CITY OF OAKLAND

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Michele Byrd

SUBJECT: **Amendments to Debt Service Regulations**

DATE: January 30, 2014

City Administrator Approval

Date 2/6/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council adopt:

1. **A Resolution Adopting Amendments to Rent Adjustment Regulations Appendix A, Section 10.4 To Require That Debt Service Rent Increases For Newly Purchased Rental Properties Not Exceed Debt Service Calculated On A Standard Financing Model, To Limit Debt Service Rent Increases To A One-Time Cap Of Seven Percent Over The Current Allowable Rent Increase, To Require Any Petition Requesting A Rent Increase Based On Debt Service Be Filed Within Three (3) Years Of The Date Of Closing On The Purchase, And To Adopt A Grandparent Clause; and**

2. **An Ordinance Amending The Rent Adjustment Ordinance (O.M.C. 8.22.090b) To Require Property Owners Seeking Rent Increases Based On Debt Service To File Owner Petitions.**

Should the City Council wish to take a different approach to the issue of rent increases related to debt service, staff alternatively recommends:

1. **A Resolution To Adopt Amendments To The Rent Adjustment Regulations Appendix A, Section 10.4 To Provide For A Grandparent Clause For Rental Properties With A Purchaser At The Enactment Of Elimination Of Debt Service As A Justification For A Rent Increase; and**

Item: 5
CED Committee
February 25, 2014

2. An Ordinance Amending The Rent Adjustment Ordinance (O.M.C. Sections 8.22.020 And 8.22.070) To Eliminate Debt Service As A Justification For A Rent Increase

EXECUTIVE SUMMARY

The current Rent Ordinance allows an owner of rental property to pass through to tenants a maximum of 95% new debt service after a new purchase that causes negative cash flow (debt service, or mortgage costs plus housing service costs, which exceed the rental income). The recommendation is to adopt regulations that would further limit rent increases based on debt service for a newly purchased property to a formula tied to a standard financing mode and limit the increase to seven percent of the rent. Alternatively, if the Council does not adopt the regulation amendments for the standard financing model, staff recommends the Council amend the Rent Adjustment Ordinance to eliminate such debt service as a basis for increasing rents and corresponding amend the Rent Adjustment Regulations. In the past the Rent Board has witnessed significant rent increases caused by debt service which have had the effect of undermining the purposes of the Rent Adjustment Ordinance in stabilizing rent increases. Of the ten major jurisdictions in California with Rent Stabilization Ordinances, four cities authorize debt service rent increases. However, Oakland is the only city where there are no limits whatsoever on rent increases based on debt service. The proposed recommendation by the Rent Board would reduce, but not eliminate the rent increases based on increased debt service that could be passed through to tenants. The alternate recommendation would eliminate debt service as the basis for a rent increase, similar to other rent control cities.

OUTCOME

Since mid-2008, the Housing Residential Rent and Relocation Board ("Board") has grappled with whether debt service should be allowed as a justification for rent increases, and if so, how much of a landlord's debt service to pass through to tenants due to the large rent increases allowed under the current Rent Adjustment Regulations. On July 23, 2009 the Board received a report on debt service that included proposed amendments to the Rent Adjustment Ordinance, and provided for either elimination of debt service or an option to place limits on debt service (***See Attachment A***). After a series of Board meetings and Board action, on July 30, 2009, the Board voted, 3-1 (2 members absent), to eliminate debt service as a justification for a rent increase. As an alternative, the Board recommended that debt service increases be allowed only by owner petition and that debt service rent increases be based on a standard rather than a non-traditional financing model.

Because the issue was not reviewed by the full Board in 2009, the issue of eliminating or amending debt service Regulations was taken back to the Board (7 members, 3 alternate members) in 2011. After a series of Board meetings and discussions, on April 12, 2012, the

Board voted 5 -1 to amend debt service Regulations by requiring standard financing arrangements, adopting a one-time cap of 7 percent over the current CPI allowable rent increase, and adopting a grandparent clause.

BACKGROUND/LEGISLATIVE HISTORY

Overview of the Rent Adjustment Program

The Rent Adjustment Program Ordinance sets the maximum annual rent increase for the approximately 60,000 covered residential units as a function of the annual CPI indices reported by the U.S. Department of Labor. Increases beyond the basic "CPI increase" must be justified under one or another provision of the Rent Adjustment Ordinance, which includes capital improvements, debt service, increased housing service costs, and banking. Implementation of the Rent Adjustment Ordinance is given to the City's Residential Rent Adjustment Program ("Program"). Disputes that arise regarding the amount of rent increases may be adjudicated administratively upon the filing of a petition with the Program. A Hearing Officer employed by the Program adjudicates petitions. Appeals from the decision of a Hearing Officer are taken the Housing Residential Rent and Relocation Board ("Board"). The Board makes the final agency decision, which may be reviewed by the Courts pursuant to C.C.P.Section 1091.6.

Debt Service Legislative History

The concept behind the debt service provision in Oakland is that every new purchaser should be permitted to charge rents adequate to cover operating expenses and mortgage payments. The counter view is that under such provisions the rent is in effect regulated by the investor by permitting rents to be based on projected market rents rather than existing rents, and recent purchasers are favored over long-term owners.

The Board approved debt service as a justification for rent increases in 1982. When detailed Regulations were issued in 1985, it included a 20-30 year amortization period, a limit on interest rates, and a loan to value ratio of 75-85% (***See Attachment B***). In 1994, the Board eliminated "standard finance arrangements" for debt service. The revision required landlords to use actual financing costs at acquisition to determine the rental rate to establish a break-even determination. The summary concluded that the actual debt service was lower than the conventional analysis due to variable interest rate financing[1].

Up through 2010, the Rent Program has seen exorbitant debt service rent increases. This may be attributed to high variable interest rates available in the market place, which allowed short term

[1] Resolution No. 71518

financing with high interest rates. As a consequence, there is a desire by the Board to either put a cap on such rent increases or eliminate debt service as a justification for rent increases.

ANALYSIS

Debt Service Cases

From fiscal year 2006-2007 through fiscal year 2011-2012, tenants or owners filed 1,985 petitions. Less than 10 percent of these cases involved debt service cases. During this time, 105 petitions were filed either by tenants claiming an unjustified rent increase on the basis of debt service increases or by owners requesting a rent increase on the basis of debt service. Of these petitions, increases were granted in 46% of the cases, with the following increases:

- 8% of the rent increases were 10% or less.
- 26% of the rent increases were between 11 to 25%.
- 12% of the rent increases were over 30%.

A debt service increase may result in an extraordinary burden and displacement of existing tenants. The actual cases reflect a median increase of 15%. Of the granted rent increases, 13 cases resulted in increases over 40% (***See Attachment C***).

No debt service cases were filed in fiscal year 2009-2010. During fiscal years 2010-2011 and 2011-2012, three debt service cases were filed.

The fact that only three debt service cases have been filed in the last three years may be attributed to the following factors:

- The government bailout of banks, which imposed very strict lending controls, eliminated creative financing vehicles, i.e., short term interest only loans and low down payments with variable financing options
- The collapse of the housing market

The data suggests that while landlords seldom used debt service as a justification for rent increases, when it was used, the increase was often exorbitant. The data also suggests that the debt service provision of the Rent Ordinance is not a crucial determinant for landlord's investing in Oakland's rental property. Although legal precedent clearly indicates that rent regulations are not constitutionally required to provide for increases in rent based on debt service in order to permit a fair return[2], the Oakland Rent Ordinance does permit debt service, with no restrictions.

[2] Fisher v. City of Berkeley, 37 Cal.3d 644,680-682 (1984, California Supreme Court).

However, new landlords, perhaps confronted by stricter lending controls adopted over the past three years, are apparently using other justifications in the Rent Ordinance to grow their investment, such as Banking, Capital Improvements, and the CPI allowable annual rent increase.

Litigation Involving Debt Service Rent Increases: Pierre v. Cox

For one group of tenants, a large debt service rent increase was the basis for litigation. In 2007, 21 tenants at 138 Monte Cresta Avenue in Oakland filed petitions with the Rent Adjustment Program to contest a rent increase of $381.00 per unit based on debt service. The Hearing Officer denied the increase based on the owner's unconventional mortgage. The Owner appealed the Hearing Officer's decision before the full Rent Board. The Board reversed the Hearing Officer's decision, based on the fact that unconventional loans were not prohibited by the Ordinance. The case was remanded back to the Hearing Officer. In the Remand Decision, the Hearing Officer determined that the owner was entitled to raise each tenant's rent by $137.55 (***See Attachment D***).

The tenants did not file a writ challenging the Rent Board's decision. Instead, in December, 2007, 13 tenants filed suit in Alameda County Superior Court alleging the owner violated the Just Cause for Eviction Ordinance by giving large rent increases, thereby constructively evicting them (***See Attachment E***).

Two and a half years later, the case went to trial and the jury found that the owner knowingly violated the Just Cause Ordinance. In a Judgment filed December 16, 2010, the tenants were awarded damages for emotional and mental anguish and move-out costs (***See Attachment F***). Cox appealed the verdict and the case eventually settled without an appellate decision.

There was no challenge to the constitutionality of debt service in Pierre v. Cox, and the ultimate impact of this decision is uncertain. However, the Judgment seems to imply that a large Debt Service rent increase circumvents the Just Cause for Eviction Ordinance. Under that scenario, there is a potential for a trend to emerge in which the Rent Board approves a debt service rent increase, and the tenants, who may be displaced by the increase, sue their landlord for violating the Just Cause for Eviction Ordinance.

Treatment of Debt Service in Other Jurisdictions

There are ten major jurisdictions in California which have apartment rent stabilization ordinances- Berkeley, Beverly Hills, East Palo Alto, Hayward, Los Angeles, Oakland, San Francisco, San Jose, Santa Monica and West Hollywood. Four cities authorize a rent increase based on debt service (Hayward, Oakland, San Francisco, and San Jose; ***see Attachment G***).

In San Jose and Hayward, only debt service for the portion of a loan up to 70% of the value of the property is considered and only 80% of those debt service costs may be passed through.

Under the Hayward Ordinance, if the property was purchased less than 5 years since the prior purchase, debt service is only considered to the extent that the increased payment under the new owner's mortgage is less than the increase in the total of the CPI since the last prior purchase.

In San Francisco, debt service is considered an operating expense. The amount of debt service passed through cannot exceed 7 percent above rents authorized by annual increase.

By contrast, Oakland is the only jurisdiction where there are no limits whatsoever on rent increases based upon debt service. Landlords who have a negative cash flow can use the actual financing cost and are allowed to pass through up to 95 percent of this amount.

POLICY ALTERNATIVES

Description of Alternative Recommendation

The alternative to amending the Regulations would be to eliminate debt service as a justification to raise rents, as recommended by the Rent Board in 2009.

The advantage to eliminating debt service includes the fact that Oakland would be aligned with most Rent Stabilization jurisdictions. In addition, under Oakland's Rent Ordinance, tenants have been displaced due to exorbitant rent increases based on debt service under the current provisions and still could be even under the standard financing model revisions.

The disadvantage to eliminating debt service is there is no immediate relief for a new purchaser who has a negative cash flow.

Additional Staff Recommendation

Staff is recommending that debt service rent increases be allowed only by owner petition. This would ensure a more expeditious process in which all tenants involved would have the opportunity to respond at the same time, thus eliminating multiple petition filings and multiple landlord responses.

In addition, Staff is recommending that any petition requesting a rent increase based on debt service be filed within three (3) years of the date of closing on the purchase. The current Regulations allow a new purchaser to claim debt service as a justification for a rent increase any time after the purchase of the property.

Summary of Options

Making a determination regarding debt service Regulations involves choosing between the following options:

1. Allow the Regulations to stand as written (*see **Attachment H***)

2. Amend the Regulations as recommended by the Rent Board on April 12, 2012 as follows:

   a. Limit Debt Service Rent increases to base them on a Standard Financing model;
   b. Adopt a one-time cap of 7% above the CPI for Debt Service rent increases;
   c. Adopt a grandparent clause to permit rental properties that are have offers to purchase the ability to use the current debt service regulations.

3. Amend the Rent Adjustment Ordinance to require owners to petition for debt service rent Increases.

4. Amend the Regulations to require any petition requesting a rent increase based on debt Service to be filed within three (3) years of the date of closing on the purchase.

5. Eliminate debt service as a jurisdiction for rent increases as recommended by the Rent Board on July 30, 2009.

Eliminating debt service would require a change in the Rent Ordinance and Regulations (grand parenting provision), while Rent Board and staff recommendations would require a change in the Rent Adjustment Regulations and Ordinance (owner petition and three year restriction on filing debt service claims).

Amending the Regulations recommended by the Board on April 12, 2013, along with Staff's recommendation, would allow a just and reasonable rate of return to Oakland landlords that does not defeat the purpose of the Rent Stabilization Ordinance, which is to prevent excessive rent increases. Adopting these amendments would also align Oakland with the few rent stabilization jurisdictions that allow debt service rent increases (***see Attachment I*** for debt service calculation comparisons).

PUBLIC INTEREST

From 2008 through 2012, there were 18 public Board meetings regarding proposed changes to debt service regulations.

On September 25, 2013, Rent Adjustment Staff held a non-Board community meeting regarding proposed ehanges to debt service and capital improvement Regulations. Approximately 30 people attended the meeting. The attendees were invited to submit written comments to be

summarized in a report to the City Council. Written comments were submitted by individual tenants and landlords as well as by representatives of tenant and landlord organizations. The chart below summarizes landlord and tenant positions on the proposed changes to debt service Regulations.

Current Ordinance/Regulations	Proposed Amendments	Tenant Position	Landlord Position
Debt Service -Rent Ordinance allows an owner of rental property to pass through to tenants a maximum of 95% new debt service after a new purchases that causes negative cash flow	Debt Service rent increases for newly purchased rental properties not exceed debt service calculated on a standard financing model, to limit debt service rent increases to a one-time cap of 7% over the current allowable increase and adopt a grandparent clause	Eliminate debt service as a justification for a rent increase	Current Regulations should stand; relief from negative cash flow should be available to landlords as long as they own the property
Landlord Requirement to file Petition for rent increases based on Debt Service – Filing a Petition for debt service rent increase is voluntary	Require property owners seeking rent increases based on debt service to file owner petitions	Landlords should be required to file a petition for debt service rent increases	Rent Adjustment Program is complaint driven; tenants file petitions to contest rent increases they object to, proposed amendment would reverse this and create unnecessary increase in Oakland's bureaucracy
Standard Financing Model- 1994 Board eliminated "standard financing arrangements," which required landlords to use actual financing costs at acquisition	Standard financing model for Debt Service increases the maximum loan payment is calculated using the principal as determined and is based on a loan fully amortized over 30 years	A landlord's purchase obligations of mortgage and interest payments should not be passed on to tenants	Rent Board Staff is not skilled to adjudicate what will be considered standard financing; some properties would not qualify for standard loans due to very low rents or the need for renovation

Current Ordinance/Regulations	Proposed Amendments	Tenant Position	Landlord Position
Amount of Debt Service Pass-Through – There are no limits on rent increases based upon debt service, landlords with negative cash flow can use the actual financing costs and can pass through up to 95% of that amount	Limit debt service rent increases to a one-time cap of 7% over the current allowable rent increase	The 7% cap remains part of the rent permanently, even when the building is paid for and if the building is sold, a new debt service increase can be imposed	A cap should not be imposed on tenants who pay lower rents
Time period for landlord to give rent increase based on Debt Service- there is no limit on when an owner can file a petition after a new purchase	Any petition requesting a rent increase based on Debt Service must be filed within three years of the date of closing on the purchase	Property can be sold to another purchaser, subjecting tenants to a debt service rent increase after the 3-year period	There are no mechanisms in place to ensure that 3-year time limit is observed; refinancing would be limited from using debt service.

