CITY OF OAKLAND

AGENDA REPORT

TO:	Sabrina B. Landreth City Administrator	**FROM:**	Michele Byrd Director, HCD
SUBJECT:	Rent Adjustment Ordinance and Regulation Changes	**DATE:**	December 27, 2016

City Administrator Approval AR SBL. Date: 12/29/16

RECOMMENDATION

Staff Recommends That The City Council Adopt The Following Pieces Of Legislation:

1. **An Ordinance Amending the Rent Adjustment Ordinance (Article I of O.M.C Chapter 8.22) To (1) Facilitate Implementation of the Requirements for Owner Petitions For Rent Increases In Excess of the CPI Rent Adjustment and Banking; (2) Enhance The Reporting Requirements Due From The Owner To A Tenant Where the Owner Is Not Permitted to Set the Initial Rent At The Commencement Of A Tenancy; And (3) Make Clarifying Amendments For Internal Consistency And Efficient Program Operation.**

2. **A Resolution Ratifying Amendments To The Rent Adjustment Regulations And Appendix A To The Regulations Approved By The Housing, Residential Rent And Relocation Board To (1) Conform The Regulations To Recent Amendments To The Rent Adjustment Ordinance (Article I of O.M.C Chapter 8.22); (2) Enact A Capital Improvement Amortization Schedule; (3) Make Other Clarifying Amendments For Internal Consistency And Efficient Program Operation; And (4) Remove Inactive Provisions.**

EXECUTIVE SUMMARY

Two recent ordinances enacted by City Council amended Rent Adjustment Ordinance (Article I of O.M.C Chapter 8.22) and changed aspects of the Residential Rent Adjustment Program. Additionally, Oakland's voters approved Measure JJ in November. These legislative changes modified the Residential Rent Adjustment Program to add more Alternate Rent Board members (Ordinance No. 13373 C.M.S.) and require that owners petition the Rent Adjustment Program for any rent increases above those permitted by Consumer Price Index (CPI) increase and banked increases from past years (Ordinance No. 13391 C.M.S. and Measure JJ). Previously, an owner could impose such a rent increase by giving notice to a tenant, and the tenant was responsible for filing a petition to object within sixty days of the increase. As mandated by

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Measure JJ and Ordinance No. 13391 C.M.S., the new owner petition requirements become effective on February 1, 2017.

In light of these changes, the City Council requested that staff present any amendments to the Rent Adjustment Ordinance that are needed to implement the recent amendments to petitioning requirements prior to their February 1, 2017 effective date. Accordingly, the proposed ordinance here would clarify the owner petition process to facilitate implementation of the new petitioning requirements. In addition, the proposed ordinance would require enhanced reporting from the owner to a tenant where the owner is not permitted to set the initial rent at the commencement of a tenancy, so that the owner's report is consistent with the new petitioning requirements. Furthermore, the ordinance proposes clarifying amendments for internal consistency and efficient program operation to further streamline the Rent Adjustment Program and enhance implementation of the City Council's goals for the program.

Additionally, in Ordinance No. 13391 C.M.S., the City Council directed the Housing, Residential Rent and Relocation Board to approve amendments to the Rent Adjustment Regulations to conform the Regulations to the recent ordinance amendments. The proposed amendments to the Rent Adjustment Regulations and Appendix A to the Regulations that are before the City Council implement the Council's direction by enacting a capital improvement amortization schedule, making other clarifying amendments for internal consistency and efficient program operation, and removing inactive provisions.

BACKGROUND / LEGISLATIVE HISTORY

On June 7, 2016, the City Council enacted Ordinance No. 13373 C.M.S., which increased the number of Rent Board alternate members and authorized more cases heard by Board Appeals Panels.

On September 20, 2016, the City Council enacted Ordinance No. 13391 C.M.S., and on November 8, 2016 the Oakland voters adopted Measure JJ. Both ordinances and the voter enacted measure make numerous changes to the Residential Rent Adjustment Ordinance. Most significantly, as of February 1, 2017, owners will be required to file petitions for all rent increases except those permitted by the CPI increase and banking. Other amendments include: changing the deadline for tenants to file petitions from 60 days to 90 days when they receive a proper rent increase notice, and to 120 days when the rent increase does not contain the required rent program notification; changing the amortization for capital improvements from five years to the useful life of the improvement; requiring the owner to provide certain notices at commencement of the tenancy to be in English, Spanish, and Chinese; requiring owners to obtain a certificate of exemption before a property is considered exempt from the Rent Adjustment Program following substantial rehabilitation of the property; and requiring that for the owner-occupancy exemption for duplexes and triplexes, the owner must occupy a unit for two years, instead of one.

As noted above, the new owner petition requirements will become effective on February 1, 2017. This deadline was established in Measure JJ and cannot be changed without a vote of the people. Accordingly, the City Council directed staff to present any amendments to the Rent Adjustment Ordinance (Article I of O.M.C Chapter 8.22) that are needed to further implement the recent amendments in advance of February 1, 2017. Rent Adjustment Program staff,

hearing officers, the City Attorney's office, and outside counsel worked together to draft proposed further amendments, which are currently before the City Council.

Additionally, the City Council at the time it adopted Ordinance No. 13373 C.M.S. directed the Housing, Residential Rent and Relocation Board (the "Rent Board") to consider and adopt conforming Regulations and return them to the City Council within 120 days of the ordinance's adoption. On October 20, 2016, the Rent Board held a public meeting regarding potential amendments to the Regulations presented by staff in response to the Council's direction to consider and adopt revised Regulations, during which the Rent Board heard comments from the public and discussed revisions to the proposed amendments. On December 8, 2016, the Rent Board held another public meeting on the potential amendments to the Regulations and continued the item to its December 15, 2016 meeting after taking public comment on the potential amendments. On December 15, 2016, the Rent Board took additional public comment orally and in writing before unanimously adopting the amendments to the Regulations, subject to the ratification of such amendments by the Council.

