(s);~~

~~(b) The total cost of the capital improvement(s);~~

~~(c) The completion date of the capital improvement(s);~~

~~(d) The amount of the rent increase from the capital improvement(s);~~

~~(e) The start and end of the amortization period.~~

~~ii. Within ten working days of serving a rent increase notice on any tenant based in whole or in part on capital improvements, an owner must file the notice and all documents accompanying the notice with the Rent Adjustment Program. Failure to file the notice with this period invalidates the rent increase.~~

~~iii. The above noticing requirement for capital improvements is an alternative to an owner filing an owner's petition for a capital improvement rent increase and this noticing is not required after a capital improvement rent increase has been approved through an owner's petition.~~

~~e. If the increase exceeds the CPI Rent Adjustment, the notice must state the amount of the increase constituting the CPI Rent Adjustment. If the amount constituting the CPI Rent Adjustment is not separately stated the tenant is not~~

~~required to pay the amount of the CPI Rent Adjustment while a petition challenging the rent increase is pending.~~

a. The Rent Adjustment Program will provide a summary of any decision, including an appeal decision or final decision with the decision or final decision, which the Owner shall include in a notice of rent increase.

fb. The Rent Adjustment Program may provide optional, "safe harbor" forms for required notices, unless the ordinance or regulations require use of a specified form.

2.4. A notice to increase rent must include the information required by Subsection 8.22.070H.1. using the language and in a form prescribed by the Rent Adjustment Program.

5. A rent increase is not permitted unless the notice meets the requirements of California Civil Code Section 827.

3.6. A rent increase is not permitted unless the notice required by this section is provided to the tenant. An owner's failure to provide the notice required by this section invalidates the rent increase or change of terms of tenancy. This remedy is not the exclusive remedy for a violation of this provision. ~~If the owner fails to timely give the tenant a written summary of the basis for a rent increase in excess of the CPI Rent Adjustment, as required by Subsection 8.22.070H.1.c., the amount of the rent increase in excess of the CPI Rent Adjustment is invalid.~~

I. An owner may terminate the tenancy for nonpayment of rent (California Code of Civil Procedure § 1161(2) (unlawful detainer)) of a tenant who fails to pay the portion of a rent increase that is equal to the CPI Rent Adjustment when the tenant is required to do so by this subsection. In addition to any other defenses to the termination of tenancy the tenant may have, a tenant may defend such termination of tenancy on the basis that:

1. The owner did not comply with the notice requirements for a rent increase; or
2. The tenant's petition was based on decreased housing services; ~~or,~~
- ~~3. That the owner failed to give the tenant a written summary of the basis for a rent increase in excess of the CPI Rent Adjustment as required by Section 8.22.070 H.1.c.~~

(Ord. No. 13226, § 1(Exh. A), 5-6-2014; Ord. No. 13221, § 1(Exh. A), 4-1-2014; Ord. 12781 § 1 (part), 2007; Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### 8.22.080 - Rent increases following vacancies.

- A. Purpose of Section. This section sets forth how an owner may set the rents to a new tenant following vacancies. Rent increases following an owner's setting the initial rent are regulated by this chapter.
- B. Setting Initial Rents to Tenants Without Restriction. Costa-Hawkins provides that owners may set an initial rent to a new tenant without restriction except in certain circumstances.
- C. Costa-Hawkins Exceptions. Costa-Hawkins permits an owner to set initial rents to a new tenant without restriction except where the previous tenant vacated under the following circumstances:

1. 1946 Termination of Tenancy. ("The previous tenancy has been terminated by the owner by notice pursuant to California Civil Code § 1946 ...") (California Civil Code § 1954.53(a)(1)).
  2. Change of Terms of Tenancy or Rent Increase Not Permitted by This chapter. The previous tenancy was terminated following a notice of a rent increase not permitted by this chapter. ("The previous tenancy ... has been terminated upon a change in the terms of the tenancy pursuant to [California Civil Code § ] 827, except a change permitted by law in the amount of rent or fees.") (California Civil Code § 1954.53(a)(1)).
  3. Failure to Renew Contract with Government That Limits Rent Increases. In certain circumstances, "... an owner ... [who] terminates or fails to renew a contract or recorded agreement with a government agency that provides for a rent limitation to a qualified tenant" ... "shall not be eligible to set an initial rent for three years following the date of the termination or nonrenewal of the contract or agreement". (California Civil Code § 1954.53(a)(1)(A)).
  4. Owner Agrees to Rent Restriction in Exchange for Subsidy. The owner has agreed to a rent restriction in return for public financial support. (California Civil Code § 1954(a)(1)(B)(2)).
  5. Unabated Serious Code Violations. The dwelling unit was cited for serious health, safety, fire, or building code violations at least sixty (60) days prior to the vacancy and the violations were not abated by the time the unit was vacated. (California Civil Code § 1954.53(f)).
- D. Sublets and Assignments. Under specified conditions, Costa-Hawkins permits an owner to set initial rents without restriction when a covered unit is sublet or assigned and none of the original occupants permanently reside in the covered unit. (California Civil Code § 1954.53(d)).
- E. Rent Increases After Setting an Initial Rent Without Restriction. After the owner sets an initial rent without restriction pursuant to Costa-Hawkins, the owner may only increase rent in conformance with the requirements of Section 8.22.070, based on circumstances or cost increases that arise after the beginning of the new tenancy. The owner may not increase rents based on banking, cost increases, capital improvements, or other circumstances that arose before the new tenancy began.
- F. Restrictions Where the Owner May Not Set the Initial Rent.
1. The Just Cause for Eviction Ordinance (O.M.C. 8.22.300 (Chapter 8.22, Article II)) provides for certain restrictions on setting initial rents to new tenants and upon re-rental to former tenants.
  2. The Ellis Act Ordinance (O.M.C. 8.22.400 (Chapter 8.22, Article III)) provides for certain restrictions on setting initial rents to new tenants and upon re-rental to former tenants.
- G. Initial Rent to New Tenant Where Owner Not Entitled to Set Initial Rent. An Owner may not set an initial Rent to a new Tenant that is more than the lawful Rent that had been charged to the previous Tenant on the date that Tenant vacated, plus any allowable CPI Rent Adjustments and Banking rent increases, unless the Owner is authorized to charge a higher initial rent by a final decision in response to an Owner petition of which the new Tenant had been given proper notice.
- H. Rent After a Tenant Returns to a Unit Following Vacation for Repairs. Where a Tenant returns to a Unit after vacating for repairs pursuant to a notice from the Owner, or an order from the City or other government agency, the Owner must petition the Rent Adjustment

Program to impose any Rent increases above the lawful Rent on the date the Tenant vacated the unit for the repairs, other than for any allowable CPI Rent Adjustments and Banking rent increases.

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

8.22.090 - Petition and response filing procedures.

A. Tenant Petitions.

1. Tenant may file a petition regarding any of the following:

- a. A rent increase ~~exceeds~~was given that is not based on the CPI Rent Adjustment, ~~including, without limitation circumstances where:~~Banking; and/or a final decision in an owner petition
    - i. ~~The owner failed to timely give the tenant a written summary of the basis for a rent increase in excess of the CPI rent adjustment as required by Subsection 8.22.070H.1.c.; and~~
    - ii. The owner set an initial rent in excess of the amount permitted pursuant to Section 8.22.080 (Rent increases following vacancies);
    - iii. A rent increase notice ~~fails~~failed to comply with the requirements of Subsection 8.22.070H;
    - iv. The owner failed to give the tenant a notice in compliance with Section 8.22.060 and State law;
    - v. The owner decreased housing services to the tenant;
    - vi. The tenant alleges the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Subsection 8.22.070 D.7;
    - vii. The owner fails to reduce rent on the month following the expiration of the amortization period for capital improvements, or to pay any interest due on any rent overcharges from the failure to reduce rent for a capital improvement.
    - viii. The owner noticed a rent increase of more than the ten (10) percent annual limit or that exceeds the rent increase limit of thirty (30) percent in five years.
  - b. ~~The tenant claims relocation restitution pursuant to Subsection 8.22.140 C.1.~~
  - ei. The petition is permitted by the Just Cause for Eviction Ordinance (Measure EE) O.M.C. ~~8.22.300~~8.22.300 or its regulations.
  - ej. The petition is permitted by the Ellis Act Ordinance, O.M.C. ~~8.22.400~~8.22.400, or its regulations.
  - ek. The tenant contests an exemption from this O.M.C. 8.22, Article I or Article II.
2. For a petition contesting a rent increase, the petition must be filed ~~within the following timelines~~as follows:
- a. If the owner provided written notice of the existence and scope of this chapter as required by Section 8.22.060 at the inception of tenancy:

- i. the petition must be filed within ninety (90) days of the date the owner serves the rent increase notice if the owner provided the RAP notice with the rent increase; or
      - ii. the petition must be filed within one hundred and twenty (120) days of the date the owner serves the rent increase if the owner did not provide the RAP notice with the rent increase.
    - b. If the owner did not provide written notice of the existence and scope of this chapter as required by Section 8.22.060 at the inception of tenancy, within ninety (90) days of the date the tenant first receives written notice of the existence and scope of this chapter as required by Section 8.22.060.
  - 3. For a petition claiming decreased housing services:
    - a. If the decreased housing is the result of a noticed or discrete change in services provided to the tenant (e.g., removal of parking place, requirement that tenant pay utilities previously paid by owner) the petition must be filed within ninety (90) days of whichever of the following is later:
      - i. The date the tenant is noticed or first becomes aware of the decreased housing service; or
      - ii. The date the tenant first receives written notice of the existence and scope of this chapter as required by Section 8.22.060.
    - b. If the decreased housing is ongoing (e.g., a leaking roof), the tenant may file a petition at any point but is limited in restitution for ninety (90) days before the petition is filed and to the period of time when the owner knew or should have known about the decreased housing service.
  - 4. In order to file a petition or respond to an owner petition, a tenant must provide the following at the time of filing the petition or response:
    - a. A completed tenant petition or response on a form prescribed by the Rent Adjustment Program;
    - b. Evidence that the tenant's rent is current or that the tenant is lawfully withholding rent; and
    - c. A statement of the services that have been reduced or eliminated, if the tenant claims a decrease in housing services;
    - d. A copy of the applicable citation, if the tenant claims the rent increase need not be paid because the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Section 8.22.070D.7.
  - 5. A tenant must file a response to an owner's petition within thirty (30) days of service of the notice by the Rent Adjustment Program that an owner petition was filed.
- B. Owner Petitions and Owner Responses to Tenant Petitions.**
- 1. In order for an owner to file a response to a tenant petition or to file a petition seeking a rent increase, the owner must provide the following:
    - a. Evidence of possession of a current city business license;
    - b. Evidence of payment of the Rent Adjustment Program Service Fee;

- c. Evidence of service of written notice of the existence and scope of the Rent Adjustment Program on the tenant in each affected covered unit in the building prior to the petition being filed;
  - d. A completed response or petition on a form prescribed by the Rent Adjustment Program; and
  - e. Documentation supporting the owner's claimed justification(s) for the rent increase or supporting any claim of exemption.
2. An owner must file a response to a tenant's petition within thirty (30) days of service of the notice by the Rent Adjustment Program that a tenant petition was filed.

(Ord. No. 13226, § 1(Exh. A), 5-6-2014; Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### 8.22.100 - Mediation of rent disputes.

Voluntary mediation of all rent increase disputes will be available to all parties to a rent adjustment hearing after the filing of the petition and response.

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### 8.22.110 - Hearing procedures.

- A. Hearing Officer. A hearing shall be set before a Hearing Officer to decide the issues in the petition.
- B. Hearings.
  1. All hearings on petitions shall be open to the public and recorded;
  2. Any party to a hearing may be assisted by a representative who may be an attorney or any other person. A party must designate his or her representative in writing.
- C. Notification and Consolidation. Rent Adjustment Program staff shall notify the owner and tenant in writing of the time and place set for hearing. Representatives of parties shall also be notified of hearings, provided that the Rent Adjustment Program has been notified in writing of a party's designation of a representative at least ten days prior to the notice of the hearing being sent. Disputes involving more than one covered unit in any single building may be consolidated for hearing.
- D. Time of Hearing and Decision.
  1. The Hearing Officer shall have the goal of hearing the matter within sixty (60) days of the original petition's filing date.
  2. The Hearing Officer shall have a goal of rendering a decision within sixty (60) days after the conclusion of the hearing or the close of the record, whichever is later. The decision shall be issued in writing.
  3. The decision of the examiner shall be based entirely on evidence placed into the record.
- E. A Hearing Officer may order a rent adjustment as restitution for any overcharges or undercharges due, subject to guidelines set out in the regulations.