Broader Tenant Advocacy for the Elimination of Debt Service

Tenants offered the following reasons for the elimination of debt service·

- Debt service results in exorbitant rent increases that could amount to "constructive eviction," in violation of the Just Cause for Eviction Ordinance
- Debt service is a permanent rent increase that has the potential to disrupt households and neighborhoods
- No other Bay Area city allows debt service as a justification for rent increase; Oakland should conform its policies to surrounding jurisdictions
- In addition to the annual allowable rent increase (CPI), there are six other justification for rent increase in the Rent Ordinance; therefore, there is no need for debt service
- Debt service violates the purpose of the Rent Ordinance, which is to stabilize the rental market in Oakland

Broader Landlord Advocacy for Not Amending the Regulations

Landlords offered the following reasons for not amending the current debt service Regulations

- The Dennis Cox case does not represent the practices of most Oakland landlords
- There have not been enough debt services cases to justify a change in the Regulations

- New Regulations would have unknown impacts on investments, housing quality and fair return for landlords
- Current Regulations have survived high and low interest rates; there is no assurance that the proposed Regulations are flexible enough for an uncertain future.
- State and Federal law require that a rent ordinance permit the owner a "fair return on investment"

COORDINATION

This report and recommendations were prepared in coordination with the City Attorney's Office, and the report has been reviewed by the Budget Office.

COST SUMMARY/IMPLICATIONS

Pursuant to O.M.C. 8.22.180, the Rent Adjustment Program is funded by Program Service Fees. There is no impact to the City of Oakland from these proposed changes to regulations.

SUSTAINABLE OPPORTUNITIES

Economic:

- Preserving the affordable housing inventory for families, seniors, and disabled people in Oakland.
- Protect tenants from exorbitant rent increases based on debt service while encouraging owners to invest in the housing stock of the City.

Environmental:

- Encourage cohesion and vested interest of owners and tenants in established neighborhoods.

Social Equity:

- Improve the landscape and climate of Oakland's neighborhoods by encouraging long term tenancies in rental housing.
- Assist low and moderate income families to save money to become homeowners.

CEQA

This report is not a project under CEQA.

For questions regarding this report, please contact Connie Taylor, Program Manager at (510) 238-6246.

Respectfully submitted,

Michele Byrd, Director
Department of Housing and
Community Development

Prepared by:
Connie Taylor, Program Manager
Rent Adjustment Program

Attachment A: Memo from Office of City Attorney regarding revisions to debt service regulations
Attachment B: 1994 Agenda Report recommending actual debt service costs be used to justify a rental increase
Attachment C: Debt Service cases from FY 2006/2007 through FY 2011/2012
Attachment D: Hearing Decision on Remand regarding 138 Monte Cresta Avenue
Attachment E: Complaint for Damages and Injunctive Relief regarding 138 Monte Cresta
Attachment F Judgment on Jury Verdict regarding 138 Monte Cresta Avenue
Attachment G Comparison of Debt Service Allowance in Other Cities With Residential Rent Ordinances
Attachment H: Current Debt Service Regulations
Attachment I: Comparison of Current Debt Service Analysis with Proposed Changes

Item: 5
CED Committee
February 25, 2014

CITY OF OAKLAND

REPORT

TO Housing Residential Rent and Relocation Board
ATTN: Jessica Leavitt, Chairperson
FROM Office of the City Attorney
DATE: July 23, 2009

RE: **A Report and Resolution Approving Revisions to Rent Ordinance and Rent Board Regulations Applying to Debt Service**

At the Rent Board meeting of November 20, 2008, the Board voted to recommend the elimination of debt service as a basis for a rent increase under the Rent Ordinance, and also to recommended an alternative modification to the debt service provisions, in case the City Council is unwilling to eliminate the debt service provisions.

The Rent Board hired economist Dr. Neil Mayer in April 2008, to analyze commercial standards for financing rental properties. His analysis has been the basis for a number of debt service decisions that the Board has issued. His report is attached hereto (Attachment A)

I have also attached a Rent Board Agenda Report Dated October 16, 2007 ("Background Information for Possible Changes to the Debt Service Regulation") (Attachment B).

At the November meeting, the Board adopted these parameters for the alternative debt service recommendation.

- Dr. Mayer's recommended standard loan calculation as modified and applied in prior cases.
- Term of loan is amortized over 30 year period
- Cap rate, interest rate and loan-to-value data to be updated from authoritative published sources
- Loan must be "commercially reasonable."
- Standard loan applies to all loans, including construction, short term loans, or other
- Debt service increase is a permanent increase once implemented, regardless of actual term of loan.
- Only the portion of the loan used for purchase money of the subject property is eligible for consideration as debt service.
- Only the portion of the loan secured by the subject property is eligible for consideration as allowed debt service.
- Cross-collateralized loans must be allocated between the secured properties in proportion to the relative market values of the properties.
- Landlords must petition for a debt service increase

ATTACHMENT A

- Landlords cannot use debt service as a justification for a rent increase without filing a petition.
- The rent increase based on debt service cannot be effective until after a decision on the petition.
- Petition for debt service increase must be filed within 3 years after purchase.
- For buyer to qualify for a debt service increase, seller must have owned property for at least 3 years prior to the sales transaction.
- For mixed use properties, any debt service increase shall be allocated in proportion to the rents or imputed market rents.

Upon direction from the Board, the City Attorney's Office has made these changes (see Attachments C and D). The Rent Board also discussed the possibility of grandparenting into the existing rules those properties that are under contract to be sold, or that have been listed for sale at the time that the changes are made to the ordinance and regulations. Because this was not approved by the Rent Board, it is not in the proposed changes to the Regulations. The Board also considered capping debt service rent increases to a specific percentage of the current rent. This is also not included in the proposed changes to the Regulations because this was not approved by the Board as a recommendation.

Finally, at its November 2008 meeting, the Board asked staff to come back with a recommendation as to a proposal for debt service treatment of buildings purchased for condominium or TIC conversion. New Regulation 10.4.3(a)(iv) includes language proposing that in such cases, the loan principal will be adjusted to reflect the value of the units as rental units, but not including ownership units. It provides that the adjustment will be based on comparing the value of the subject property as condominium or TIC units to the subject property as non-subdivided or common ownership rentals. The Board will need to decide the percentage by which the value of condominium and TIC units are presumed to be greater than the value of rental units.

I will be happy to answer any questions you have at the meeting.

Respectfully Submitted,

Alix Rosenthal
Deputy City Attorney

Attachment A – Report of Dr. Neil Mayer Regarding Financing of Rental Properties
Attachment B – Agenda Report Dated October 16, 2007 ("Background Information for Possible Changes to the Debt Service Regulation")
Attachment C – Proposed Amendments to Oakland Municipal Code Section 8.22.070 ("Rent Adjustments for Occupied Covered Units")
Attachment D – Proposed Amendments to Rent Adjustment Board Regulations (Appendix A)
PROPOSED RESOLUTION NO. R09-002

C I T Y O F O A K L A N D

Agenda Report

TO: Office of City Manager
ATTN: Craig G. Kocian
FROM: Office of Housing and Neighborhood Development
DATE: November 29, 1994

RE: RESOLUTION AMENDING RESOLUTION NO. 63429 C.M.S., WHICH APPROVED THE RESIDENTIAL RENT ARBITRATION BOARD RULES AND PROCEDURES, AND APPROVING AMENDMENTS TO CLARIFY DEFINITIONS, TO AMEND THE APPEAL HEARING PROCESS, TO CLARIFY CALCULATION OF CAPITAL IMPROVEMENT COSTS, TO CLARIFY NOTICE PROCEDURES TO TENANTS, AND OTHER TECHNICAL CHANGES

After the Economic Development, Community Development and Housing Committee meeting of October 2, 1994, the Residential Rent Arbitration Board conducted a regularly scheduled meeting on November 10, 1994 to seek additional input from interested parties regarding the changes proposed to the Ordinance and the Rules and Procedures. The Board held a three hour session that provided for presentation of concerns by citizens and which eventually became a conversation between members of the Board and interested landlords and tenants.

Based upon the recommendations by the public, the Board voted to include two additional amendments proposed by landlord representatives. These are as follows:

Rent Increase Guidelines

Capital Improvements
The existing provisions allow a landlord credit for capital improvements that have been completed and paid for within the 12 month period prior to the date of the proposed rent increase. The recommendation includes a provision to expand the 12 month period to a 24 month period to complete and pay for capital improvements prior to the date of the proposed rent increase.

Technical Changes
Include specific references to the date of the Comprehensive Housing Affordability Strategy (CHAS) report used as reference for the overall 3.2% vacancy rate in housing. Therefore December 22, 1993 will be included in the third WHEREAS in the amended Ordinance No. 9980 C.M.S.

An additional reference to the Housing Vacancy Survey of the Federal Home Loan Bank (FHLB) system dated August 22, 1994 reflecting a housing vacancy rate of 3.4% will be added.

ATTACHMENT B

In addition to the two new proposed recommendations, the Residential Rent Arbitration Board (RRAB) recommends that prior proposed changes to Ordinance No. 9980 C.M.S. and the Rules and Procedures be adopted. A proposed Ordinance amending Ordinance No. 9980 and proposed changes to the Rules and Procedures that include these amendments have been reviewed by the City Attorney and are attached.

The changes reflected in these documents include: 1) a reduction of the annual rate of increase from 6.0% to the CPI for the previous twelve month period ending June 30th of the current year which is 3%; 2) a more detailed procedure for notice to tenants; 3) changes in methods used to justify increases under capital improvements, debt service and rental history/banking; and 4) a variety of technical changes to make the process more efficient and fair.

BACKGROUND

The RRAB has considered these proposed changes for several months as a part of its ongoing duty to hear appeals from Hearing Officer decisions and recommend policy changes to the City Council. The Board also develops Rules and Procedures which are submitted to the Council for approval. The last amendment to the Ordinance and Rules and Procedures was adopted in 1984.

Below is a summary of the major proposed recommendations that the Residential Rent Arbitration Board is requesting that the Council adopt.

The substantive changes proposed to the Ordinance are:

Rent Increase Guidelines

The annual rate of rent increase shall be reduced from 6.0% to the CPI for the previous twelve month period ending June 30th of the current year which would provide for a rate of 3.0%.

Banking

Presently, the Ordinance allows landlords to carry forward rent increases without limit. "Banking" refers to rental increases that a landlord has chosen not to take yearly and elects to accumulate and take at one time. The proposed provision limits the ability of the landlord to carry forward rent increases to an amount equal to three times the current allowable annual rental rate in one year. In no event may the landlord carry forward such rent increases for more than ten years.

Notice

The existing rule stipulates that the landlord is required to notify tenants in writing of the existence of the Residential Rent Arbitration Ordinance. Provisions are being added to

specify the wording as well as the form of the notice to assure the correct information is provided by the landlords. In addition, a penalty for failure to comply is added.

The substantive changes proposed to the Rules and Procedures are:

Notice
This section presently provides the wording to be incorporated in the required notice to notify a tenant of the existence of the Residential Rent Arbitration Ordinance. This notice is proposed to be provided in the language of Oakland's five largest ethnic communities.

A section has been added to provide penalties for a landlord who is not in compliance with the Ordinance and the Rules and Procedures with regard to providing notice of the existence of the Residential Rent Arbitration Ordinance to tenants. The penalty applies when a landlord has not given proper notice as prescribed in the Rules and Procedures. The effective date of any rental increase otherwise permitted by the Ordinance will then be forfeited for six months.

Rent Increase Guidelines
The Residential Rent Arbitration Board Ordinance provides that the Rules and Procedures will allow landlords to justify increases above the yearly limit on several grounds. The Board has made recommendations to amend some of those provisions based on the actions of the Hearing Officers and the Board since 1986.

Capital Improvements
The existing provision allows a landlord to justify a rental increase above the allowable rental rate based on increased capital improvement costs. These costs may be amortized over a period of five years. Once these costs have been used to justify a rent increase higher than the allowable rental rate, this amount is continued indefinitely. The recommendation includes a provision that after the capital improvement amortization of five years, the dollar amount of the rent increase justified by capital improvement costs will be reduced from the allowable rental rate.

The existing provisions allows a landlord credit for capital improvements that have been completed and paid for within the 12 month period prior to the date of the proposed rent increase. The recommendation includes a provision to expand the 12 month period to a 24 month period to complete and pay for capital improvements prior to the date of the proposed rent increase. This recom-

mendation was a request by a landlord representing a landlord organization.

Debt Service
The existing rule requires a conventional financing analysis based on assumptions regarding market rate financing or costs based on the actual financing. The Board is recommending the actual debt service (mortgage only) be used to justify a rental increase under this provision.

Rental History/Banking
The existing rule allows a landlord to choose to carry forward allowable rent increases not taken yearly, to take the combined allowable rent increases all at once.

For example the allowable increases since the inception of the Ordinance (May 6, 1980) are as follows:

1) 10.0% from May 6, 1980 through October 31, 1983;
2) 8.0% from November 1, 1983 through September 30, 1986; and
3) 6.0% from October 1, 1986 through the present.

Currently a landlord who has a tenant residing in his/her unit since May 1980 and has chosen not to take his/her increases since 1980, the landlord may raise rent by a total of 172.0% in a one year period.

The proposed provision limits the rental banking rent increases to three times the current allowable annual rate in any one year period. In no event may a landlord carry such increases forward for more than ten years. This will substantially reduce the maximum increase allowed in 1994 from 172.0% to 18.0% (3 x 6.0%) and 86.0% (10 years allowable) over several years.

Included is a staff summary detailing the Board's recommendations, an RRAB annual statistical summary for the year 1993 and 1994, Consumer Price Indexes, and letter from the RRAB.