ANALYSIS

Oakland continues to experience a severe housing affordability crisis. As housing costs are increasing, the Rent Adjustment Program continues to receive increasing numbers of petitions and appeals. In response, on June 7, 2016, the Oakland City Council passed an amendment to the Rent Adjustment Ordinance that increases the number of Rent Board alternate members and authorizes more cases be heard by Board Appeal Panels (***Attachment A***). On September 20, 2016, the City Council approved further amendments to the Rent Adjustment Ordinance, as summarized above (***Attachment B***).

To advance the work started by these ordinances and implement the direction from City Council, the following specific changes to the Rent Adjustment Ordinance and Rent Adjustment Regulations are now proposed.

A. Proposed Amendments to Rent Adjustment Ordinance

As part of the recent Rent Adjustment Ordinance amendments, the Council directed staff to return to the Council with further proposed amendments to implement the changes adopted by Ordinance No. 13373 C.M.S., Ordinance No. 13391 C.M.S., and Measure JJ -- in particular the new owner petition requirements. Because the owner petition requirements will become effective as of February 1, 2017, it is important that these additional amendments be in place before that date.

The Rent Adjustment Program provides a process to resolve disputes regarding rent increases and decreased housing services through its petition, mediation, and appeal processes. The purpose of the recommended amendments to the Ordinance is to ensure that the goals of the Program are met and that the rules are applied fairly and approved rent increases can be applied within a reasonable period of time. Accordingly, pursuant to the City Council's direction, Staff recommends the following changes to O.M.C. Chapter 8.22: (***Attachment C***)

a. *Amendments to Facilitate Implementation of the Requirements for Owner Petitions For Rent Increases In Excess of the CPI Rent Adjustment and Banking*

Under the prior system of tenant petitioning, an owner could serve a tenant with a rent increase notice for capital improvements, and the tenant could file a petition objecting to the rent increase. The rent increase would be effective either thirty or sixty days (depending on State law requirements) after the notice, even if the petition were still pending (the tenant is not obligated to start paying the rent increase until the petition is decided, but the tenant would owe any upheld rent increase back to the effective date). Ordinance No. 13391 C.M.S. and Measure JJ modified this system to require owner petitions for rent increases due to capital improvements, but they did not update the related rent increase notice provisions. Currently, rent increases for owner petitions cannot be noticed until after a final decision is reached, which might not be until after an appeal or even after a writ appealing the matter to the Superior Court is resolved.

Under the proposed ordinance (Section 8.22.010 (D)), an owner can notice a rent increase based on the amount authorized by a decision on an owner's petition either on the service date of the hearing officer's decision or the tenant's anniversary date, whichever is later. The rent increase is then effective either thirty or sixty days after service of the rent increase notice (depending on State law requirements), and the tenant is responsible for the amount of the rent increase from that date. Because most hearing officer decisions are not appealed or are affirmed, this decision generally will be the final result. However, because the hearing officer's decision can be appealed, it is not final, and an appeal by the landlord or tenant could result in the decision being more or less than the amount the hearing officer decided. Accordingly, the tenant is not required to start paying the rent increase until the decision is final after any appeals. If the tenant appeals and the rent increase amount is reduced, the tenant will owe rent back to the date of the notice in the lesser amount based on the appeal results. If the landlord appeals and the rent increase is adjusted upwards, the landlord must issue a supplemental rent increase notice and the additional rent increase amount from the appeal starts running from the effective date of the supplemental notice, but the tenant still owes for the initial rent increase from the date of the earlier notice. The supplemental rent increase is exempt from the one rent increase per year limitation.

As proposed in Section 8.22.070 (D), the tenant would be responsible for the amount of the rent increase when it takes effect pursuant to the notice; however, if the tenant appeals, the tenant would have the option of paying the rent increase when it becomes effective and, if on appeal the rent increase were lowered, getting a refund, or waiting to pay the rent increase until the appeal is final. After the decision is final, if the hearing officer decision was upheld, the tenant would be responsible for the full amount of the rent increase back to the effective date of the notice. If the owner appeals and gets a higher rent increase, then the owner would be entitled to notice a new rent increase for the difference between the decision and the higher amount. Thus, the proposed new date for noticing rent increases under the owner-petitioning system represents an accommodation to both owners and tenants.

b. Amendments to Enhance The Reporting Requirements Due From The Owner To A Tenant Where the Owner Is Not Permitted to Set the Initial Rent At The Commencement Of A Tenancy

To better enable enforcement of rent levels for new tenancies in which the owner is not permitted to increase the rent to market, additional information will be added in the notice at the beginning of tenancy regarding the owner's right to set the initial rent and reporting of rent levels pursuant to Section 8.22.060 (A)(1) of the proposed ordinance. The circumstances this reporting requirement affects are when tenants are given a "no tenant fault" eviction notice under California Civil Code §1946.1 (such as owner occupancy eviction or an eviction for repairs) or the Ellis Act.

c. Amendments For Efficient Program Operation

The proposed ordinance would provide more specificity as to when a decision is final and requires Hearing Officers to provide a summary of any decision to be attached to a rent increase notice to make clear the justification for the rent increase after an owner petition (see Section 8.22.070 (H)(2) of the proposed ordinance). The amendments to Section 8.22.070 (H) would also eliminate enhanced capital improvement noticing requirements, as they are no longer necessary because owners will be required to file petitions to get capital improvement rent increases.