F. Administrative Decisions.

1. Notwithstanding the acceptance of a petition or response by the Rent Adjustment Program, if any of the following conditions exist, a hearing may not be scheduled and a Hearing Officer may issue a decision without a hearing:
  - a. The petition or response forms have not been properly completed or submitted;
  - b. The petition or response forms have not been filed in a timely manner;
  - c. The required prerequisites to filing a petition or response have not been met; or
  - d. ~~Conclusive proof~~ A certificate of exemption has been provided ~~was previously issued~~ and is not challenged by the tenant.
2. A notice regarding the parties' appeal rights will accompany any decision issued administratively. Appeals are governed by Section 8.22.120.

G. Should the petitioner fail to appear at the designated hearing, the Hearing Officer may dismiss the petition.

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

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 or Appeal Panel pursuant to California Civil Code Section 1094.5 within the time frames set forth therein.

(Ord. No. 13373, § 1, 6-7-2016; Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### 8.22.130 - Retaliatory Evictions.

An owner may not recover possession of a covered unit in retaliation against a tenant for exercising rights under this chapter. If an owner attempts to terminate the tenancy of a tenant who files a petition under this chapter from the date the petition filing to within six months after the notice of final decision, such termination of tenancy will be rebuttably presumed to be in retaliation against the tenant for the exercise rights under this chapter.

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### 8.22.140 - Voluntary mediation of evictions.

The Rent Arbitration Program will assist in making voluntary mediation of evictions in covered units available to tenants and owners prior to an unlawful detainer lawsuit being filed.

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### 8.22.150 - General Remedies.

##### A. Violations of this chapter.

1. Violations of Orders or Decisions. Failure of a party to abide by an order or decision of a Hearing Officer and/or the Board shall be deemed a violation of this chapter and shall be punishable administratively or by civil remedies unless otherwise provided in this chapter.
2. Violations of this chapter. Violations of this chapter may be enforced administratively or by civil remedies as set forth in this section or as otherwise specifically set out in this chapter.
3. In addition to the remedies provided in this chapter, a violator is liable for such costs, expenses, and disbursements paid or incurred by the city in abatement and prosecution of the violation.
4. The remedies available in this chapter are not exclusive and may be used cumulatively with any other remedies in this chapter or at law.
5. Remedies for violations of Section 8.22.080 are set out in that section.

##### B. General Administrative Remedies.

1. Administrative Citation. Anyone who violates specified provisions of this chapter may be issued an administrative citation. Administrative citations shall be issued in accordance with O.M.C Chapter 1.12 (Administrative Citations). The specified sections of this chapter that may be enforced by administrative citation shall be set out in the regulations.
2. Administrative Assessment of Civil Penalties. Anyone who violates specified provisions of this chapter may be administratively assessed a civil penalty. Civil penalties for

violations are assessed in accordance with O.M.C Chapter 1.08 (Administrative Assessment of Civil Penalties) as a major violation under that Chapter 1.08. Specified sections of this chapter that may be enforced with civil penalties shall be set out in the regulations.

3. The City Manager shall designate staff authorized to issue administrative citation and civil penalties.
  4. Each and every day or any portion of a day during which a violation of any provision of this chapter is committed, continued, or permitted is a separate violation and shall be punishable accordingly.
- C. General Civil Remedies. An aggrieved party or the City Attorney, on behalf of such party, may bring a civil action for injunctive relief or damages, or both, for any violation of the provisions of this chapter or an order or decision issued by a Hearing Officer or the Board.

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### 8.22.160 - Computation of time.