Case No.	Address	Petitions filed	Rents and Proposed Increase	% Requested	Result/% Increase
L06-0001	2717 23rd Ave.	1	$1,328 $850-$2,178 $1,125-$2,453	 156% 118%	Dismissed
L06-0002	633 Valle Vista Ave.	1	$1,079 $1,265-$1,860	85.0%	Denied
T06-0159	1836 Chestnut St.	1	$550 $650-$1,200	81.5%	Denied
T06-0163	1916 Park Blvd.	1	$500 $1,100-$1,600	45.0%	Denied
T06-0166	2225 38th Ave.	1	$275 $600 to $875	46.0%	Denied
T06-0168	1005 Aileen St	1	$100 $575-$675	17.0%	Denied
T06-0200	1089 Stanford Ave.	1	$620 $550-$1,170	223 0%	Settled
T06-0220 et al.	2429 Humboldt Ave	3	$348 $662-$1,010 $364 $668-$1,032 $300 $900-$1,200	 52 5% 54%; 33.0%	1 Settled;, 2 Granted 1 at 9% 1 at 17.4%
T06-0225	2028 Damuth St	1	$364 $936-$1,300	39.0%	Settled
T06-0232 et al.	2247 Ivy Dr.	2	$400 $850-$1,250 $265 $735-$1,000	 47 0% 36.0%	Granted $400-47% $265-36%
T06-0242	2425 Humboldt Ave.	1	$359 $627-$986	57.0%	Granted $63 -10%

ATTACHMENT C

Case No.	Address	Petitions filed	Rents and Proposed Increase	% Requested	Result/% Increase
T06-0260	738 E 23rd St.	1	$100 $600-$700	17.0%	Denied
T06-0277	348 Haddon Rd.	1	$1,416 $451 to $1,867	314 0%	$523 116% (case settled)
T06-0303 et al.	1420 Jackson St.	4	$567 $705-$1,272 $820-1,479 $640-$1,154 $580-$1,046	80.0%	Granted $56 22 7-10%
T06-0305	3006 E. 17th St.	1	$150 $600-$750	25.0%	Denied
T06-0343	4160 Webster St.	1	$184 $1,520-$1,704	12.1%	Settled
T06-0347	2917 Morgan Ave	1	$1,000 $750-$1,750	133.0%	Denied
T06-0350 et al.	352 Palm Ave.	2	$285 $765-$1,050 $823-$1,050	0.363	Granted $246 30-32%
L07-0006-10	4141 Piedmont Ave.	6	$653 Rents of $750-$1125	58%-87%	5 cases settled, so L petition dismissed-last tenant filed T07-0337-was dismissed
T07-0131 et al.	1017 E. 22nd St.	3	$150 $507-$657	14%-32%	Denied
T07-0148	1520 Leimert Blvd.	1	$800 $2,100-$2,900	38.0%	Petition withdrawn
T07-0149	385 Fairmount Ave	1	$189 $736-$925	25.6%	Denied

Case No.	Address	Petitions filed	Rents and Proposed Increase	% Requested	Result/% Increase
T07-0153	546 30th St.	1	$388 $666.75 to $1,055	58 0%	Granted $388.25 58.00%
T07-0162 et al.	138 Monte Cresta Avenue**	20 9	$381 $663-1125	34%-57%	Granted 9 withdrawn $137 55 12·2% to 21%
T07-0164	4408 View St	2	$250 $1,350-$1,600	18 5%	Denied
T07-0191	627 Alma Ave.	4	$275 $1,125-$1,400	24.0%	Petition withdrawn
T07-0201	4833 Shafter Ave.	1	$900 $1,100-$2,000	82.0%	Denied
T07-0203	709 40th St.	1	$225 $525-$750	43.0%	Denied
T07-0210	5420 Claremont	1	$400 $1,007-$1,407	40.0%	Granted $400
T07-0281	1052 Walker	1	$318 $1,151-$1,469	27 6%	Granted $154.86; 13.4%
T07-0311	670 41st St	1	$625 $1,025-$1,650	61.0%	Granted $344.03; 33.5%
T07-0317	5392 Locksley Ave.	1	$450 $1,300-$1,750	34 6%	Granted $304 83; 23%
T07-0322	5392 Locksley Ave.	1	$395 $930-$1,325	42 4%	Denied
T07-0327	414 Lester Ave.	1	$233 $945-$1178	25 0%	Granted $231.69; 25%

Case No.	Address	Petitions filed	Rents and Proposed Increase	% Requested	Result/% Increase
T07-0337	4141 Piedmont Avenue	1	$551 $750-$1,301	73 0%	Granted 173.1, 23%
T07-0352	5759 Clement	1	$288 $872-$1,160	33 0%	Granted $288.02; 33%
T08-0004 et al.	1340 E. 28th St.	3	$635 $995-$1,630	64.0%	Dismissed
T08-0027 et al.	1911 5th Ave.	3	$465 $775-$1,200 $405 $795-$1,200 $370 $830-$1,200	 60 0% 51 0% 45.0%	Denied
T08-0079	1340 E. 28th St.	1	$635 $1,045-$1,680	61.0%	Denied (no required RAP notice)
T08-0104	672 41st St.	1	$692 $803-$1,495	86.0%	Denied (L-no show)
T08-0240	3001 E. 17th St.	1	$204.60 $600-$804.60	34 0%	Granted 98.08, 16.34%
T08-0297 et al	521 Prince Street	3	$440 $981-$1,421 $677-$1,117 $1,300-$1,740	 34.0% 44.8% 65.0%	Denied (parties settled after Board Appeal Decision)
T09-0209	749 55th Street	1	$25.00 $975-$1,000	2 5%	Petition dismissed for untimeliness

Case No.	Address	Petitions filed	Rents and Proposed Increase	% Requested	Result/% Increase
L10-0012	321 63rd Street	4	$141.21		Granted
			$791-$932.21	17.9%	
			$1275-$1,416.21	11.1%	
			$2,000-$2,141.21	7.1%	
			$1,825-$1,966.21	7.7%	
L10-0013	323 63rd Street	4	$559.73	65.0%	Granted
			$739-$1,298 73	75.7%	
			$860-$1,419.73	65.1%	
			$723-$1,282.73	77 4%	
			$1,600-$2,159.73	35.0%	
T10-0002	709 40th Street	1		19 0%	Denied
T10-0003	9874 Bancroft Ave	1		8 5%	Denied
TOTAL		**105**			

20 cases dismissed or withdrawn	19.0%
13 cases settled	12.4%
24 cases denied	22 9%
48 cases granted	45 7%
	100.0%

** T07-0162 was originally 29 cases, 9 withdrew

CITY OF OAKLAND

250 Frank H. Ogawa Plaza P.O. BOX 70243 OAKLAND, CA 94612-0234
COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY
RENT ADJUSTMENT PROGRAM

TEL (510) 238-3721
FAX (510) 238-3691
TDD (510) 238-3254

HEARING DECISION ON REMAND

CASE NUMBER:

T07-0162, Hayes v. Cox
T07-0168, Dyer v. Cox
T07-0176, Kolakoswki v. Cox
T07-0169, Oberg et al. v. Cox
T07-0170, Pierre v. Cox
T07-0171, Jain v. Cox
T07-0172, Fearman v. Cox
T07-0173, Agamid v. Cox
T07-0174, Antoni v. Cox
T07-0175, Roberson v. Cox
T07-0177, Bastani v. Cox
T07-0178, Krueger v. Cox
T07-0179, Golriz v. Cox
T07-0180, Lal v. Cox
T07-0182, Watson v. Cox
T07-0183, Drolet v. Cox
T07-0184, Sen v. Cox
T07-0185, Bern v. Cox
T07-0189, Greenman v. Cox
T07-0192, Singh v Cox

HEARING DECISION: July 21, 2008

PROPERTY ADDRESS: 138 Monte Cresta Avenue, Oakland, CA

ATTACHMENT D

APPEARANCES	Bhima Sen, #307	(Tenant)
	Carolyn Hayes, #405	(Tenant)
	Martin Greenman, #103	(Tenant and Tenant Representative)
	Kalpana Jain, #203	(Tenant)
	Ron and Judith Bern , #138	(Tenants)
	Renee Dyer, #409	(Tenant)
	Mary Krueger, #408	(Tenant)
	Dick Singh, #209	(Tenant)
	Robert Fearman, #204	(Tenant
	Gregory McConnell, Esq.	(Owner representative)
	James Parinello, Esq.	(Owner representative)
	Dennis Cox	(Owner)

SUMMARY OF DECISION

The tenants' petitions are partially granted. The rent for the tenants' units is set forth in the Order below.

INTRODUCTION

This matter involves petitions filed by twenty tenants who contest the current rent increase on various grounds, including the allegation that the proposed rent increase was in excess of the C.P.I. Adjustment and was unjustified. Several tenants also claimed decreased housing services. The hearing was conducted on September 19, 2007, and the Hearing Officer issued a Decision on November 16, 2007 and a corrected Decision on December 13, 2007. The owner appealed and the Board conducted an appeal hearing on February 21, 2008.

Appeal- The Board reversed the Hearing Decision and remanded the case for further proceedings with the following instructions: (1) In the absence of a supplemental tax bill, the supplemental tax calculator on the Alameda County Tax Assessor's web site is to be used to calculate property taxes, (2) The Hearing Officer shall consider evidence of a standard financing arrangement for similar property, including, but not limited to, the report of the expert contracted by the Rent Adjustment Program to produce a report explaining a standard financing arrangement; (3) The Hearing Officer shall reduce the amount of debt service, if any, in proportion to the security for the purchase money loan provided by the Mandana property, if any. The hearing on remand was conducted on June 19, 2008, June 30, 2008, and July 7, 2008.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Computation of Debt Service

Banking

The parties' testimony and documentation indicate that before consideration of banked increases the building income is $286,644 (First Hearing, Rent roll, Ex. 35; Laundry income, Ex. 32). Banked increases must be included when determining the annual income for the purpose of debt service calculation. If this amount were not included in the calculation, the owner could obtain a double recovery. The Hearing Officer reviewed the Banking calculations and based on the available data submitted by the parties the banked rents for the tenants' units total $1,272 which is shown in the attached tables[1].

TENANT	Case No	Unit No.	Move in Date & Original Monthly Rent	MONTHLY RENT	MONTHLY BANKING	MONTHLY RENT AND BANKING	ANNUAL BANKING TOTAL	ANNUAL TOTAL
Hayes	T07-0162	405	1975 - $100	$663 00	$0 00		$0.00	$7,956.00
Dyer	T07-0168	409	5/80 - $180	$792 00	$0 00		$0 00	$9,504 00
Kolakoswki	T07-0176	304	1992 - $615	$830 00	$0 00		$0 00	$9,960 00
Oberg	T07-0169	102	1978 - $260	$600.00	$0 00		$0.00	$7,200.00
Pierre	T07-0170	201	1996 - $530	$699 00	$0 23	$699.23	$2 76	$8,390.76
Jain	T07-0170	203	1996 - $530	$686 00	$0.00		$0.00	$8,232 00
Fearman	T07-0172	204	1987 - $550	$812 00	$0.00		$0.00	$9,744.00
Aghamir*	T07-0173	207	2000 - $500	$587.00	$0.00		$0.00	$7,044.00
Antoni	T07-0174	208	1994 - $600	$821 00	$0.00		$0.00	$9,852 00
Roberson*	T07-0175	303	3/06 - $915	$915 00	$30 20	$945.20	$362 40	$11,342 40
Bastani	T07-0177	406	1993 - $520	$783 00	$0.00		$0.00	$9,396.00
Krueger	T07-0178	408	1983 - $275	$699 00	$13 86	$712.86	$166.32	$8,554 32
Golriz*	T07-0179	410	2001 - $720	$835 00	$0.00		$0 00	$10,020 00
Lai*	T07-0180	101	2004 - $825	$868.00	$6.50	$874.50	$78.00	$10,494.00
Watson	T07-0182	302	1998 - $575	$833.00	$0.00		$0.00	$9,996 00
Drolet	T07-0183	306	1/1/07 - $1,125	$1,125 00	$0 00	$1,125 00	$0 00	$13,500.00
Sen	T07-0184	307	1987 - $175	$326 00	$0.00		$0 00	$3,912 00
Bern	T07-0185	138	1970 - $105	$623 00	$0.00		$0 00	$7,476.00
Greenman*	T07-0189	103	7/06 - $925	$925 00	$30 53	$955.53	$366 36	$11,466 36
Singh	T07-0192	209	1983 - $198	$653 00	$0 00		$0 00	$7,836.00
Dilge		104		$894 00	$0 00		$0 00	$10,728 00
England		202		$813 00	$24 67	$837 67	$296 04	$10,052 04
Wright*		205		$950 00	$0 00		$0 00	$11,400 00
Diamond		206		$1,125 00	$0 00		$0 00	$13,500 00
Arch		210		$895 00	$0 00		$0 00	$10,740 00
Simmons		301		$975 00	$0 00		$0 00	$11,700 00
Hua		305		$875 00	$0 00		$0 00	$10,500 00
De La Cruz		309		$808 00	$0 00		$0 00	$9,696 00
Pothanveci		310		$950 00	$0 00		$0 00	$11,400 00
Vacant		407		$550 00	$0 00	$0 00	$0 00	$6,600 00
TOTAL				$23,910.00	$105.99	$6,149.99	$1,271.88	$288,191.88

* = Actual banking information available

[1] Banking figures were based on actual rent history available back to 1997 which was provided only by tenants Antoni and Krueger. This data was used to extrapolate pro forma banking figures for the other tenants, Banking figures were also extrapolated for 10 tenants who did not file petitions based on their current rents

Property Tax Calculation

The property tax amount used in the debt service calculation, pursuant to the Appeal Decision, is the supplemental tax calculator on the Alameda County Tax Assessor's web site. The supplemental property tax is $46,811.48. The original property tax bill is $12,144.58. The total property tax amount so computed is $58,596.

At the time the petitions were filed the building income was $289,423 per year (Rent Roll, Ex. 35; Laundry Income-Ex. 32; Add Banking). The owner purchased the subject property for $3,900,000. On May 7, 2007, he executed a promissory note in the amount of $2,600,000 at 10.5% interest only for twenty-four months with a balloon payment in favor of Cushman Rexrode Capital Corporation (Promissory Note Secured by Deed of Trust, Ex. pp.152-157). The terms of the loan are stated below as follows:

Loan balance on 6/12/07	$2,925,000
Rate	10.5%
Maturity Date	6/1/09
Monthly Interest only payment	$25,593.75

The note is secured by a Deed of Trust, Assignment of Rents and Fixture Filing on the subject property (Ex. pp. 206-215). There is a an additional Deed of Trust, Assignment of Rents and Fixture Filing on a second piece of property located at 470 Mandana Boulevard ("Mandana property"; Ex. p.216-226). Each Deed of Trust states that the two deeds of trust provide the security for one $2,925,000 promissory note.

This transaction raises the issue of what constitutes a standard financing arrangement and the extent to which the debt was secured by the second property located on Mandana Boulevard ("Mandana Property"). Neil Mayer, Ph. D., was retained by the Board to provide a report regarding standard financing arrangements. He issued two reports, one pertaining to Case Number L07-0006 et al, 4141 Piedmont Investors LLC v. Tenants, and a general report on April 2, 2008, and factors which he considered include the following.

Expenses The operating expenses, except the property taxes, used in the calculations below are taken from the First Corrected Hearing Decision and were not in dispute at the appeal hearing.

Loan to Value Ratio: The lender used a 75% loan to value ratio and Dr. Mayer stated that a range of 75 to 80% loan to value was typical in May 2007, the time of the subject

acquisition. (Mayer report, Property at 4141 Piedmont, Ex. 111). Therefore, 75% is used in this calculation.