B. Proposed Amendments to Rent Adjustment Regulations and Appendix A to the Regulations

The Rent Adjustment Regulations consistent of two major components: the Regulations, which cover mostly procedural matters, and Appendix A to the Regulations, which covers substantive matters regarding how rent may be increased. The Rent Board unanimously adopted the following changes to the Rent Adjustment Regulations and Appendix A to the Regulations to conform to the ordinance changes, subject to Council approval (***Attachments D and E***).

a. Rent Petition Appeal Process

The Rent Board proposes amendments to streamline the appeal process[1]. The proposed changes to the Regulations would give clear direction to appealing parties and the Rent Board, which include:

- Require a clear statement of grounds for appeal and provide supporting documents (Section 8.22.120 (A)(1));
- Revise procedures at appeal hearings (Section 8.22.120 (D));
- Update process for issuing Appeal decisions (Section 8.22.120 (G));
- Define grounds for appeal dismissals (Sections 8.22.120 (H) and (I)); and
- Give appeal panels the same authority to rule on appeals as the full Rent Board (throughout (Section 8.22.120).

[1] O.M.C. Section 8.22.120

These changes are necessary, because the ordinance amendments adopted by the City Council require that owners submit petitions to increase rent above CPI or any amount allowed by banked rent increases (untaken CPI increases carried over from previous years). However, any appreciable increase in petitions will affect the Rent Board's ability to hear appeals within a reasonable time period. Pursuant to the Rent Ordinance No. 12538 C.M.S., the Rent Board meets twice a month. Special meetings and appeal panels can also be scheduled. ***Table 1*** below shows the increase in petitions and appeals over the past five years.

Table 1

FISCAL YEAR	NO. OF PETITIONS/OTHER FILINGS	NO. OF APPEALS
2011-2012	385	20
2012-2013	411	39
2013-2014	551	82
2014-2015	735	96
2015-2016	864	96

Based on the number of appeals annually, and the number of meetings the Rent Board is able to schedule (considering holiday periods of vacation periods), the Rent Board or Appeals Panels, would need to meet nearly weekly to address the numbers of appeals. In addition, the Rent Board has other duties that must be addressed during their regular meetings, such as considering regulation changes to the various rent and eviction control ordinances and periodic trainings by the staff.

Accordingly, the proposed amendments would restructure the appeals process so that appeal hearings can be heard more than twice a month. Additional staff, along with the regulation changes, will assist in clearing the backlog of appeals.

b. Providing Notices in Multiple Languages

Effective September 21, 2016, at the beginning of a tenancy, the Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice) must be provided to all tenants in English, Spanish and Chinese. (This is not required with the RAP Notice served concurrent with the rent increases; that notice must be given in the language in which the owner negotiated the terms of the rental agreement.)[2] The City Council wanted regulations that would delay penalties for noncompliance for a reasonable period of time to allow owners to be notified of the change and to adjust for the change.

As amended, Section 8.22.060 of the regulations would provide for the following:

- Owners will not be penalized for failing to comply with the requirement until the later of sixty (60) days after the Rent Program makes a general announcement of the requirement or all of the translations are available on the Rent Adjustment Website;

[2] O.M.C. Section 8.22.060 (A)(2)

- Until September 17, 2017, no owner will be denied a rent increase for failing to provide the notice in the required languages, unless:
  (a) The tenant is proficient in one of the non-English languages and is not proficient in English; or
  (b) The owner negotiated the terms of the rental agreement in one of the non-English languages and failed to give the notice in that language.[3]

c. Amortization Schedule Based on Useful Life of Capital Improvement

The recent Rent Adjustment Ordinance amendments changed the way in which capital improvements are amortized to using an amortization schedule based on the useful life of the improvement rather than over five (5) years, regardless of the capital improvement. The Council asked the board to consider adding a useful life table to the regulations. The Board voted to adopt an amortization schedule as part of Appendix A to the Regulations that is based on analysis developed by the City of Santa Monica and used in the administration of that city's rent program. Under the proposed schedule attached to Appendix A to the Regulations, improvements would be amortized over five (5), 10, or 20 years based on the type of improvement.

d. Rent Increase Standards Regarding Gold-plating/Over improvements

Recent Rent Ordinance amendments provide that "gold plated" improvements do not qualify as capital improvements for rent increase purposes. The owner may only pass the cost of the substantially equivalent replacement of a specific improvement, and not improvements that are substantially higher in quality or features unless requested by the tenant to avoid incentivizing over-improving units for the sake of inflating the rent. For example, if an owner replaces a Kenmore stove with a Wolf Range, the rent could not be increased to account for the higher quality range; the capital improvement adjustment would be based on the equivalent value of the Kenmore stove that was replaced. Under Section 10.2.1(c) of Appendix A to the Regulations, if a capital improvement increase is challenged as "gold plating," then the burden is on the tenant to prove the improvement is greater in character or quality than existing improvements.

e. Fair Return Standards

To streamline the process when owners claim a rent increase is needed to provide them a fair return, the Rent Board's proposed amendments include a default standard of maintenance of net operating income in Section 10.6 of Appendix A to the Regulations. The maintenance net operating income standard proposed in Section 10.6.2 of Appendix A to the Regulations is in use by a number of other rent control jurisdictions and has been accepted by the courts as an approved method for determining fair return. The new section on Fair Return, outlines how fair return is calculated; defines what is the responsibility of Owners; and establishes guidelines for Hearing Officers to review fair return petitions.

Historically, it is rare for an Owner to claim fair return as a justification for a rent increase. When owners have made fair return claims, the claims have been denied because owners have been

[3] O.M.C. Section 8.22.060 (A)(1-3)

unable to provide an analysis of fair return that would justify the proposed rent increase. Adoption of these new guidelines would significantly assist owners who want to base a rent increase on fair return.

IMPACT OF CHANGES ON STAFF

It is anticipated that the greatest impact on staff will be the requirement for owners to file petitions for rent increases above the CPI or one based on banking, which was imposed by the previously-adopted amendments. However, the exact impact on staff may not be easy to measure. While it is anticipated that there will be fewer tenant petitions, the expectation based upon the number of enhanced notices received for capital improvement rent increases, is that more petitions will be filed overall[4]. In addition, processing owner petitions involving multiple tenants is more time consuming for all Rent Adjustment Program staff. With large buildings, multiple notices, responses, and other correspondence have to be prepared and mailed out. Managing cases from a large building may require the assignment of two Program Analysts. Mediation in such cases could take an entire day or more to conduct. Finally, more than one hearing may be necessary with cases involving multiple parties.