In this O.M.C. 8.22, Article I, days are computed using calendar days unless otherwise specifically stated. Date of service of any matter under this chapter is the date the matter is placed in the mail (in which case the time for responding is extended by five days) or the date of receipt for a matter personally served. Timely filing requires receipt by the Rent Arbitration Program on or before 5:00 p.m. on the last day to file the document as prescribed in this chapter or the regulations. If the last day to file is a weekend or holiday the period of time to file the document is extended to the next business day. The Rent Arbitration Program may establish rules and procedures to accept electronic filing of certain documents.

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### 8.22.170 - Severability.

This chapter shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end the provisions of this chapter are declared to be severable and are intended to have independent validity.

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### 8.22.180 - Non-waiverability.

Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this chapter is waived or modified, is against public policy and void.

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### 8.22.185 - Miscellaneous.

A. Translation Services. Translation services for documents, procedure, and hearings in languages other than English pursuant to the Equal Access to Services Ordinance (O.M.C.

Chapter 2.3) shall be made available to persons requesting such services subject to the City's ability to provide such services.

B. Periodic Reports. Staff shall report annually to Council on rent board vacancies, statistics on petition filings and outcomes, timeliness of appeal hearings and appeals, statistics on numbers and types of evictions, and statistics on numbers and types of covered units.

C. Request for Enforcement Action. The Rent Board may request enforcement actions be taken by the City Administrator or the City Attorney.

D. Studies and Investigations. The Rent Board may request Council direct the City Administrator undertake studies, surveys, or investigations related to administering and enforcement of renter protection laws.

#### 8.22.190 - Applicability—Effective date of chapter.

The ordinance codified in this chapter shall take effect as follows:

- A. The CPI Rent Adjustment. The CPI Rent Adjustment is effective for rent increases taking effect on or after July 1, 2002 in accordance with Section 8.22.070(B)(1);
- B. Unless otherwise specified in a specific provision of this Chapter. All provisions of this chapter take effect pursuant to Section 216 of the Oakland City Charter. Whenever a new section takes effect on a date after this amended chapter takes effect pursuant to Section 216 of the Oakland City Charter, the provisions of the former Chapter 8.22 will apply until that new section takes effect.

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### 8.22.200 - Reduced rents to disaster victims.

- A. Purpose. The purpose of this Section 8.22.200 is to permit owners to offer temporary below market rent to certified displaced persons from areas hit by the Hurricane Katrina disaster ("displacees") and to enable the owners to increase the rent to market rate at the end of the temporary period.

Invocation of Section and Period of Invocation. The provisions of this section will remain in effect for six months after the date of action invoking this section unless rescinded earlier by the City Council. The City Council may extend the time during which this section is in effect. After the end of the period during which the invocation of Section 8.22.200 was in effect, owners and displacees may not enter into new rental agreements pursuant to this section, but may renew or extend rental agreements previously entered into under this section during the invocation on the same terms.

- B. Rent Increases to Displacees. During the period of invocation set out in subsection 8.22.200(B), an owner may enter into a rental agreement with a displacee for an initial rent at a below market rate fixed for a period of at least six months and may increase the rent at the end of the six month period if the owner has given the displacee the notice required by subsection 8.22.200(D). The rent increase at the end of the six month period or other term is not subject to the limitations on rent increases provided in this chapter, but any subsequent rent increases are subject to the limitations on rent increases provided in this Chapter 8.22. The rent increase must not exceed the amount stated in the notice the owner gives to the

displacee prior to the commencement of the tenancy. If an owner agrees to continue to rent to a displacee at the reduced rent for a period longer than one year, the owner may increase the initial rent pursuant to O.M.C. 8.22.070 (Rent Adjustments for Occupied Rental Units). In order for a rental agreement to be eligible under this Section 8.22.200, the below market rent must be no greater than fifty percent (50%) of the HUD Fair Market Rents in effect in Oakland at the time this section is invoked based on the number of bedrooms in the rental unit. The City Administrator will make available to the public the maximum rents for eligibility under this section.