Debt Service Coverage Ratio: Dr. Mayer also discussed the debt service coverage ratio, which is the ratio of net operating income to the debt service payment. His report states that in recent years the DSCR is 1.2 or in some cases higher [2]. This ratio is not utilized in determining the debt service calculation because it does not provide a fair valuation of the property and does not conform to present market conditions. It is not the intent of the Rent Adjustment Program to discourage investment, but to achieve a balance between encouraging investment in residential housing while also protecting the welfare of residential tenants.

Interest Rates: Dr. Mayer applied an interest rate based on a margin above published interest rate statistical series for widely traded instruments. Dr. Mayer used the LIBOR swap rate and the 10 year treasury bond rate. The swap rate and treasury bond rate for May 7, 2007, when the property was purchased, may be obtained from the Federal Reserve H.15 reports. 200 basis points are added to the 10 year LIBOR swap rate which was 5.17 %, resulting in a higher end interest rate of 7.17%. It would also be appropriate to use a midpoint between the LIBOR swap rate and the 10 year treasury bond rate of 4.64%, which would result in a slightly lower rate of 6.9%. Based on the fact that lenders were charging the higher interest rates based on the LIBOR swap rate in May 2007, and based on Dr. Mayer's report that lenders were able to charge 200 basis points in 2007, the higher interest rate of 7.17% is used in calculating the debt service (Dr. Mayer's report, 3/11/08-Ex. 111).

Amortization: Dr. Mayer stated in his report that the typical apartment building loan is fully amortized, principal and interest, over 30 years, and this amortization is used.

Valuation of Property: In an arms length transaction, the value of a property can be estimated at its acquisition price. Dr. Mayer stated: "The value of a property can be estimated at the acquisition price, assuming the transaction was an arm's length transaction under normal market conditions. Because it is not always possible to determine whether a transaction represents a true arms length market purchase it is worth while to check the price against an alternative valuation"[3]. The check on the sales price as the property value is to use the capitalization of income approach. This approach divides net operating income (expected rents minus operating expenses) by the capitalization rate, which is the ratio observed in other apartment transactions in the same market area between net operating income and purchase price. Using this approach, and a capitalization rate of .0535, which is midpoint between .051 and .056 in 2007 for the Oakland area, the property value is calculated at $3,011,402.[4]

At the Hearing Michael Henshaw, a sales agent with Marcus and Millichap, testified that he was the broker for the subject property and prepared an opinion of value for the

[2] Mayer Report, April 2, 2008, p 4, Ex 110
[3] Mayer Report, April 2, 2008, p 2, Ex 108
[4] $161,110/ 0535 = $3,011,402

owner. Mr. Henshaw stated that the subject property is a late 1920s building with original moldings in a desirable location and borders Piedmont. Based on comparables, the rents, rent potential, and location, he concluded that the property was valued at $3,700,000 to $3,800,000. Mr. Henshaw testified that the owner was adamant that he wanted $3,900,000 for the subject property. Mr. Henshaw credibly testified that he received six offers in writing. On February 8, 2007, he received an offer of $3,700,000 from Mr. Cox, which was rejected (Sales and Purchase Agreement signed by Mr. Cox-Ex. 52-60). Mr. Henshaw credibly testified that there was an offer by another buyer, Paul Loh, at $3,800,000, which was also rejected by the owner and Mr. Cox made an additional offer of $3,900,000, which was accepted by the owner. This evidence was uncontroverted. Based on the testimony and evidence provided during the Hearing and under the particular circumstances of this case, the Hearing Officer determines that the transaction was an arms length transaction and finds that the sales price is a fair valuation for the property despite the discrepancy with the capitalized value of the property.

Under either option the loan is reduced by 5%, the amount secured by the Mandana property. The Board directed the Hearing Officer to reduce the amount of debt service in proportion to the security for the purchase money loan provided by the Mandana property. Stephen Rexrode, co-owner of Cushman-Rexrode, the lender, credibly testified that he was contacted by Mr. Lipsett, who told him he had a client who needed private financing. Mr. Rexrode credibly testified that he hired an appraiser to establish the value of the subject property, which was appraised at $3,900,000 and he wanted to assure that the value of the subject property was not inflated. He prepared a loan placement agreement in the amount of $2,730,000 at 70% loan to value. Mr. Rexrode credibly testified that his company was willing to loan an additional $390,000 if the owner provided additional collateral. The owner executed the loan placement agreement on March 7, 2007 (Loan Placement Agreement-Ex. 63-68). Ultimately, the loan was 75% of the value, or an additional 5% in the amount $195,000, totaling $2,925,000. Therefore, the Mandana property secured 5% of the loan and the debt service is reduced by $195,000. Following is a comparison of the debt service based on the two valuations.

	$3,011,402 valuation capitalization rate	$3,900,000 actual loan
75% loan	$2,258,552	$2,925,000
reduced by Mandana property at 5%	$2,145,624	$2,730,000
amortized over 30 years Interest Rate of 7.17%	$14,524	$18,476

The following table sets forth the total of the allowed debt service and housing service costs which is greater than the building income. Therefore, a debt service increase in the amount of $137.55 per month per unit is allowed. The debt service calculation follows.

1	**DEBT SERVICE**	Effective Date of Increase	1-Aug-2007
2	**INCREASE**	Date Prior Owner Purchased Property	
		INCOME	**2007**
3	Rents		$ 286,920.00
4	Laundry		$ 1,231.00
6	Other, specify:	Banking	$ 1,272.00
7	Other, specify:		
10	(sum of lines 3-8)	Gross Operating Income	$ 289,423.00
		EXPENSES	
		Notes	**2007**
11	Bus license		$ 4,023.00
12	Electricity/Gas		$ 19,660.00
16	Insurance		$ 9,342.00
20	Refuse removal		$ 7,225.20
22	Property Taxes		$ 58,956.00
23	Water & Sewer		$ 5,953.00
	PLUS	**Expenses subject to 8% floor**	
26	Maintenance & Repairs		
27	Management, Accounting & Legal		
28	Subtotal	$ -	
29	**OR** 8% of gross operating income:	$ 23,153.84	$ 23,153.84
30		Annual operating expenses (total of lines 11 through 29)	$ 128,313.04
31		Annual net operating income(line 10 - line 30)	$ 161,109.96
32		Monthly net operating income (line 31 – 12)	$ 13,425.83
	Loans	Monthly principal and interest	
34	Cushman-Rexrode	$18,476.00	
37	Total debt service	$18,476.00	
	x Percent of Debt Service allowed	95%	
38	Allowed total debt service	$17,552.20	
39	- Monthly net operating income	$13,425.83	
40	= Increase allocated to all units	$4,126.37	
41	÷ Number of units	30	
42	= Increase per unit	$137.55	

Conclusion

Based on the foregoing calculations, the owner may increase each tenant's rent on the basis of debt service in the amount of $137.55 monthly

ORDER

1. The tenant petitions are partially granted.

2. A rent increase on the basis of debt service is granted in the amount of $137.55, effective August 1, 2007. The parties shall adjust any rent underpayments among themselves. The monthly rent for each subject unit, including the debt service increase, is stated as follows:

Case No.	Unit No.	Tenant	Monthly Rent
T07-0162	405	Hayes	$ 800.55
T07-0168	409	Dyer	$ 929.55
T07-0176	304	Kolakowski	$ 967.55
T07-0169	102	Oberg	$ 737.55
T07-0170	201	Pierre	$ 836.55
T07-0171	203	Jain	$ 823.55
T07-0172	204	Fearman	$ 949.55
T07-0173	207	Aghmir	$ 724.55
T07-0174	208	Antoni	$ 958.55
T07-0175	303	Roberson	$1,052.55
T07-0177	406	Bastani	$920.55
T07-0178	408	Krueger	$836.55
T07-0179	410	Golriz	$972.55
T07-0180	101	Lal	$1,005.55
T07-0182	302	Watson	$970.55
T07-0183	306	Drolet	$1,262.55
T07-0184	307	Sen	$463.55
T07-0185	138	Bern	$760.55
T07-0189	103	Greenman	$1,062.55
T07-0192	209	Singh	$ 790.55

Right to Appeal: This Decision is the Final Decision of the Rent Adjustment Program Staff. Either party may appeal this Decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received with twenty (20) days after service of this Decision. The date of service is shown on the attached Proof of Service. If the last date to file is a weekend or holiday, the appeal may be filed on the next business day.

Date: July 21, 2008

BARBARA KONG-BROWN, ESQ.
Hearing Officer

Kenneth M. Greenstein, SBN 201224
Steven J. McDonald, SBN 178655
GREENSTEIN & McDONALD
300 Montgomery Street, Suite 621
San Francisco, CA 94104
Telephone: 415-773-1240
Facsimile: 415-773-1244

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA, UNLIMITED JURISDICTION

AMY PIERRE, RACHEL DROLET, RENEE DYER, KALPANA JAIN, MARILYN KOLAKOWSKI, MARY KRUEGER, LAURA O'ROURKE NEETA PUTHANVEETIL, MARISSA QUARANTA, RHONDA ROBERSON, WILLIAM WATSON, and ROBERT FEARMAN,

Plaintiffs,

vs.

DENNIS COX, and DOES 1-10,

Defendants.

Civil Case No RG07362393

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Demand Exceeds $25,000

PLAINTIFFS, and each of them, allege the following:

1. Plaintiffs AMY PIERRE, RACHEL DROLET, RENEE DYER, KALPANA JAIN, MARILYN KOLAKOWSKI, MARY KRUEGER, LAURA O'ROURKE, NEETA PUTHANVEETIL, MARISSA QUARANTA, RHONDA ROBERSON, WILLIAM WATSON, and ROBERT FEARMAN at all times mentioned in this complaint have been competent adults residing at 138 Monte Cresta Avenue, Oakland, California, (hereinafter shall be referred to as the "subject building"). All Plaintiffs were tenants who resided in individual units (to be referred to as "subject units" in the subject building) at the subject building.

2. Defendant DENNIS COX is a competent adult who is doing business in Oakland, Alameda County, California and at all times relevant herein was the landlord and owner of the subject building.

ATTACHMENT E

3. This action is filed in this county because the acts occurred here, Plaintiffs were injured here and Defendant does business in this county.

4. Plaintiffs do not know the true names and capacities of Defendants sued herein as DOES 1-10, and therefore sues these Defendants by such fictitious name. Plaintiffs will amend this complaint to the true names and capacities of said Defendants when they have been ascertained.

5. At all times relevant herein, Defendants, and each of them, were the servant, employee, partner, franchisee, joint venturor, sublessor, sublesee, operator, manager, and/or agent of the other and committed the acts and omissions herein alleged within the course and scope of said relationship.

6. Plaintiffs are informed and believe and thereon allege that at all relevant times, Defendant was Plaintiffs' landlords, and Plaintiffs were tenants of Defendant, as "landlord" and "tenant" are defined under California common law, under §1161 et seq. of the California Code of Civil Procedure, under §1980 of the California Civil Code, and under the Oakland Municipal Code, Chapter 8.22, commonly known as the Oakland Rent Ordinance (hereinafter "Rent Ordinance")

7. Plaintiffs, and each of them, resided as a lawful tenant at the subject building owned and managed by Defendant and were all subjected to the unlawful conduct and action of Defendant as described herein.

8. Plaintiff AMY PIERRE took possession of her subject unit located at 138 Monte Cresta Avenue, Apartment 201, Oakland, California, in or about 1996 pursuant to a written agreement. Said rental agreement provided, in part, that the prevailing party in any action relating to said premises would be entitled to reasonable attorney's fees. Plaintiff's current rent is substantially below market value.

9. Plaintiffs RACHEL DROLET and MARISSA QUARANTA took possession of their subject unit located at 138 Monte Cresta Avenue, Apartment 306, Oakland, California, in January 2007 pursuant to a written agreement. Said rental agreement provided, in part, that the prevailing party in any action relating to said premises would be entitled to reasonable attorney's

fees. Plaintiffs' current rent is substantially below market value.

10. Plaintiff RENEE DYER took possession of her subject unit located at 138 Monte Cresta Avenue, Apartment 409, Oakland, California, in or about 1980 pursuant to a written agreement. Said rental agreement provided, in part, that the prevailing party in any action relating to said premises would be entitled to reasonable attorney's fees. Plaintiff's current rent is substantially below market value.

11. Plaintiff KALPANA "KALLY" JAIN took possession of her subject unit located at 138 Monte Cresta Avenue, Apartment 203, Oakland, California, in 1996, pursuant to a written agreement. Said rental agreement provided, in part, that the prevailing party in any action relating to said premises would be entitled to reasonable attorney's fees. Plaintiff's current rent is substantially below market value.

12. Plaintiff MARILYN KOLAKOWSKI moved into the subject building located at 138 Monte Cresta Avenue, Apartment 203, Oakland, California, in1986 pursuant to a written agreement. Thereafter, she moved into Unit 410 at the subject building in 1987 and later into Unit 304 at the subject building in or about September 1992, where she still currently resides. Said rental agreement provided, in part, that the prevailing party in any action relating to said premises would be entitled to reasonable attorney's fees. Plaintiff is disabled and her current rent is substantially below market value.

13. Plaintiff MARY KRUEGER took possession of her subject unit located at 138 Monte Cresta Avenue, Apartment 305, Oakland, California, in 1983 pursuant to a written agreement. Thereafter, she moved into Unit 408 at the subject building in or about 1985, where she still currently resides. Said rental agreement provided, in part, that the prevailing party in any action relating to said premises would be entitled to reasonable attorney's fees. Plaintiff's current rent is substantially below market value.

14. Plaintiff LAURA O'ROURKE took possession of her subject unit located at 138 Monte Cresta Avenue, Apartment 406, Oakland, California, in or about 2004 pursuant to a written agreement. Said rental agreement provided, in part, that the prevailing party in any action relating to said premises would be entitled to reasonable attorney's fees. Plaintiff's current rent

is substantially below market value.

15. Plaintiff NEETA PUTHANVEETIL took possession of her subject unit located at 138 Monte Cresta Avenue, Apartment 310, Oakland, California, in December 2006 pursuant to a written agreement. Said rental agreement provided, in part, that the prevailing party in any action relating to said premises would be entitled to reasonable attorney's fees. Plaintiff's current rent is substantially below market value.

16. Plaintiff RHONDA ROBERSON took possession of her subject unit located at 138 Monte Cresta Avenue, Apartment 303, Oakland, California, in 1996 pursuant to a written agreement. Said rental agreement provided, in part, that the prevailing party in any action relating to said premises would be entitled to reasonable attorney's fees. Plaintiff's current rent is substantially below market value.

17. Plaintiff WILLIAM WATSON took possession of his subject unit located at 138 Monte Cresta Avenue, Apartment 302, Oakland, California, in 1998, pursuant to a written agreement. Said rental agreement provided, in part, that the prevailing party in any action relating to said premises would be entitled to reasonable attorney's fees. Plaintiff's current rent is substantially below market value.