The recent increase in the Program Service fee, which allows for more staff, along with upgrades to the Rent Adjustment Program database, website and workflows will likely mitigate some of the anticipated impact on staff[5] and program administration. Work continues to implement technology enhancements, business operations and other streamlining measures. Much of this work is based on the 2016 City Auditor's Report.

FISCAL IMPACT

At this time, staff cannot assess any fiscal impact caused by the changes to the ordinance or by the proposed changes to the regulations. The most significant change is the requirement for owners to file petitions for rent increases above the CPI or banked increases. As noted, this change will likely result in an increase in the number of overall petitions filed, but at this time it is simply not possible to make accurate projections. Similarly, although both staff and program resources will increase due to the new Program Service Fee, continued careful monitoring will be required to assure that the new program demands are being adequately addressed.

Any fiscal impact will be reported in the 2016-2017 RAP annual report. In addition, the Council has previously requested periodic status report about the status and effectiveness of the new program changes.

PUBLIC OUTREACH / INTEREST

[4] In 2015, 963 Enhanced Notices were submitted by Owners for capital improvement rent increases. However, only seven owner petitions and 31 tenant petitions were filed in 2015 regarding capital improvement rent increases.
[5] O.M.C. 13389 C.M.S.

Conforming Regulations

There were three public Rent Board meetings regarding the amended regulations where members of the public spoke and/or submitted written comments. To the extent that comments were consistent with the City Council's recent ordinances, they have been incorporated into the proposed Regulations. Public participants consistently expressed a desire for much more time to consider changes to the regulations; although this was not possible to meet the City Council-established deadline for the revised Regulations, members of the public are welcome to raise additional policy considerations in open forum before the Rent Board, which may consider future amendments to the Regulations if appropriate.

Ordinance Changes to Streamline the Program

Recommendations by staff regarding changes to the Ordinance to streamline the procedures did not require any additional public outreach other than the required posting on the City's website. However, due to high public interest, on-going outreach will be conducted in order to educate the public regarding their rights and responsibilities under the new ordinance and to obtain input into Rent Adjustment Program policies and procedures.

COORDINATION

This report was coordinated with the City Attorney's office and the Controller's Bureau.

SUSTAINABLE OPPORTUNITIES

Economic:

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

Environmental:

- Mitigate adverse environmental impacts resulting from existing rental housing; and
- 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; and
- Assist low and moderate income families to save money to become homeowners.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt The Following Pieces Of Legislation:

1. An Ordinance Amending the Rent Adjustment Ordinance (Article I of O.M.C Chapter 8.22) To (1) Facilitate Implementation of the Requirements for Owner Petitions For Rent Increases In Excess of the CPI Rent Adjustment and Banking; (2) Enhance The Reporting Requirements Due From The Owner To A Tenant Where the Owner Is Not Permitted to Set the Initial Rent At The Commencement Of A Tenancy; And (3) Make Clarifying Amendments For Internal Consistency And Efficient Program Operation.

2. A Resolution Ratifying Amendments To The Rent Adjustment Regulations And Appendix A To The Regulations Approved By The Housing, Residential Rent And Relocation Board To (1) Conform The Regulations To Recent Amendments To The Rent Adjustment Ordinance (Article I of O.M.C Chapter 8.22); (2) Enact A Capital Improvement Amortization Schedule; (3) Make Other Clarifying Amendments For Internal Consistency And Efficient Program Operation; And (4) Remove Inactive Provisions.

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

Respectfully submitted,

Michele Byrd, Director
Department of Housing and Community Development

Prepared by
Connie Taylor, Program Manager

Attachments (5)
Attachment A: Ordinance No. 13373
Attachment B: Ordinance No. 13391
Attachment C: Proposed Amendments to Rent Adjustment Ordinance
Attachment D: Proposed Amendments to Rent Adjustment Regulations
Attachment E: Proposed Amendments to Appendix A to the Rent Adjustment Board Regulations

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Attachment A

INTRODUCED BY COUNCILMEMBER KAPLAN

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APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. 13373 C.M.S.

ORDINANCE AMENDING CHAPTER 8.22 (RENT AJUSTMENT PROGRAM) OF THE OAKLAND MUNICIPAL CODE TO: (1) INCREASE THE NUMBER OF ALTERNATE BOARD MEMBERS; AND (2) AUTHORIZE MORE CASES BE HEARD BY BOARD APPEALS PANELS

WHEREAS, the City of Oakland intends to have fair and timely resolution of Rent Program cases in the interest of justice; and

WHEREAS, when appeals are not heard timely, or when appeal hearings are cancelled, it causes hardship to the public in Oakland, including to landlords and tenants; and

WHEREAS, in order to minimize Rent Board meeting cancellations, it will be helpful to have a sufficient number of available Board members; and

WHEREAS, in order to solve and prevent a backlog of cases, the use of Appeal Panels should be encouraged;

WHEREAS, the provision that time served as regular board member shall be considered separately from time served as an Alternate is declarative of existing law; 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, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Modification of Chapter 8.22 of the Oakland Municipal Code. Relevant sections of Title 8 of the Oakland Municipal Code are hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

Chapter 8.22 - RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS

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COMMUNITY & ECONOMIC DEVELOPMENT CMTE.

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8.22.020 - Definitions.

As used in this chapter, Article I:

"1946 notice" means any notice of termination of tenancy served pursuant to California Civil Code Section 1946. This notice is commonly referred to as a thirty (30) or sixty (60) day notice of termination of tenancy, but the notice period may actually be for a longer or shorter period, depending on the circumstances.