- C. Notice to Displacee. An owner who seeks to rent to a displacee, prior to entering into a rental agreement with a displacee, must give the displacee a notice provided by the Rent Adjustment Program. This notice must specify the amount of the rent the owner will charge after the end of the term of the temporary rental agreement; and at a minimum shall include information about the Rent Adjustment Ordinance and the Just Cause Ordinance.
- D. Determination of Eligibility as Displacee.
  - 1. The City Administrator will develop a list of public or private agencies, including but not limited to the Federal Emergency Management Agency, that will identify and certify that persons are displacees and can provide documentation of certification as to whether a person is a displacee.
  - 2. The City Administrator may develop a procedure for owners to receive approval in advance of entering into a rental agreement with a displacee. A rental agreement that is approved in advance would not be subject to challenge on the ground that the agreement violates this Section 8.22.200 or Chapter 8.22, absent fraud by the owner.
  - 3. An owner who enters into a rental agreement that is based on fraud or misrepresentation by the tenant is not subject to any penalty under this Chapter 8.22 unless the owner knew or should have known of the fraud or misrepresentation in advance of entering into the rental agreement with the tenant.
  - 4. Eligibility to receive benefits as a displacee of the disaster for which this Section 8.22.200 is invoked is implied as material term of the tenancy created by a rental agreement entered into under this section. The tenancy of an ineligible tenant who knowingly or fraudulently enters into a rental agreement under this section is subject to termination under subsection 8.22.360(A)(1) on the ground that he or she violated a material term of the tenancy, and the rent for the rental unit may be increased to the rate given in the notice required by subsection 8.22.200(D), unless the owner knew or should have known of the tenant's fraud or ineligibility. The owner also may recover the difference in the rent the tenant actually paid and the rent set out in the notice required by subsection 8.22.200(D) and such owner's costs and reasonable attorney's fees.
- E. Termination of Tenancy by Displacee. Any rental agreement entered into pursuant to this section must permit the displacee to terminate the rental agreement pursuant to California Civil Code § 1946.
- F. Definitions. The following definitions are applicable to this Section 8.22.200.
  - 1. For purposes of this section, "displacee" means a person or household who has been displaced as a result of the Katrina Hurricane disaster for which this section has been invoked by City Council, and who has been certified as such by FEMA or other agency designated by the City Administrator pursuant to subsection 8.22.200(E)(1) of this section.

- G. Procedures, Standards, and Regulations. The Rent Adjustment Board is authorized to develop regulations pursuant to O.M.C. 8.22.040(D)(2). The City Administrator is authorized to develop any procedures and standards to carry out this section that are not in conflict with this Section 8.22.200 or any regulations that may later be adopted.
- H. Retroactivity. This Section 8.22.200 may be applied to rental agreements that displacees and owners executed before the ordinance codified in this chapter became effective if it meets all requirements of Section 8.22.200 including this subsection H. The City Administrator is authorized to develop the procedures and requirements that rental agreements must comply with to be eligible for the protections provided by this section.

(Ord. 12707 § 1, 2005)

## NOTICE AND DIGEST

**AN ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (ARTICLE I OF O.M.C CHAPTER 8.22) TO (1) FACILITATE IMPLEMENTATION OF THE REQUIREMENTS FOR OWNER PETITIONS FOR RENT INCREASES IN EXCESS OF THE CPI RENT ADJUSTMENT AND BANKING; (2) ENHANCE THE REPORTING REQUIREMENTS DUE FROM THE OWNER TO A TENANT WHERE THE OWNER IS NOT PERMITTED TO SET THE INITIAL RENT AT THE COMMENCEMENT OF A TENANCY; AND (3) MAKE CLARIFYING AMENDMENTS FOR INTERNAL CONSISTENCY AND EFFICIENT PROGRAM OPERATION.**

The Ordinance amends the Oakland Municipal Code to continue the work started by recent amendments by making additional changes to the Rent Adjustment Ordinance (Article I of O.M.C Chapter 8.22) designed to facilitate implementation of the requirements for owner petitions for rent increases in excess of the CPI rent adjustment and banking from previous years. The amendments would change the procedures around noticing rent increases and the operative date of such increases to reflect the modified procedures previously adopted by the City Council and Oakland's voters. In addition, the ordinance would increase the reporting requirements due from the owner to a tenant where the owner is not permitted to set the initial rent at the commencement of a tenancy and make other clarifying amendments for internal consistency and efficient program operation.