18. Plaintiff ROBERT FEARMAN took possession of his subject unit located at 138 Monte Cresta Avenue, Apartment 204, Oakland, California, in or about October 1987, pursuant to a written agreement. Said rental agreement provided, in part, that the prevailing party in any action relating to said premises would be entitled to reasonable attorney's fees. He vacated the unit in or about November 2007 because of Defendant's wrongful endeavor to recover possession of tenants' units at the subject building. His rent at the time he vacated his unit was substantially below market value.

19. Defendant DENNIS COX purchased the subject building in May 2007. Defendant DENNIS COX purchases, owns and manages real property in Oakland and throughout the San Francisco-Oakland Bay Area. The tenants, including the Plaintiffs, in the subject building pay below market rent and otherwise do not fit into the profile of tenants Defendant wishes to have in his buildings. The tenants, including the Plaintiffs, in the subject building are protected under the

Rent Ordinance which limits the amount a landlord may increase a tenant's rent and which also limits the grounds to evict a tenant to certain enumerated "just causes." When a tenant vacates a rental unit, the landlord may then increase the rent to the market-rate. Defendant, therefore, has strong financial incentives to cause the ouster of existing tenants and has engaged in the below-mentioned practices.

20. At the subject building, Defendant adopted a business practice of intimidation, harassment, and abuse intended and designed to force a significant number of tenants, including the Plaintiffs, to vacate their rent controlled units. These actions and business practice violate Plaintiffs' rights under Civil Code Section 1927 and the Rent Ordinance, Chapters 8.22 et seq, 8.22.100 et seq and 8.22.300 et seq. This pattern and practice includes, but is not limited to, the following:

a. Making an intimidating presence, harassing, threatening, and abusing tenants. The harassment, threats, and abuse include, but are not limited to, telling tenants they are in violation of their rental agreements when, in fact they are not, and threatening eviction unless the tenants pay an improper increase in their rent or otherwise accede to Defendant's demands;

b. Unilaterally, arbitrarily and improperly changing terms of tenancy including but not limited to threats of eviction, rent increases, and no longer permitting dogs at the premises;

c. Undertaking construction in a manner that is calculated to cause disruption of the tenants' quiet use and enjoyment of their premises, including but not limited to, excessive and continuous noise, frequent and prolonged water shut-offs without proper notice, disruption of heat supply without proper notice, allowing dust, dirt, and debris to accumulate in the hallways, undertaking construction beginning early in the morning and into the evenings and on weekends, and leaving doors open causing a security hazard and prolonging construction. Often Defendant improperly undertakes construction and removal of lead based paint in an unsafe and unauthorized matter. Defendant failed to properly supervise and manage his agents and workers at the subject building. Defendant prioritizes renovation of common areas above making

necessary repairs to those units occupied by tenants and when such repairs are made, they are often done in a shoddy and unprofessional manner;

d. Not responding promptly to specific repair requests of tenants, allowing serious defective conditions to exist notwithstanding the fact that repairs have been requested; and

e. Otherwise creating an unwelcome home environment for the tenants.

21. Plaintiffs, and each of them, allege that the Defendant sought to circumvent the law and Rent Ordinance protections through the creation of intolerable conditions for existing tenants, that Defendant engaged in acts calculated to circumvent the Rent Ordinance, statutory law, and common law, to improperly and illegally endeavor to recover possession of the premises, to improperly and illegally evict the Plaintiffs from the premises and to improperly and illegally recover possession of the subject premises.

22. As a direct and proximate result of the foregoing conduct, significant numbers of tenants vacated their respective units at the subject building rather than face the threat of continued intimidation, harassment, abuse, hostility, and unwelcome living situation.

23. Plaintiffs have suffered, and the Defendant's actions and inactions set forth herein have directly and proximately caused, damages including but not limited to the following: loss of use and enjoyment of rent controlled property; severe physical, mental, and emotional pain, injury, and distress, including, but not limited to shock, headaches, anxiety, insomnia, nervousness, digestive problems, fatigue, depression, embarrassment, humiliation, discomfort, annoyance, and aggravation of preexisting medical conditions; payment of excessive rent; diminished value of rent controlled property; and all of the above in amounts to be demonstrated by proof at the time of trial. Further, as a direct and proximate result of Defendant's conduct and action alleged hereinabove, Plaintiff Fearman and any other Plaintiff vacating their unit before trial by virtue of said conduct, have suffered and will continue to suffer damage in that they lost possession of their rent controlled subject unit.

24. Defendant engaged in the above-described conduct as part of a business plan designed and intended to cause substantial numbers of tenants to vacate their units. Defendant

engaged in the above described conduct with the knowledge that the conduct was without right or justification and without regard for the fact that it would cause injury to Plaintiffs. Rather, Defendant's conduct was malicious, oppressive and fraudulent and done with the intent to maximize income from the subject premises notwithstanding Defendant's obligations to Plaintiffs and to the general public by virtue of Plaintiffs' statutory and common law rights. Plaintiffs are therefore entitled to punitive damages.

FIRST CAUSE OF ACTION

(Violation of the Rent Ordinance - Oakland Municipal Code Chapter 8.22 et seq)

Plaintiffs reallege and incorporate all previous paragraphs of this complaint as though fully set forth herein.

25. The above-described conduct of Defendant was part of a business plan intended to displace plaintiffs from their rent controlled subject units in a manner not permitted under the Rent Ordinance, Chapter 8.22 et seq, 8.22.100 seq, 8.22.100 et seq.

26. As a direct and proximate result of Defendant's violation of the Rent Ordinance, Chapter 8.22 et seq, 8.22.100 seq, 8.22.100 et seq, as alleged herein, Plaintiffs have suffered damages as is heretofore set forth.

27. Chapter 8.22.300(a)(2) of the Rent Ordinance provides for an award of not less than three times the actual damages for violation of Chapter 8.22.300 et seq and Plaintiffs are entitled to not less than three times their actual damages. Defendant's conduct, as heretofore alleged, was willful and in conscious disregard for the rights of Plaintiffs, and Plaintiffs are also entitled to three times their damages for emotional distress.

28. Chapter 8.22.300(a)(2) of the Rent Ordinance provides for the award of reasonable attorney's fees and costs to the prevailing party to any action brought under this section. Plaintiffs are thereby entitled to a reasonable attorney's fees and costs.

SECOND CAUSE OF ACTION

(Breach Of Implied Covenant of Quiet Use and Enjoyment - Contract)

Plaintiffs reallege and incorporate into this cause of action all previous paragraphs of this complaint as though fully set forth herein.

29. Plaintiffs took possession of their subject units pursuant to agreements with Defendant's predecessors in interest. These residential tenancy agreements contain implied covenants including, but not limited to the implied covenant of quiet use and enjoyment. Plaintiffs performed all obligations under the rental agreements except those obligations for which they were excused or were prevented from performing.

30. In committing the acts complained of herein, Defendant materially breached the implied terms of the agreements between Plaintiffs and Defendant, and caused the damages and injuries to Plaintiffs complained of herein.

THIRD CAUSE OF ACTION

(Breach of Implied Covenant of Quiet Enjoyment -- Tort)

Plaintiffs reallege and incorporate all previous paragraphs of this complaint as though fully set forth herein.

31. The applicable rental agreement between each Plaintiff and Defendant contains an implied covenant that Plaintiffs have the quiet use and enjoyment of their respective premises.

32. Defendant breached this covenant by engaging in the conduct described herein. Defendant is therefore liable to Plaintiffs for all detriment proximately caused thereby.

33. As a direct and proximate result of said conduct and action Plaintiffs have been damaged as is heretofore set forth.

34. Plaintiffs are entitled to punitive damages under this cause of action.

FOURTH CAUSE OF ACTION

(Nuisance)

Plaintiffs reallege and incorporate all previous paragraphs of this complaint as though fully set forth herein.

35. The conduct of Defendant and the conditions at Plaintiffs' respective premises substantially interfered with the comfortable enjoyment of subject premises and thereby constituted a nuisance.

36. As a direct and proximate result of Defendant's conduct and action, Plaintiffs have been damaged as is heretofore set forth.

37. Plaintiffs are entitled to punitive damages under this cause of action.

FIFTH CAUSE OF ACTION

(Negligence)

Plaintiffs reallege and incorporate all previous paragraphs of this complaint as though fully set forth herein.

38. Defendant, as Plaintiffs' landlord, had a duty at law to allow Plaintiffs' peaceful and quiet use and enjoyment of the premises.

39. Defendant, by committing the acts herein alleged, breached this duty.

40. As a direct and proximate result of said breach of duty of Defendant, Plaintiffs were injured in their health, strength, and activity, sustaining injury to their bodies, and shock and injury to their nervous systems and persons, all of which injuries have caused and continue to cause Plaintiffs great mental, physical, and nervous pain and suffering.

41. As a further proximate result of Defendants' negligence, Plaintiffs were required to and did incur moving, relocation expenses and other incidental and consequential damages in an amount to be determined at the trial of this action.

SIXTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

Plaintiffs reallege and incorporate all previous paragraphs of this complaint as though fully set forth herein.

42. The acts of Defendant, as heretofore alleged were extreme and outrageous and done with conscious disregard for the rights of Plaintiffs and with the intent to harm plaintiffs. Defendant knew that the above-described conduct would adversely affect them, had the wherewithal to avoid the conduct, yet consciously failed and refused to do so.

43. As a direct and proximate result of Defendant's conduct, Plaintiffs have suffered and continue to suffer severe mental, emotional and physical distress, pain, suffering all to Plaintiffs' general damages in an amount to be proven.

44. Plaintiffs are entitled to punitive damages under this cause of action.

//

SEVENTH CAUSE OF ACTION

(Constructive Eviction)

(Robert Fearman only)

Plaintiffs reallege and incorporate into this cause of action all previous paragraphs of this complaint as though fully set forth herein.

45. Plaintiff FEARMAN duly performed all conditions, covenants and promises required to be performed by him under his lease in accordance with the terms and conditions, except for those acts that have been prevented, delayed or excused by acts or omissions of Defendant.

46. Through his actions and failures to act, Defendant breached the California Civil Code §1927 and interfered with Plaintiff FEARMAN'S right of quiet use and enjoyment of his unit at the subject building as described above. As a result of Defendant's interference and wrongful endeavor to recover possession of his unit, Plaintiff FEARMAN vacated his unit in the subject building.

47. As a direct and proximate result of Defendant's constructive eviction of Plaintiff FEARMAN from his respective unit, Mr. FEARMAN suffered emotional distress, mental anguish, discomfort, worry, anxiety, pain and suffering, and physical and mental injury.

48. As a further proximate result of Defendant's constructive eviction of Plaintiff FEARMAN, Mr. FEARMAN incurred moving and relocation expenses and other consequential and incidental expenses all to his further damage in an amount unknown at this time.

49. Defendant's constructive eviction of Plaintiff FEARMAN was oppressive and malicious within the meaning of Civil Code §3294 in that it subjected Plaintiff to cruel and unjust hardship in willful and conscious disregard of Plaintiff's rights thereby entitling Plaintiff FEARMAN to an award of punitive damages.

EIGHTH CAUSE OF ACTION

(Unfair Business Practices)

Plaintiffs reallege and incorporate all previous paragraphs of this complaint as though fully set forth herein.

50. The conduct of Defendant as heretofore described constitutes a business practice

intended to cause large numbers of tenants, including the Plaintiffs, to vacate their units. Said conduct violates Plaintiffs' rights under the Rent Ordinance, and Civil Code Section 1927. As such, Defendant's conduct is an unlawful business practice within the meaning of Business and Professions Code Section 17200.

51. Plaintiffs are entitled to injunctive relief preventing the use by Defendant of any unfair or unlawful means that would have the probable effect of denying Plaintiffs their right to quiet use possession and enjoyment of the premises.

52. Plaintiffs hereby request injunctive relief preventing Defendant from engaging in any of the conduct alleged herein.

WHEREFORE Plaintiffs pray for judgment as follows:

A. For general and special damages, in the amount of $1,000.000.00 or according to proof, for each cause of action;

B. For punitive damages according to statute and according to proof;

C. For compensatory damages for losses resulting from humiliation, mental anguish and emotional distress according to proof;

D. For treble damages under the First Cause of Action;

E. For medical and incidental expenses, past, present and future, according to proof;

F. For interest on the amount of losses incurred at the prevailing legal rate;

G. For statutory damages according to statute and according to proof;

H. For injunctive relief to prohibit the Defendant from engaging in the illegal conduct herein alleged, and for such other injunctive relief as the Court may deem proper;

I. For consequential and incidental damages, including, without limitation, moving and relocation expenses in an amount according to proof;

J. For rental reimbursement in an amount according to proof, plus interest;

K. For costs and reasonable attorney's fees according to contract and statute; and

L. For such other and further relief which their Court deems just and proper.

GREENSTEIN & MCDONALD

DATED: 12/20/07

KENNETH GREENSTEIN
STEVEN J. McDONALD
Attorneys for Plaintiffs

8106875

FILED
ALAMEDA COUNTY

DEC 16 2010

CLERK OF THE SUPERIOR COURT
By
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA, UNLIMITED JURISDICTION

AMY PIERRE, RACHEL DROLET, RENEE DYER, KALPANA JAIN, MARY KRUEGER, LAURA O'ROURKE, NEETA PUTHANVEETIL, MARISSA QUARANTA, RHONDA ROBERSON, WILLIAM WATSON, ROBERT FEARMAN, RICARDO ANTONI, and DICK SINGH,

Plaintiffs,

vs.

DENNIS COX,

Defendant.

Case No. RG-07-362393

ASSIGNED FOR ALL PURPOSES TO JUDGE Robert B. Freedman, DEPARTMENT 20

JUDGMENT ON JURY VERDICT

Trial Date:
June 21, 2010 – August 12, 2010
Dept: 20
Time: 9:30 a.m.

ATTACHMENT F

This action came on regularly for trial on June 21, 2010, with trial continuing on subsequent days, until and including August 12, 2010, in Department 20 of the Superior Court, the Hon. Robert B. Freedman, Judge, presiding; the plaintiffs appearing by attorneys Steven J. McDonald and Ariel Gershon, and the defendant appearing by attorneys Kurt Bridgman and Kevin Greenquist.

A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified. After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court and the cause was submitted to the jury with directions to return a verdict on special issues (one set of issues per each Plaintiff). The Jury deliberated and thereafter returned into court and being called, the jurors answered to their names and rendered their verdict in writing in words and figures as follows:

RENEE DYER

1. Did Defendant DENNIS COX wrongfully endeavor to recover possession of RENEE DYER's unit at 138 Monte Cresta Avenue, Unit No. 409, in a manner not permitted by the Oakland Just Cause Ordinance "Measure EE?"

Answer: Yes.

2. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in reckless disregard of the Ordinance?

Answer: No.

3. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in knowing violation of the Ordinance?

Answer: Yes.

4. Did Defendant DENNIS COX's violation of the Oakland Just Cause Ordinance "Measure EE" cause Plaintiff RENEE DYER to return possession of Unit No. 409 at 138 Monte Cresta Avenue to Defendant DENNIS COX?

Answer: Yes.

5. What is the amount of RENEE DYER's economic damages resulting from the loss of possession of Unit No. 409 by caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE?"

Answer: $10,132.43.