"1946 Termination of tenancy" means any termination of tenancy pursuant to California Civil Code § 1946.

"Anniversary date" is the date falling one year after the day the tenant was provided with possession of the covered unit or one year after the day the most recent rent adjustment took effect, whichever is later. Following certain vacancies, a subsequent tenant will assume the anniversary date of the previous tenant (Section 8.22.080).

"Appeal panel" means a three-member panel of board members authorized to hear appeals of Hearing Officer decisions. Appeal panels must be comprised of one residential rental property owner, one tenant, and one person who is neither a tenant nor a residential rental property owner. Appeal panels may be made up of all regular board members, all alternates, or a combination of regular board members and alternates.

"Banking" means any CPI Rent Adjustment (or any rent adjustment formerly known as the Annual Permissible Rent Increase) the owner chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in the regulations.

"Board" and "Residential Rent Adjustment Board" means the Housing, Residential Rent and Relocation Board.

"Capital improvements" means those improvements to a covered unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the tenant rather than the owner.

"CPI—All items" means the Consumer Price Index—All items for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics for the twelve (12) month period ending on the last day of February of each year.

"CPI—Less shelter" means the Consumer Price Index—All items less shelter for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics for the twelve (12) month period ending on the last day of February of each year.

"CPI Rent Adjustment" means the maximum rent adjustment (calculated annually according to a formula pursuant to Section 8.22.070 B.3) that an owner may impose within a twelve (12) month period

without the tenant being allowed to contest the rent increase, except as provided in Section 8.22.070B.2 (failure of the owner to give proper notices, decreased housing services, and uncured code violations).

"Costa-Hawkins" means the California state law known as the Costa-Hawkins Rental Hawkins Act codified at California Civil Code § 1954.50, et seq. (Appendix A to this chapter contains the text of Costa-Hawkins).

"Covered unit" means any dwelling unit, including joint living and work quarters, and all housing services located in Oakland and used or occupied in consideration of payment of rent with the exception of those units designated in Section 8.22.030A as exempt.

"Ellis Act Ordinance" means the ordinance codified at O.M.C. 8.22.400 (Chapter 8.22, Article III) setting out requirements for withdrawal of residential rental units from the market pursuant to California Government Code § 7060, et seq. (the Ellis Act).

"Fee" means the Rent Program Service Fee as set out in O.M.C. 8.22.500 (Chapter 8.22, Article IV).

"Housing services" means all services provided by the owner related to the use or occupancy of a covered unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.

"Owner" means any owner, lessor or landlord, as defined by state law, of a covered unit that is leased or rented to another, and the representative, agent, or successor of such owner, lessor or landlord.

"Owner of record" means a natural person, who is an owner of record holding an interest equal to or greater than thirty-three percent (33%) in the property, but not including any lessor, sublessor, or agent of the owner of record.

"Just Cause for Eviction Ordinance" means the ordinance adopted by the voters on November 5, 2002 (also known as Measure EE) and codified at O.M.C. 8.22.300 (O.M.C. Chapter 8.22, Article II).

"Rent" means the total consideration charged or received by an owner in exchange for the use or occupancy of a covered unit including all housing services provided to the tenant.

"Rent Adjustment Program" means the department in the city that administers this chapter and also includes the board.

"Regulations" means the regulations adopted by the board and approved by the City Council for implementation of this chapter, Article I (formerly known as "Rules and Procedures") (After regulations are approved, they will be attached to this chapter as Appendix B).

"Security deposit" means any payment, fee, deposit, or charge, including but not limited to, an advance payment of rent, used or to be used for any purpose, including but not limited to the compensation of an owner for a tenant's default in payment of rent, the repair of damages to the premises caused by the tenant, or the cleaning of the premises upon termination of the tenancy exclusive of normal wear and tear.

"Tenant" means a person entitled, by written or oral agreement to the use or occupancy of any covered unit.

"Uninsured repairs" means that work done by an owner or tenant to a covered unit or to the common area of the property or structure containing a covered unit which is performed to secure compliance with any state or local law as to repair damage resulting from fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds.

8.22.040 - Composition and functions of the Board.

A. Composition

1. Members. The Board shall consist of seven regular members appointed pursuant to Section 601 of the City Charter. The Board shall be comprised of two residential rental property owners, two tenants, and three persons who are neither tenants nor residential rental property owners. The Board shall also have ~~three~~ six alternate members, ~~one~~ two residential rental property owners, ~~one~~ two tenants and ~~one~~ two persons who ~~is~~ are neither ~~a~~ tenants nor residential rental property owners appointed pursuant to Section 601 of the Charter. An alternate member may act at Board meetings in the absence of a regular Board member of the same category, and at appeal panels meetings without such an absence.
2. Appointment. A Board member is deemed appointed after confirmation by the City Council and upon taking the oath of office.
3. Board members serve without compensation.

B. Vacancies and Removal

1. A vacancy on the Board exists whenever a Board member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the City Council within two City Council meetings of nomination by the Mayor.
2. Removal for Cause. A Board member may be removed pursuant to Section 601 of the City Charter. Among other things, conviction of a felony, misconduct, incompetency, inattention to or inability to perform duties, or absence from three consecutive regular meetings except on account of illness or when absent from the city by permission of the Board, constitute cause for removal.
3. Report of Attendance. To assure participation of Board members, attendance by the members of the Board at all regularly scheduled and special meetings of the Board shall be recorded, and such record shall be provided ~~semi~~annually to the Office of the Mayor and to the City Council.

C. Terms and Holdover

1. Terms. Board members' terms shall be for a period of three years beginning on February 12 of each year and ending on February 11 three years later. Board members shall be appointed to staggered terms so that only one-third of the Board will have terms expiring each year, with no more than one Board member who is neither a residential rental property owner nor a tenant, and no more than one rental property owner and no more than one tenant expiring each year. Terms will commence upon the date of appointment, except that an appointment to fill a vacancy shall be for the unexpired portion of the term only. No person may serve more than two

consecutive terms as a board member, nor more than two consecutive terms as an alternate. Time served as a board member shall be considered separately from time served as an alternate.