6. What is the amount of RENEE DYER's non-economic damages resulting from Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE", including inconvenience, loss of enjoyment, pain, anxiety, suffering, and mental and emotional distress?

Answer: $15,000.

AMY PIERRE

7. Did Defendant DENNIS COX wrongfully endeavor to recover possession of AMY PIERRE's unit at 138 Monte Cresta Avenue, Unit No. 201, in a manner not permitted by the Oakland Just Cause Ordinance "Measure EE?"

Answer: Yes.

8. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in reckless disregard of the Ordinance?

Answer: No.

9. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in knowing violation of the Ordinance?

Answer: Yes.

10. Did Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" cause Plaintiff AMY PIERRE to return possession of Unit No. 201 at 138 Monte Cresta Avenue to Defendant DENNIS COX?

Answer: No.

11. What is the amount of AMY PIERRE's economic damages resulting from the loss of possession of Unit No. 201 caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE?"

Answer: (nothing).

12. What is the amount of AMY PIERRE's non-economic damages caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" including inconvenience, loss of enjoyment, pain, anxiety, suffering, and mental and emotional distress?

Answer: $12,000.

MARY KRUEGER

13. Did Defendant DENNIS COX wrongfully endeavor to recover possession of MARY KRUEGER's unit at 138 Monte Cresta Avenue, Unit No. 408, in a manner not permitted by the Oakland Just Cause Ordinance "Measure EE?"

Answer: Yes.

14. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in reckless disregard of the Ordinance?

Answer: No.

15. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in knowing violation of the Ordinance?

Answer: Yes.

16 Did Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" cause Plaintiff MARY KRUEGER to return possession of Unit No 408 at 138 Monte Cresta Avenue to Defendant DENNIS COX?

Answer: Yes.

17. What is the amount of MARY KRUEGER's economic damages because of the loss of possession of Unit No. 408 caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE?"

Answer: $10,022.23.

18. What is the amount of MARY KRUEGER's non-economic damages caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" including inconvenience, loss of enjoyment, pain, anxiety, suffering, and mental and emotional distress?

Answer. $14,000.

ROBERT FEARMAN

19. Did Defendant DENNIS COX wrongfully endeavor to recover possession of ROBERT FEARMAN's unit at 138 Monte Cresta Avenue, Unit No. 204, in a manner not permitted by the Oakland Just Cause Ordinance "Measure EE?"

Answer: Yes.

20. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in reckless disregard of the Ordinance?

Answer: No.

21. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in knowing violation of the Ordinance?

Answer: Yes.

22. Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" cause Plaintiff ROBERT FEARMAN to return possession of Unit No. 204 at 138 Monte Cresta Avenue to Defendant DENNIS COX?

Answer: No.

23. What is the amount of ROBERT FEARMAN's economic damages because of the loss of possession of Unit No. 204 caused by Defendant DENNIS COX's violation of the Oakland Just Cause Ordinance "Measure EE?"

Answer: (nothing).

//

//

24. What is the amount of ROBERT FEARMAN's non-economic damages caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" including inconvenience, loss of enjoyment, pain, anxiety, suffering, and mental and emotional distress?

Answer: $11,000

LAURA O'ROURKE

25. Did Defendant DENNIS COX wrongfully endeavor to recover possession of LAURA O'ROURKE unit at 138 Monte Cresta Avenue, Unit No. 406, in a manner not permitted by the Oakland Just Cause Ordinance "Measure EE?"

Answer: Yes.

26. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in reckless disregard of the Ordinance?

Answer: No.

27. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in knowing violation of the Ordinance?

Answer: Yes.

28. Did Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" cause Plaintiff LAURA O'ROURKE to return possession of Unit No. 406 at 138 Monte Cresta Avenue to Defendant DENNIS COX?

Answer: No.

29. What is the amount of LAURA O'ROURKE's economic damages because of the loss of possession of Unit No. 406 caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE?"

Answer: (nothing).

30 What is the amount of LAURA O'ROURKE's non-economic damages caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" including inconvenience, loss of enjoyment, pain, anxiety, suffering, and mental and emotional distress?

Answer: $11,500.

NEETA PUTHANVEETIL

31 Did Defendant DENNIS COX wrongfully endeavor to recover possession of

NEETA PUTHANVEETIL's unit at 138 Monte Cresta Avenue, Unit No. 310, in a manner not permitted by the Oakland Just Cause Ordinance "Measure EE?"

Answer: Yes.

32. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in reckless disregard of the Ordinance?

Answer: No.

33 Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in knowing violation of the Ordinance?

Answer: Yes.

34. What is the amount of NEETA PUTHANVEETIL's non-economic damages caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" including inconvenience, loss of enjoyment, pain, anxiety, suffering, and mental and emotional distress?

Answer: $10,500.

RACHEL DROLET

35. Did Defendant DENNIS COX wrongfully endeavor to recover possession of RACHEL DROLET's unit at 138 Monte Cresta Avenue, Unit No. 306, in a manner not permitted by the Oakland Just Cause Ordinance "Measure EE?"

Answer: Yes.

36. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in reckless disregard of the Ordinance?

Answer: No.

37. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in knowing violation of the Ordinance?

Answer: Yes.

38. What is the amount of RACHEL DROLET's non-economic damages caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" including inconvenience, loss of enjoyment, pain, anxiety, suffering, and mental and emotional distress?

Answer: $12,000.

//

//

MARISSA QUARANTA

39. Did Defendant DENNIS COX wrongfully endeavor to recover possession of MARISSA QUARANTA's unit at 138 Monte Cresta Avenue, Unit No. 306, in a manner not permitted by the Oakland Just Cause Ordinance "Measure EE?"

Answer: Yes.

40. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in reckless disregard of the Ordinance?

Answer: No.

41. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in knowing violation of the Ordinance?

Answer: Yes.

42. What is the amount of MARISSA QUARANTA's non-economic damages caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" including inconvenience, loss of enjoyment, pain, anxiety, suffering, and mental and emotional distress?

Answer: $12,000.

RICARDO ANTONI

43. Did Defendant DENNIS COX wrongfully endeavor to recover possession of RICARDO ANTONI's unit at 138 Monte Cresta Avenue, Unit No. 208, in a manner not permitted by the Oakland Just Cause Ordinance "Measure EE?"

Answer: Yes.

44. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in reckless disregard of the Ordinance?

Answer: No.

45 Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in knowing violation of the Ordinance?

Answer: Yes.

46. What is the amount of RICARDO ANTONI's non-economic damages caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" including inconvenience, loss of enjoyment, pain, anxiety, suffering, and mental and emotional distress?

Answer: $14,000

DICK SINGH

47. Did Defendant DENNIS COX wrongfully endeavor to recover possession of DICK SINGH's unit at 138 Monte Cresta Avenue, Unit No. 305, in a manner not permitted by the Oakland Just Cause Ordinance "Measure EE?"

Answer: Yes.

48. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in reckless disregard of the Ordinance?

Answer: No.

49. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in knowing violation of the Ordinance?

Answer: Yes.

50. What is the amount of DICK SINGH's non-economic damages caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" including inconvenience, loss of enjoyment, pain, anxiety, suffering, and mental and emotional distress?

Answer: $11,000.

RHONDA ROBERSON

51 Did Defendant DENNIS COX wrongfully endeavor to recover possession of RHONDA ROBERSON's unit at 138 Monte Cresta Avenue, Unit No. 303, in a manner not permitted by the Oakland Just Cause Ordinance "Measure EE?"

Answer: Yes.

52. Was Defendant DENNIS COX's violation of the Oakland Just Cause Ordinance in reckless disregard of the Ordinance?

Answer: No.

53. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in knowing violation of the Ordinance?

Answer: Yes.

54. What is the amount of RHONDA ROBERSON's non-economic damages caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" including inconvenience, loss of enjoyment, pain, anxiety, suffering, and mental and emotional distress?

Answer: $14,000.

KALPANA JAIN

55. Did Defendant DENNIS COX wrongfully endeavor to recover possession of KALPANA JAIN's unit at 138 Monte Cresta Avenue, Unit No. 203, in a manner not permitted by the Oakland Just Cause Ordinance "Measure EE?"

Answer: Yes.

56. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in reckless disregard of the Ordinance?

Answer: No.

57. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in knowing violation of the Ordinance?

Answer: Yes.

58. What is the amount of KALPANA JAIN's non-economic damages caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" including inconvenience, loss of enjoyment, pain, anxiety, suffering, and mental and emotional distress?

Answer: $11,500.

WILLIAM WATSON

59. Did Defendant DENNIS COX wrongfully endeavor to recover possession of WILLIAM WATSON's unit at 138 Monte Cresta Avenue, Unit No. 302, in a manner not permitted by the Oakland Just Cause Ordinance "Measure EE?"

Answer: Yes.

60. Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in reckless disregard of the Ordinance?

Answer: No.

61 Was Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance in knowing violation of the Ordinance?

Answer: Yes.

//

//

62. What is the amount of WILLIAM WATSON's non-economic damages caused by Defendant DENNIS COX' violation of the Oakland Just Cause Ordinance "Measure EE" including inconvenience, loss of enjoyment, pain, anxiety, suffering, and mental and emotional distress?

Answer: $11,000.

It appearing by reason of said verdict, and per the provisions of Oakland Municipal Code Section 8.22.370 A 2, which provides for money damages of not less than three times actual damages to prevailing plaintiffs suing in civil court for harms caused by a violation of the Oakland Just Cause Ordinance ("Measure EE" or "the Ordinance"), Oakland Municipal Code Section 8.22.360 A, and per the provision therein that an award of damages for mental or emotional distress shall likewise be trebled on a factual finding that the landlord acted in knowing violation of or in reckless disregard of the Ordinance, that:

Plaintiff DYER is entitled to judgment against Defendant COX in the amount of $75,397.29;

Plaintiff PIERRE is entitled to judgment against Defendant COX in the amount of $36,000;

Plaintiff KRUEGER is entitled to judgment against Defendant COX in the amount of $72,066.69,

Plaintiff FEARMAN is entitled to judgment against Defendant COX in the amount of $33,000;

Plaintiff O'ROURKE is entitled to judgment against Defendant COX in the amount of $34,500,

Plaintiff PUTHANVEETIL is entitled to judgment against Defendant COX in the amount of $31,500;

Plaintiff DROLET is entitled to judgment against Defendant COX in the amount

of $36,000;

Plaintiff QUARANTA is entitled to judgment against Defendant COX in the amount of $36,000;

Plaintiff ANTONI is entitled to judgment against Defendant COX in the amount of $42,000;

Plaintiff SINGH is entitled to judgment against Defendant COX in the amount of $33,000;

Plaintiff ROBERSON is entitled to judgment against Defendant COX in the amount of $42,000;

Plaintiff JAIN is entitled to judgment against Defendant COX in the amount of $34,500;

Plaintiff WATSON is entitled to judgment against Defendant COX in the amount of $33,000.

///

///

COMPARISON OF DEBT SERVICE ALLOWANCE IN OTHER CITIES WITH RESIDENTIAL RENT ORDINANCES

CITY	TYPE OF FAIR RETURN STANDARD	DEBT SERVICE ALLOWED?
BERKELEY	Net operating income + anti-speculation provision (Reg. 1273)	**NO.** Debt service excluded from definition of operating expenses (Reg. 1263)
BEVERLY HILLS	Not specified	**NO**
EAST PALO ALTO	Operating Income	**NO**
HAYWARD	No specific formula Various factors-increase in operating and maintenance expenses, etc.	**YES** ■ Applies to 5 units or more ■ Debt service allowed if sale or refinancing within12 months ■ Arms length transaction ■ Sale is only sale within5 years of prior sale-otherwise increase limited to C.P.I. increase between date of prior and most recent sale ■ Loan considered up to 70% of loan to value ■ 80% of debt service costs may be passed through ■ Use lender's appraisal or comparable sales, net operating income capitalization formula or any other valuation accepted by real estate industry

ATTACHMENT G

CITY	TYPE OF FAIR RETURN STANDARD	DEBT SERVICE ALLOWED?
LOS ANGELES	Factors include: ■ Net operating income(includes property tax) ■ reasonable operating and maintenance expense ■ capital improvements ■ living space & level of housing services ■ substantial deterioration of rental units other than ordinary wear and tear ■ failure to perform ordinary repairs, replacement and maintenance	**NO** Debt service excluded from definition of operating expenses (Sec. 151.07 B (1)) Anti-speculation provision for purchases after 1978 (Sec. 151.07 B (2)
OAKLAND	No specific formula Increase allowed to meet constitutional or fair return requirements	**YES** Debt service of 95% granted; limited by Board decision (T08-0297 et al, Peacock et al, v. Heinemann) to "standard financing arrangement" per Dr. Mayer which includes: ■ 30 yr. amort Pd. ■ Loan to value ratio of 75% ■ Interest rate-avge. of 10 yr. LIBOR swap rate + 200 basis points ■ Lesser of purchase price or capitalized value (case settled by parties)

CITY	TYPE OF FAIR RETURN STANDARD	DEBT SERVICE ALLOWED?
SAN FRANCISCO	Right to cover increases in operating and maintenance costs not covered by annual increase limited to 7% above annual allowable increase (Sec. 6.10)	**YES** Debt service allowed Limitation of 7% (Sec. 6 10(e))
SAN JOSE	Lists factors including the following: ■ Debt service ■ Rental history of unit/bldg. ■ Physical condition of the unit/bldg. ■ Increases or decreases of housing services during last 12 months ■ Other financial information provided by landlord ■ Existing market value for units similarly situated ■ Hardship to tenant (Sec. 17.23.440)	**YES** ■ Can pass 80% of debt service to tenants ■ Loan to value ratio of 70% max ■ Allows points, loan broker fees, balloon interest ■ Considers debt service within 12 months of the debt service increase (Sec. 17 23.440 (C) (1)
SANTA MONICA	Fair return based on presumption of net operating income with adjustments available upon landlord proving unusually low or high operating and maintenance expenses, special circumstances or net operating income of less than 50% of gross income in the base year (Sec. 4100; 4103)	**NO** Debt service excluded from definition of operating expenses (Sec. 4101 (c) (2)
WEST HOLLYWOOD	Based on Net Operating Income	**NO** Debt service not allowed (Rent Increases, Sec. D)

10.4 Debt Service Costs: Debt Service Costs are the monthly principal and interest payments on the deed(s) of trust secured by the property.

10.4.1 An increase in rent based on debt service costs will only be considered in those cases where the total income is insufficient to cover the combined housing service and debt service costs after a rental increase as specified in Section 5 of the Ordinance. The maximum increase allowed under this formula shall be that increase that results in a rental income equal to the total housing service costs plus the allowable debt service costs.

10 4.2 No more than 95% of the eligible debt service can be passed on to tenants. The eligible debt service is the actual principal and interest.

10.4.3 If the property has been owned by the current landlord and the immediate previous landlord for a combined period of less than twelve (12) months, no consideration will be given for debt service.

10.4.4 If a property has changed title through probate and has been sold to a new owner, debt service will be allowed. However, if the property has changed title and is inherited by a family member, there will be no consideration for debt service unless due to hardship.

10.4.5 If the rents have been raised prior to a new landlord taking title, or if rents have been raised in excess of the percentage allowed by the Ordinance in previous 12-month periods without tenants having been notified pursuant to Section 5(d) of the Ordinance, the debt service will be calculated as follows:

1. Base rents will be considered as the rents in effect prior to the first rent increase in the immediate previous 12-month period.

2. The new landlord's housing service costs and debt service will be considered. The negative cash flow will be calculated by deducting the sum of the housing service costs plus 95% of the debt service from the adjusted operating income amount.

ATTACHMENT H

3. The percentage of rent increase justified will then be applied to the base rents (i.e., the rent prior to the first rent increase in the 12-month period, as allowed by Section 5 of the Ordinance).

10.4.6 Refinancing and second mortgages, except those second mortgages obtained in connection with the acquisition of the property, will not be considered as a basis for a rent increase under the debt service category. Notwithstanding this provision, such refinancing or second mortgage will be considered as basis for a rent increase when the equity derived from such refinancing or second mortgage is invested in the building under consideration in a manner which directly benefits the tenant (i.e., capital improvements or housing services such as maintenance and repairs) or if the refinancing was a requirement of the original purchase.

10.4.7 As in housing service costs, a new landlord is allowed up to 8% of the gross operating income for unspecified expenses.

COMPARISON OF CURRENT DEBT SERVICE ANALYSIS WITH PROPOSED CHANGES

	12/1/2010 **323 63rd, Unit B**
Current Method	
INCOME	$68,337
EXPENSES	$27,356
Total Profit/loss (annualized)	$40,980
Monthly net operating income	$3,415
Allowable DEBT SERVICE (95% of loan)	$3,980
Minus monthly net operating income	$3,415
=allocated to all units	$565
÷ Number of units	4
= Increase per unit	$141.21
Proposed Method	
Current Rent	$860.00
CPI	2.7%
+7%	7.0%
Maximum Increase %	9.7%
Maximum Increase in $	**$83.42**
Debt Service Rent Increase is Limited to:	**$83.42**

Current Method determines allowable rent increase based solely on landlord's debt service costs

Proposed Method compares the current method to a maxiumum allowable increase based on the current CPI plus 7% ...

...and limits rent increase to the smaller of the two

ATTACHMENT I

DEBT SERVICE INCREASE

Effective Date of Increase	20-Dec-2010
Date Prior Owner Purchased Property	29-Jun-2007

CURRENT RENT $860.00
Address: 323 63rd St, Unit B

			2009
	INCOME		
Rents			$ 67,092.00
Laundry			
Parking			
Other, specify	Banking		$ 1,244.88
Other, specify.			
(sum of lines 3-8)		Gross Operating Income	$ 68,336 88

EXPENSES

	Notes		2009
Bus license			
Electricity/Gas			
Elevator Service			
Furnishings			
Gardening			
Insurance			$ 2,032.00
Janitorial			
Laundry			
Janitorial			
Refuse removal			
Security			$ 2,374.96
Property Taxes			
Water & Sewer			$ 15,766.92
Other, specify			$ 1,715.64
Other, specify			
PLUS	Expenses subject to 8% floor		
Maintenance & Repairs			
Management, Accounting & Legal	$	4,850.55	
Subtotal	$	4,850 55	
OR 8% of gross operating income	$	5,466.95	$ 5,466.95
		Annual operating expenses (total of lines 11 through 29)	$ 27,356 47
		Annual net operating income(line 10 - line 30)	$ 40,980 41
		Monthly net operating income (line 31 ÷ 12)	$ 3,415 03

Loans	Monthly principal and interest
MetLife Home Loans	$4,189 36
Total debt service	$4,189 36
x Percent of Debt Service allowed	95%
Allowed total debt service	$3,979.89
- Monthly net operating income	$3,415 03
= Increase allocated to all units	$564 86
÷ Number of units	4
= Increase per unit	$141 21

CPI Analysis	
20-Dec-2010	2 7%
Plus 7%	7%
Maximum increase %	**9.70%**
Maximum Increase in $	$83 42
DEBT SERVICE IS LIMITED TO.	$83 42

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 FEB 13 PM 1:39

Approved as to Form and Legality

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. C.M.S.

RESOLUTION ADOPTING AMENDMENTS TO THE RENT ADJUSTMENT REGULATIONS, APPENDIX A, SECTION 10.4 TO REQUIRE THAT DEBT SERVICE INCREASES FOR NEWLY PURCHASES RENTAL PROPERTIES NOT EXCEED DEBT SERVICE CALCULATED ON A STANDARD FINANCING MODEL, TO LIMIT DEBT SERVICE RENT INCREASES TO A ONE-TIME CAP OF SEVEN PERCENT OVER THE CURRENT ALLOWABLE RENT INCRESE, TO REQUIRE A RENT INCREASE BASED ON DEBT SERVICE BE FILED WITHIN THREE (3) YEARS OF THE DATE OF CLOSING ON THE PURCHASE ; AND TO ADOPT A GRANDPARENT CLAUSE

WHEREAS, the current Rent Ordinance allows an owner of rental Property to pass through to tenants up to 95% of new debt service after a new purchase that causes negative cash flow; and

WHEREAS, over the past several years the Rent Adjustment Program has seen rental property owners seek and receive substantial rent increases based on debt service, many of which had the effect of causing tenants to vacate their homes; and

WHEREAS, the Housing Residential Rent and Relocation Board ("Rent Board") believes that many of the debt service rent increase appear to be based on speculative values for the rental property and interest rates and other loan terms that did not appear standard in the industry; and

WHEREAS, the Rent Board believes that amending debt service Regulations will offer tenants relief from exorbitant rent increases and the potential of displacement; and

WHEREAS, the Rent Board and the Rent Adjustment Program Staff recommend to the City Council that debt service rent increases for newly purchased rental property not exceed debt service calculated on a standard financing model, limiting debt service rent increases to a one-time cap of seven percent over the current allowable rent increase, adopting a grandparent clause, and (staff recommendations) to allow debt service increase only by owner petition and to require any petition requesting a rent increase based on debt service to be filed within three (3) years, and

WHEREAS, the City Council finds that amending the debt service Regulations will offer tenants relief from exorbitant rent increases and the potential for displacement; and

A
5-1

COMMUNITY & ECONOMIC
DEVELOPMENT CMTE.

FEB 25 2014

WHEREAS the City Council finds the amendments to debt service Regulations offer relief to landlord who have a negative cash flow from newly purchased rental properties; and

WHEREAS, the City Council finds that the amendments to debt service Regulations will further the Rent Adjustment Ordinance's purpose of preventing excessive rent increases; and

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

RESOLVED: That the City Council hereby adopts the amendments to Oakland Municipal Code Section 8.22.070 and the Rent Board Regulations (Appendix A) Section 10.4 as provided in Exhibit 2-A and 2-B to require that debt service rent increases for newly purchased rental property not exceed debt service calculated on a standard financing model, to limit debt service rent increases to a one-time cap of seven percent over the current allowable rent increase, to only allow debt service rent increases within three (3) years of the purchase of the subjeet property, and to adopt a grandparent clause, and be it

FURTHER RESOLVED: That in the event the City Council decides against the recommendations of the Rent Board and of Rent Adjustment Staff, the Rent Adjustment Staff hereby recommends to the City Council that it amend Oakland Municipal Code Section 8.22.070 and Rent Board Regulation (Appendix A) Section 10.4 as provided in Exhibit 1, to eliminate debt service as a justification for rent increases, and be it

FURTHER RESOLVED: If any section, subsection, sentence, clause or phrase of this Resolution 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 this Resolution 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, and be it

FURTHER RESOLVED: This Resolution shall take effect when the Ordinance considered by the City Council concurrent with this Resolution amending O.M.C. Chapter 8.22 and concerning debt service takes effect. If the Council does not adopt the corresponding Ordinance, this Resolution will become effective seven (7) days after adoption.

IN COUNCIL, OAKLAND, CALIFORNIA_____2014

PASSED BY THE FOLLOWING VOTE:

AYES-BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAFF and PRESIDENT KERNIGHAN

NOES -

ABSENT –

ABSTENTION -

ATTEST_____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

A
5-1

COMMUNITY & ECONOMIC
DEVELOPMENT CMTE.
FEB 25 2014

EXHIBIT 2-A

Proposed New Rent Adjustment Board Regulation
Appendix A, Section 10.4 ("Debt Service Costs")
(Applies to properties not grandparented)

10.4a[1] Debt Service Costs: Debt Service Costs are the monthly principal and interest payments on the loans secured by deed(s) of trust on the rented property.

10 4 1 An increase in Rent based on debt service costs will only be considered in those cases where the total income from the rental property is insufficient to cover the combined operating expenses and debt service costs after a rental increase as specified in Section 8.22.070 B of the Ordinance (CPI Rent Adjustment). The maximum increase allowed under this formula shall be that increase that results in a rental income equal to the total operating expenses plus the allowable debt service costs.

a. For purposes of this Section 10.4, income includes the Rent at the time of submitting the petition (including any entitlements to banked rent increases) and income from non-rent sources such as parking and laundry) so long as they are attributable to the subject property's residential rental uses. If any units are vacant or are occupied by persons who are not paying rent or less than the whole rent (for example, a resident manager), the rent will be imputed at a market rent based on rent for recently rented comparable rents, asking rents, or other evidence. If no competent evidence is available for imputed rent, the applicable HUD Fair Market Rents may be used, provided that such rents are not less than the actual rents on comparable units in the subject property.

b. For purposes of this Section 10.4, operating expenses shall be calculated using the same rules and calculations as for Increased Housing Service Costs Section 10.1, except that only twelve (12) months are considered and are divided by twelve (12) to create a monthly average of operating expenses.

10.4.2. No more than 95% of the eligible debt service can be passed on to tenants The eligible debt service is the lesser of the actual principal and interest payment or the amount calculated pursuant to Section 10.4.3.

10.4.3. The financing on which the debt service increase is based must be commercially reasonable based on typical financing for multi-family residential rental

[1] This section 10.4b applies to properties on which the current Owner did not have a bona fide offer for sale on or before the date that section 10 4a took effect.

properties and will be adjusted so that it does not exceed financing calculated as set out below.

a. The maximum loan principal will be determined as follows:

i. Only the portion of the loan used to finance the purchase of the subject property will be used in the debt service calculation Any portion of the loan used to finance capital improvements will not be allowed as part of the debt service increase, but may be allowed as part of a capital improvements increase pursuant to Oakland Municipal Code Section 8.22 070C.

ii. Only the portion of the loan used secured by the subject property will be used in the debt service calculation. If the loan is secured by more than one property, only that portion that can be allocated to the subject property by comparing the relative market values of the properties securing the loan will be used in the debt service calculation.

iii. If the subject property contains both residential and non-residential units the loan will be adjusted so that the principal used in the debt service calculation will be no more than that for the residential units. This adjustment will be made by adjusting the loan amount by a ratio of the actual rents or imputed rents (where no actual rents are available) for the residential to non-residential portions of the property.

iv. If the subject property is subdivided into a condominium or units have been sold or marketed as tenants-in-common ownership units, then the loan principal will be adjusted to reflect the value of the units as rental units, but not including ownership units. This adjustment will be based on comparing the value of the subject property as condominium or tenants-in-common ownership units to the subject property as non-subdivided or common ownership rentals. In making this calculation, staff shall determine a percentage which presumes that the value of condominium and TIC units is greater than the value of rental units.

v. The allowed principal may be no more than the typical loan to value ratio as reported by an authoritative reat estate research service for the quarter prior to the date the loan was closed. The value of the subject property will be calculated by dividing the net operating income for (income minus operating expenses) the subject property related to the residential rentals by the capitalization rate. The capitalization rate shall be the rate reported by an authoritative real estate research service for the quarter prior to the date the loan was closed.

b. The maximum loan payment is calculated using the principal as determined and is based on a loan fully amortized over thirty (30) years.

c. The interest rate used shall be the average of the ten (10) year United States Treasury bill rate and the ten (10) year LIBOR swap rate for the quarter prior to the date the loan was closed, plus an additional one and one-half percent.

10.4.4 If the property has been owned by the current landlord and the immediate previous landlord for a combined period of less than thirty-six (36) months, the Rent may not be increased due to debt service.

10.4.5 If a property has changed title through probate and has been sold to a new owner, debt servide will be allowed. However, if the property has changed title and is inherited by a family member, there will be no consideration for debt service unless due to hardship.

10.4.6 Refinancing and second mortgages, except those second mortgages obtained in connection with the acquisition of the property, will not be considered as a basis for a rent increase under the debt service category. Notwithstanding this provision, such refinancing or second mortgage will be considered as basis for a rent increase when the equity derived from such refinancing or second mortgage is invested in the building under consideration in a manner which directly benefits the tenant (i.e., capital improvements or housing services such as maintenance and repairs) or if the refinancing was a requirement of the original purchase.

10.4.7 Any petition requesting a rent increase based on debt service must be filed within three (3) years of the date of closing on the purchase.

10.4.8 A debt service rent increase cannot be based on unlawful rents. In the event that rents being charged prior to the debt service increase are based on invalid rent increases because the notices required by O.M.C. 8.22.060 or 8.22.070, or are otherwise determined to be invalid, were not given to the Tenants by the prior Owner, the debt service increase will first be calculated based on the rents being charged on the petition date. After the new Rent is determined, the Rent will be reduced by the amount of the invalidated increases.

10.4.9 A debt service rent increase is a permanent rent increase until the Landlord is permitted to set the initial Rent to a new Tenant and is not adjusted for fluctuations in the interest rate, decrease in principal, or the end of the loan term.

10.4.10. The maximum rent increase based on debt service that may be given is a one-time seven percent (7%) of the current rent above any allowed CPI Rent Adjustment.

10.4.11. This revised section 10 4, does not apply to any property on which the Owner can demonstrate that the Owner had made a bona-fide, arms-length offer to purchase on or before the effective date of this section

EXHIBIT 2-B

Existing Appendix A, Section 10.4

(Applies to Grandparented Properties)

Now labeled 10.4b

10.4b[1] Debt Service Costs. Debt Service Costs are the monthly principal and interest payments on the deed(s) of trust secured by the property.

10.4.1 An increase in rent based on debt service costs will only be considered in those cases where the total income is insufficient to cover the combined housing service and debt service costs after a rental increase as specified in Section 5 of the Ordinance. The maximum increase allowed under this formula shall be that increase that results in a rental income equal to the total housing service costs plus the allowable debt service costs.

10.4.2 No more than 95% of the eligible debt service can be passed on to tenants. The eligible debt service is the actual principal and interest.

10.4.3 If the property has been owned by the current landlord and the immediate previous landlord for a combined period of less than twelve (12) months, no consideration will be given for debt service.

10.4.4 If a property has changed title through probate and has been sold to a new owner, debt service will be allowed. However, if the property has changed title and is inherited by a family member, there will be no consideration for debt service unless due to hardship.