2. Holdover. A Board member whose term has expired may remain as a Board member for up to one year following the expiration of his or her term or until a replacement is appointed whichever is earlier. The City Clerk shall notify the Mayor, the Rent Program, the Board, and affected Board member when a Board member's holdover status expires. Prior to notification by the City Clerk of the end of holdover status, a Board member may fully participate in all decisions in which such Board member participates while on holdover status and such decisions are not invalid because of the Board member's holdover status.

D. Duties and Functions

1. Appeals. The Board or an Appeal Panel hears appeals from decisions of hearing officers under the procedures set out in O.M.C. Section 8.22.120.
2. Regulations. The Board may develop or amend the regulations, subject to City Council approval.
3. Reports. The Board shall make such reports to the City Council or committees of the City Council as may be required by this chapter, by the City Council or City Council Committee.
4. Recommendations. The Board may make recommendations to the City Council or appropriate City Council committee pertaining to this chapter or City housing policy when requested to do so by the City Council or when the Board otherwise acts to do so.
5. Regular Meetings. The Board or an Appeal Panel shall meet regularly on the second and fourth Thursdays of each month unless cancelled. Rent Program staff is authorized to schedule these regular meetings either for the full Board or for an Appeal Panel.
6. Special Meetings. The Board or an Appeal Panel may meet at additional times as scheduled by the Board Chair or Rent Program staff.

E. Appeal Panels

1. Appeal Panels shall hear appeals of Hearing Officer decisions.
2. Rent Program staff shall determine whether an appeal should be heard by an Appeal Panel or the full Board. A party to an appeal may, however, elect not to have his/her case heard by a panel and instead to be heard by the full Board. A party may so elect by notifying the Rent Adjustment Program not less than fifteen (15) days after the notice of the panel hearing is mailed.
3. All Appeal Panel members must be present for a quorum. A majority of the Appeal Panel is required to decide an appeal.
4. Membership on an Appeal Panel is determined by Rent Program staff. Membership need not be permanent, but may be selected for each panel meeting.

8.22.120 - Appeal procedure.

A. Filing an Appeal.

1. Either party may appeal the Hearing Officer's decision, including an administrative decision,

within fifteen (15) days after service of the notice of decision by filing with the Rent Adjustment Program a written notice on a form prescribed by the Rent Adjustment Program setting forth the grounds for the appeal.

2. The matter shall be set for an appeal hearing and notice thereof shall be served on the parties not less than ten days prior to such hearing.

B. Appeal Hearings. The following procedures shall apply to all Board and Appeal Panel appeal hearings:
   1. The Board or Appeal Panel shall have a goal of hearing the appeal within thirty (30) days of filing the notice of appeal.
   2. All appeal hearings conducted by the Board or Appeal Panel shall be public and recorded.
   3. Any party to a hearing may be assisted by an attorney or any person so designated.
   4. Appeals shall be based on the record as presented to the Hearing Officer unless the Board or Appeal Panel determines that an evidentiary hearing is required. If the Board or Appeal Panel deems an evidentiary hearing necessary, the case will be continued and the Board or Appeal Panel shall issue a written order setting forth the issues on which the parties may present evidence. All evidence submitted to the Board or Appeal Panel must be submitted under oath.
   5. Should the appellant fail to appear at the designated hearing, the Board or Appeal Panel may dismiss the appeal.

C. Board or Appeal Panel's Decision Final. The Board's decision is final. Parties cannot appeal to the City Council. Parties cannot appeal the decision of an Appeal Panel to the full Board.

D. Court Review. A party may seek judicial review of a final decision of the Board or Appeal Panel pursuant to California Civil Code Section 1094.5 within the time frames set forth therein.

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 3. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

SECTION 4. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: section 15378 (regulatory actions), section 15061(b)(3) (no significant environmental impact), and section 15183 (consistent with general plan and zoning).

SECTION 5. The Rent Adjustment Board shall propose changes to the Rent Board regulations to conform the regulations to the changes hereby made to the Ordinance and propose such changes to the City Council within 90 days of the adoption of this ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, = JUN 07 2016

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, ~~REID~~ AND PRESIDENT GIBSON MCELHANEY

NOES - Ø

ABSENT - 1 - REID

ABSTENTION - Ø

ATTEST: LaTonda Simmons

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

Date of Attestation: June 13, 2016

NOTICE AND DIGEST

ORDINANCE AMENDING CHAPTER 8.22 (RENT AJUSTMENT PROGRAM) OF THE OAKLAND MUNICIPAL CODE TO: (1) INCREASE THE NUMBER OF ALTERNATE BOARD MEMBERS; AND (2) AUTHORIZE MORE CASES BE HEARD BY BOARD APPEALS PANELS

The Ordinance amends the Oakland Municipal Code to increase the number of alternate Rent Board members and authorize more cases be heard by Board Appeals Panels.

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COMMUNITY & ECONOMIC DEVELOPMENT CMTE.

JAN 10 2017

Attachment B

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

.S KALB, CAMPBELL WASHINGTON, GIBSON MCELHANEY, AND GUILLEN

OAKLAND CITY COUNCIL

ORDINANCE NO. 13391 C.M.S.