10.4.5 If the rents have been raised prior to a new landlord taking title, or if rents have been raised in excess of the percentage allowed by the Ordinance in previous 12-month periods without tenants having been notified pursuant to Section 5(d) of the Ordinance, the debt service will be calculated as follows:

1 Base rents will be considered as the rents in effect prior to the first rent increase in the immediate previous 12-month period.

---

[1] This section 10 4b applies to properties on which the current Owner had a bona fide offer for sale on or before the date that section 10 4a took effect.

2. The new landlord's housing service costs and debt service will be considered. The negative cash flow will be calculated by deducting the sum of the housing service costs plus 95% of the debt service from the adjusted operating income amount.

3. The percentage of rent increase justified will then be applied to the base rents (i.e., the rent prior to the first rent increase in the 12-month period, as allowed by Section 5 of the Ordinance).

10.4.6 Refinancing and second mortgages, except those second mortgages obtained in connection with the acquisition of the property, will not be considered as a basis for a rent increase under the debt service category. Notwithstanding this provision, such refinancing or second mortgage will be considered as basis for a rent increase when the equity derived from such refinancing or second mortgage is invested in the building under consideration in a manner which directly benefits the tenant (i.e., capital improvements or housing services such as maintenance and repairs) or if the refinancing was a requirement of the original purchase.

10.4.7 As in housing service costs, a new landlord is allowed up to 8% of the gross operating income for unspecified expenses.

A
5-1

Approved as to Form and Legality

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (O.M.C. 8.22.090B) TO REQUIRE PROPERTY OWNERS SEEKING RENT INCREASES BASED ON DEBT SERVICE TO FILE OWNER PETITIONS

WHEREAS, the current Rent Ordinance and Regulations allow an owner of newly purchased rental property to pass through to tenants up to 95% of new debt service that causes negative cash flow; and

WHEREAS, over the past several years the Rent Adjustment Program has seen rental property owners seek and receive substantial rent increases based on debt service, many of which had the effect of causing tenants to vacate their homes; and

WHEREAS, the Housing Residential Rent and Relocation Board ("Rent Board") believes that many of the debt service rent increases appear to be based on speculative values for the rental property and interest rates and other loan terms that did not appear standard in the industry; and

WHEREAS, between 2008 and 2012, there were 18 public Rent Board meetings regarding proposed changes to debt service Regulations and Rent Adjustment Staff held a public meeting in 2013 to consider possible amendments to debt service Regulations that would allow for a fair and balanced application of the Regulations; and

WHEREAS, the City Council finds that amending debt service Regulations will offer tenants relief from exorbitant rent increases and the potential of displacement; and

WHEREAS, the City Council finds the amendments to debt service Regulations considered concurrent with this Rent Adjustment Ordinance Amendment offer relief to landlords who have a negative cash flow from newly purchased rental property; and

WHEREAS the City Council finds that the amendments to debt service Regnlations will further the Rent Adjustment Ordinance's purpose of preventing excessive rent increases; and

WHEREAS, the Rent Board and the Rent Adjustment Staff recommended to the City Council that debt service rent increases for newly purchased rental property not exceed debt service calculated on a standard financing model, to limit debt service rent increases to a one-time cap of seven percent over the current allowable rent increase, to adopt a grandparent clause, and (staff recommendation) to allow debt service increases only by owner petition, and

A
5-2

COMMUNITY & ECONOMIC DEVELOPMENT CMTE.

FEB 25 2014

WHEREAS, Debt service rent increases generally affect all the rental units on a property and to avoid the cost and potential disparate results from independent tenant petition, City staff recommends that in order for a landlord to obtain a rent increase for debt service, and a property owner be required to file an Owner petition to cover all the affected units;

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

Now, therefore, the Council of the City of Oakland does ordain as follows:

Section 1: The City Council hereby adopts the amendment to Oakland Municipal Code Section 8.22.090B attached as Exhibit 3 hereto to require that property owners file Owner Petition in order to obtain a rent increase based on debt service;

Section 2: This Ordinance takes effect seven (7) days after final adoption, unless it has been passed with at least six (6) votes, in which case it takes effect immediately upon adoption.

Section 3: This Ordinance Amendment will not apply to any property on which the Owner can demonstrate that the Owner had made a bona-fide, arms-length offer to purchase on or before the effective date of this section;

Section 4: This action is exempt under 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 (actions consistent with the general plan);

Section 5: 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 that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2014

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON -McELHANEY, KALB, KAPLAN, REID, SCHAAF, AND PRESIDENT KERNIGHAN

NOES –

ABSENT –

ABSTENTION –

A
5-2

COMMUNITY & ECONOMIC
DEVELOPMENT CMTE.

FEB 25 2014

ATTEST:

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

EXHIBIT 3

Amendment to Oakland Municipal Code Chapter 8.22 Requiring Owner Petition for Debt Service Increase.

(Underlined language is added, stricken language is deleted)

8.22.090

B Owner Petitions and Owner Responses to Tenant Petitions.

1. An Owner may file an Owner Petition seeking to justify a Rent increase on any basis permitted by this Chapter 8.22. An Owner is required to file an Owner Petition for all the units the Owner wishes to have subject to the increase for the following justifications.

a. Debt service.

~~1~~2. 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~~3. 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

A
5-2

COMMUNITY & ECONOMIC DEVELOPMENT CMTE.

FEB 25 2014

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 FEB 13 PM 1:39

OAKLAND CITY COUNCIL

Approved as to Form and Legality

City Attorney

RESOLUTION NO. _____ C.M.S.

RESOLUTION TO ADOPT AMENDMENTS TO THE RENT ADJUSTMENT REGULATIONS APPENDIX A, SECTION 10.4 TO PROVIDE FOR A GRANDPARENT CLAUSE FOR RENTAL PROPERTIES WITH A PURCHASER AT THE ENACTMENT OF ELIMINATION OF DEBT SERVICE AS A JUSTIFICATION FOR A RENT INCREASE

WHEREAS, the current Rent Adjustment Ordinance and Regulations allow a recent purchaser of rental property to pass through to tenants up to 95% of new debt service after the new purchase that causes negative cash flow; and

WHEREAS, over the past several years the Rent Adjustment Program has seen rental property owners seek and receive substantial rent increases based on debt service, many of which had the effect of causing tenants to vacate their homes; and

WHEREAS, the Housing Residential Rent and Relocation Board ("Rent Board") believes that many of the debt service rent increases appear to be based on speculative values for the rental property and interest rates and other loan terms that did not appear standard in the industry; and

WHEREAS, in 2009, the Housing Residential Rent and Relocation Board ("Rent Board") passed a resolution recommending to the City council that debt service should be eliminated as a justification for increasing rents, city staff concurs in that recommendation, and the City Council accepts that recommendation;

WHEREAS, based on the information submitted by the Rent board and staff, the City Council finds that many of the debt service rent increases appear to be based on speculative values for the rental property and interest rates and other loan terms that did not appear standard in the industry; and

WHEREAS, the City council finds that eliminating debt service as a justification for increasing rents will offer tenants relief from exorbitant rent increases and the potential of displacement; and

WHEREAS, the City Council finds that rent increases for debt service are not required for a rental property owner to receive a fair return on the investment in the property; and

B-5-1

COMMUNITY & ECONOMIC DEVELOPMENT CMTE.

WHEREAS, the City Council finds that the elimination of debt service as a justification for a rent increase will cause the Oakland Rent Stabilization Ordinance to be aligned with the practices of many ten major rent stabilization ordinances in California; and

WHEREAS the City Council finds that the elimination of debt service as a rent increase justification will further the Rent Adjustment Ordinance's purpose of preventing excessive rent increases and will amend the Rent Adjustment Ordinance to eliminate debt service as a justification for a rent increase; and

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

RESOLVED: That the City Council hereby adopts the amendments to the Rent Adjustment Regulations (Appendix A) Section 10.4 as provided in Exhibit 4 to require that debt service rent increases for newly purchased rental property shall only apply to properties in the process of at the time the amendment to the Rent Adjustment Ordinance eliminating debt service as a justification for rent increases takes effect, and be it

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

FURTHER RESOLVED: If any section, subsection, sentence, clause or phrase of this Resolution 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 this Resolution 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, and be it

FURTHER RESOLVED: This Resolution shall take effect when the Ordinance considered by the City Council concurrent with this Resolution amending O.M.C. Chapter 8.22 and concerning debt service takes effect. If the Council does not adopt the corresponding Ordinance, this Resolution will become effective seven (7) days after adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,_____2014

PASSED BY THE FOLLOWING VOTE;

AYES-BROOKS, GALLO, GIBSON-MCELHANEY, KALB, KAPLAN, REID, SCHAFF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION

ATTEST:

_____
LATONDA SIMMONS
CITY CLERK AND CLERK OF THE COUNCIL
of the City of Oakland, California

B-5-1

COMMUNITY & ECONOMIC
DEVELOPMENT CMTE.
FEB 25 2014

EXHIBIT 4

Amendments to Rent Adjustment Regulations Appendix A, Section 10.4 to Adopt a Grandparent Clause as a Companion to the Rent Adjustment Ordinance Amendments

(Underlined text is added text)

10.4 Debt Service Costs· Debt Service Costs are the monthly principal and interest payments on the deed(s) of trust secured by the property. Debt service for new acquired properties has been eliminated as a justification for increasing Rents. This section 10.4 will only apply to properties on which the Owner can demonstrate that the Owner made a bona-fide, arms-length offer to purchase on or before the effective date of the amendment to the Rent Adjustment Ordinance eliminating debt service as a Rent increase justification.

10.4.1 An increase in rent based on debt service costs will only be considered in those cases where the total income is insufficient to cover the combined housing service and debt service costs after a rental increase as specified in Section 5 of the Ordinance. The maximum increase allowed under this formula shall be that increase that results in a rental income equal to the total housing service costs plus the allowable debt service costs.

10.4.2 No more than 95% of the eligible debt service can be passed on to tenants. The eligible debt service is the actual principal and interest.

10.4.3 If the property has been owned by the current landlord and the immediate previous landlord for a combined period of less than twelve (12) months, no consideration will be given for debt service.

10.4 4 If a property has changed title through probate and has been sold to a new owner, debt service will be allowed. However, if the property has changed title and is inherited by a family member, there will be no consideration for debt service unless due to hardship.

10.4.5 If the rents have been raised prior to a new landlord taking title, or if rents have been raised in excess of the percentage allowed by the Ordinance in previous 12-month periods without tenants having been notified pursuant to Section 5(d) of the Ordinance, the debt service will be calculated as follows:

1 Base rents will be considered as the rents in effect prior to the first rent increase in the immediate previous 12-month period.

2 The new landlord's housing service costs and debt service will be considered. The negative cash flow will be calculated by deducting the sum of the housing service costs plus 95% of the debt service from the adjusted operating income amount.

3. The percentage of rent increase justified will then be applied to the base rents (i.e., the rent prior to the first rent increase in the 12-month period, as allowed by Section 5 of the Ordinance).

10.4.6 Refinancing and second mortgages, except those second mortgages obtained in connection with the acquisition of the property, will not be considered as a basis for a rent increase under the debt service category. Notwithstanding this provision, such refinancing or second mortgage will be considered as basis for a rent increase when the equity derived from such refinancing or second mortgage is invested in the building under consideration in a manner which directly benefits the tenant (i.e., capital improvements or housing services such as maintenance and repairs) or if the refinancing was a requirement of the original purchase.

10.4.7 As in housing service costs, a new landlord is allowed up to 8% of the gross operating income for unspecified expenses.

Approved as to Form and Legality

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO. C.M.S.

AN ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (O.M.C. SECTIONS 8.22.020 AND 8.22.070) TO ELIMINATE DEBT SERVICE AS A JUSTIFICATION FOR A RENT INCREASE

WHEREAS, the current Rent Adjustment Ordinance and Regulations allow the new of rental property to pass through to tenants up to 95% of new debt service after a new purchase that causes negative cash flow; and

WHEREAS, over the past several years the Rent Adjustment Program has seen rental property owners seek and receive substantial rent increases based on debt service, many of which had the effect of causing tenants to vacate their homes; and

WHEREAS, in 2009, the Housing Residential Rent and Relocation Board ("Rent Board") passed a resolution recommending to the City council that debt service should be eliminated as a justification for increasing rents, City Staff concurs in that recommendation, and the City Council accepts that recommendation; and

WHEREAS, based on the information submitted by the Rent board and staff, the City Council finds that many of the debt service rent increases appear to be based on speculative values for the rental property and interest rates and other loan terms that did not appear standard in the industry; and

WHEREAS, the City council finds that eliminating debt service as a justification for increasing rents will offer tenants relief from exorbitant rent increases and the potential of displacement; and

WHEREAS, the City Council finds that rent increases for debt service are not required for a rental property owner to receive a fair return on the investment in the property; and

WHEREAS, the City Council finds that the elimination of debt service as a justification for a rent increase will cause the Oakland Rent Stabilization Ordinance to be aligned with the practices of many ten major rent stabilization ordinances in California; and

WHEREAS the City Council finds that the elimination of debt service as a rent increase justification will further the Rent Adjustment Ordinance's purpose of preventing excessive rent increases; and

B-5-2

COMMUNITY & ECONOMIC DEVELOPMENT CMTE.

FEB 25 2014

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

Now, therefore, the Council of the City of Oakland does ordain as follows:

Section 1: The City Council hereby adopts the amendments to Oakland Municipal Code Sections 8.22.020 ("Definitions") and 8.22.070 ("Rent Adjustments for Occupied Covered Units") attached as Exhibit 1 hereto that will eliminate debt service for newly acquired units as a justification for increasing rents;

Section 2: This Ordinance takes effect seven (7) days after final adoption, unless it has been passed with at least six (6) votes, in which case it takes effect immediately upon adoption.

Section 3: This Ordinance will not apply to any property on which the rental property owner can demonstrate that the owner made a bona-fide, arms-length offer to purchase on or before the effective date of this section;

Section 4: This action is exempt under 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 (actions consistent with the general plan);

Section 5: 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.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2014

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON- McELHANEY, KALB, KAPLAN, REID, SCHAAF, AND PRESIDENT KERNIGHAN

NOES –

ABSENT –

ABSTENTION –

B-5-2

COMMUNITY & ECONOMIC DEVELOPMENT CMTE.

FEB 25 2014

ATTEST

_____

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

Exhibit 1

Proposed Amendments to Oakland Municipal Code Sections 8.22.020 ("Definitions") and 8.22.070 ("Rent Adjustments for Occupied Covered Units")

Oakland Municipal Code

8.22.020 Definitions
~~"*Debt service*" means the monthly principal and interest payments on one or more promissory notes secured by deed(s) of trust on the property on which the covered units are located.~~

8.22.070 Rent Adjustments for Occupied Covered Units.
C Rent Increases In Excess of 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 increase in excess of the CPI Rent Adjustment on one or more of the following grounds:

a. Banking;

b. Capital improvement costs, including financing of capital improvement costs;

c. Uninsured repair costs;

d. Increased housing service costs;

~~e. Debt service costs;~~

~~f~~e. The Rent increase is necessary to meet constitutional or fair return requirements.

B-52

COMMUNITY & ECONOMIC DEVELOPMENT CMTE.

FEB 25 2014