ORDINANCE AMENDING CHAPTER 8.22, ARTICLE I (RENT ADJUSTMENT) OF THE OAKLAND MUNICIPAL CODE TO: (1) MODIFY EXEMPTIONS FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES AND SUBSTANTIALLY REHABILITATED PROPERTIES; (2) REQUIRE OWNERS FILE PETITIONS FOR RENT INCREASES OTHER THAN THOSE BASED ON THE ANNUAL CONSUMER PRICE INDEX INCREASE OR BANKING; (3) CHANGE THE DEFINITION OF CAPITAL IMPROVEMENTS TO PROVIDE AMORTIZATION OF THE COST OVER THE USEFUL LIFE OF THE IMPROVEMENT; AND (4) AMEND TIMELINES FOR FILING PETITIONS, AND AMENDING CHAPTER 8.22, ARTICLE V (TENANT PROTECTION ORDINANCE) TO CLARIFY THAT INCREASING A TENANT'S RENT PURSUANT TO STATE OR OAKLAND LAW SHALL NOT BE DEEMED A VIOLATION OF THE TENANT PROTECTION ORDINANCE

WHEREAS, Oakland has a Rent Adjustment Program that presently permits landlords to petition for rent increases, but in most cases requires tenants to petition to contest rent increases over an annual rent increase allowance;

WHEREAS, on November 5, 2002, Oakland voters passed the Just Cause for Eviction Ordinance (Measure EE), codified as Article II of Title 8 of the Oakland Municipal Code; and

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

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

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

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COMMUNITY & ECONOMIC DEVELOPMENT CMTE.

JAN 10 2017

WHEREAS, in February 2016 the median rental price for a one-bedroom unit in Oakland was $2,250 per month ($27,000 per year), a 13.6 percent increase in costs over February 2015, and the median rental price for a two-bedroom unit in February 2016 was $2,700 per month ($32,400 per year), an 18.9 percent increase over costs in February 2015 (Zumper National Rent Report: March 2016); and

WHEREAS, Oakland's rental housing costs are the fourth highest in the nation, behind San Francisco, New York, and Boston (Zumper National Rent Report: March 2016); and

WHEREAS, in 2014 the estimated annual median household income for households that rented in Oakland was $36,657, which would result in a household earning the annual median household income paying 74 percent of household income for a one-bedroom unit or 85 percent of household income for a two-bedroom unit (U.S. Census Bureau, ACS 2014, Table S2503); and

WHEREAS, the affordable rent for a family earning $36,657 is defined as only paying thirty percent of income on housing, which is approximately $916 per month; and

WHEREAS, the median rent for all apartments rented in February of 2016 reached an all-time high of just over $3,000 per month according to research from Trulia; and

WHEREAS, 22.5% of Oakland's households are "housing insecure," defined as facing high housing costs, poor housing quality, unstable neighborhoods, overcrowding, or homelessness; and

WHEREAS, over 26,000 Oakland households are severely rent burdened, which is defined as spending 50 percent or more of monthly household income on rent (Oakland Consolidated Housing Needs Assessment 2015 Analysis of HUD Data, as reported in the City's March 2016 Oakland at Home report, pp. 10-11); and

WHEREAS, displacement through unauthorized rent increases has a direct impact on the health, safety and/or welfare of Oakland's citizens by uprooting children from their schools, disrupting longstanding community networks that are integral to citizens' welfare, forcing low-income residents to pay unaffordable relocation costs, segregating low-income residents into less healthy, less safe and more overcrowded housing that is often further removed from vital public services and leaving residents with unhealthy levels of stress and anxiety as they attempt to cope with the threat of homelessness; and

WHEREAS, major capital improvements amortized over a short period of time may cause high rent increases and the costs of such improvements should be amortized over a period of time closer to their useful life, and tenants should not have to pay for improvements that upgrade amenities beyond what they already have without the tenants approval; and

WHEREAS, The City Council finds that requiring property owners to file petitions for all rent increases other than those based on CPI Rent Increases or Banking would ensure greater fairness and compliance with the RAP Ordinance; 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, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Modification of Chapter 8.22 of the Oakland Municipal Code. Relevant sections of Title 8 of the Oakland Municipal Code are hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

Chapter 8.22 - RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS

Article I. - Residential Rent Adjustment Program

8.22.020 - Definitions.
As used in this chapter, Article I:

"1946 notice" means any notice of termination of tenancy served pursuant to California Civil Code Section 1946. This notice is commonly referred to as a thirty (30) or sixty (60) day notice of termination of tenancy, but the notice period may actually be for a longer or shorter period, depending on the circumstances.

"1946 Termination of tenancy" means any termination of tenancy pursuant to California Civil Code § 1946.

"Anniversary date" is the date falling one year after the day the tenant was provided with possession of the covered unit or one year after the day the most recent rent adjustment took effect, whichever is later. Following certain vacancies, a subsequent tenant will assume the anniversary date of the previous tenant (Section 8.22.080).

"Banking" means any CPI Rent Adjustment (or any rent adjustment formerly known as the Annual Permissible Rent Increase) the owner chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in the regulations.

"Board" and "Residential Rent Adjustment Board" means the Housing, Residential Rent and Relocation Board.

"Capital improvements" means those improvements to a covered unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the tenant rather than the owner. Capital improvement costs that may be passed through to tenants include seventy percent (70%) of actual costs, plus imputed financing. Capital improvement costs shall be amortized over the useful life of the improvement as set forth in an amortization schedule

developed by the Rent Board. Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements ("gold-plating" "over-improving") excluding: improvements approved in writing by the tenant, improvements that bring the unit up to current building or housing codes, or the cost of a substantially equivalent replacement.

"CPI—All items" means the Consumer Price Index—All items for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics for the twelve (12) month period ending on the last day of February of each year.

"CPI—Less shelter" means the Consumer Price Index—All items less shelter for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics for the twelve (12) month period ending on the last day of February of each year.

"CPI Rent Adjustment" means the maximum rent adjustment (calculated annually according to a formula pursuant to Section 8.22.070 B.3) that an owner may impose within a twelve (12) month period without the tenant being allowed to contest the rent increase, except as provided in Section 8.22.070B.2 (failure of the owner to give proper notices, decreased housing services, and uncured code violations).

"Costa-Hawkins" means the California state law known as the Costa-Hawkins Rental Hawkins Act codified at California Civil Code § 1954.50, et seq. (Appendix A to this chapter contains the text of Costa-Hawkins).

"Covered unit" means any dwelling unit, including joint living and work quarters, and all housing services located in Oakland and used or occupied in consideration of payment of rent with the exception of those units designated in Section 8.22.030A as exempt.

"Ellis Act Ordinance" means the ordinance codified at O.M.C. 8.22.400 (Chapter 8.22, Article III) setting out requirements for withdrawal of residential rental units from the market pursuant to California Government Code § 7060, et seq. (the Ellis Act).

"Fee" means the Rent Program Service Fee as set out in O.M.C. 8.22.500 (Chapter 8.22, Article IV).

"Housing services" means all services provided by the owner related to the use or occupancy of a covered unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.

"Owner" means any owner, lessor or landlord, as defined by state law, of a covered unit that is leased or rented to another, and the representative, agent, or successor of such owner, lessor or landlord.

"Owner of record" means a natural person, who is an owner of record holding an interest equal to or greater than thirty-three percent (33%) in the property, but not including any lessor, sublessor, or agent of the owner of record.

"Just Cause for Eviction Ordinance" means the ordinance adopted by the voters on November 5, 2002 (also known as Measure EE) and codified at O.M.C. 8.22.300 (O.M.C. Chapter 8.22, Article II).

"Rent" means the total consideration charged or received by an owner in exchange for the use or occupancy of a covered unit including all housing services provided to the tenant.

"Rent Adjustment Program" means the department in the city that administers this chapter and also includes the board.

"Regulations" means the regulations adopted by the board and approved by the City Council for implementation of this chapter, Article I (formerly known as "Rules and Procedures") (After regulations are approved, they will be attached to this chapter as Appendix B).

"Security deposit" means any payment, fee, deposit, or charge, including but not limited to, an advance payment of rent, used or to be used for any purpose, including but not limited to the compensation of an owner for a tenant's default in payment of rent, the repair of damages to the premises caused by the tenant, or the cleaning of the premises upon termination of the tenancy exclusive of normal wear and tear.

"Tenant" means a person entitled, by written or oral agreement to the use or occupancy of any covered unit.

"Uninsured repairs" means that work done by an owner or tenant to a covered unit or to the common area of the property or structure containing a covered unit which is performed to secure compliance with any state or local law as to repair damage resulting from fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds.

8.22.030 - Exemptions.

A. Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this chapter, Article I only (the Just Cause for Eviction Ordinance (Chapter 8.22, Article II) and the Ellis Act Ordinance (Chapter 8.22, Article II)) have different exemptions):
   1. Dwelling units whose rents are controlled, regulated (other than by this chapter), or subsidized by any governmental unit, agency or authority.
   2. Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses, provided that such accommodations are not occupied by the same tenant for thirty (30) or more continuous days.
   3. Housing accommodations in any hospital, convent, monastery, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by an educational institution.
   4. Dwelling units in a nonprofit cooperative, owned, occupied, and controlled by a majority of the residents.

5. Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. This exemption does not apply to any newly constructed dwelling units that replace covered units withdrawn from the rental market in accordance with O.M.C. 8.22.400, et seq. (Ellis Act Ordinance). To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential.
6. Substantially rehabilitated buildings.
7. Dwelling units exempt pursuant to Costa-Hawkins (California Civil Code § 1954.52).
8. A dwelling unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by an owner of record as his or her principal residence. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the state of California.

B. Exemption Procedures.

1. Certificate of Exemption:
   a. A certificate of exemption is a determination by the Rent Adjustment Program that a dwelling unit or units qualify for an exemption and, therefore, are not covered units. An owner may obtain a certificate of exemption by claiming and proving an exemption in response to a tenant petition or by petitioning the Rent Adjustment Program for such exemption. A certificate of exemption may be granted only for dwelling units that are permanently exempt from the Rent Adjustment Ordinance as new construction, substantial rehabilitation, or by state law (Costa Hawkins).
   b. For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner. A certificate of exemption is a final determination of exemption absent fraud or mistake.
   c. Timely submission of a certificate of exemption previously granted in response to a petition shall result in dismissal of the petition absent proof of fraud or mistake regarding the granting of the certificate. The burden of proving such fraud or mistake is on the tenant.
2. Exemptions for Substantially Rehabilitated Buildings.
   a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.
   b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.
   c. An Owner seeking to exempt a property on the basis of substantial rehabilitation must first obtain a certificate of exemption after completion of all work and obtaining a certificate of occupancy. If no certificate of occupancy was issued for the property, in lieu of the certificate of occupancy an owner may provide the last finalized permit. For any property that has a certificate of occupancy issued on or

before the date of enactment of this subparagraph O.M.C 8.22.30B.2.c. for which an Owner claims exemption as substantially rehabilitated, the Owner must apply for such exemption not later than June 30, 2017 or such exemption will be deemed to be vacated.

C. Controlled, Regulated, or Subsidized Units. The owner of a dwelling unit that is exempt because it is controlled, regulated (other than by this chapter), or subsidized by a governmental agency (Section 8.22.030A.1) must file a notice with the Rent Adjustment Program within thirty (30) days after such dwelling unit is no longer otherwise controlled, regulated, or subsidized by the governmental agency. Once the dwelling unit is no longer controlled, regulated, or subsidized, the dwelling unit ceases to be exempt and becomes a covered unit subject to this chapter, Article I. Such notice must be on a form prescribed by the Rent Adjustment Program.

D. Exemptions for Owner-Occupied Properties of three or Fewer Units. Units in owner-occupied properties divided into three or fewer units will be exempt from this chapter, Article I under the following conditions:

1. Two-~~One~~-Year Minimum Owner Occupancy. A qualifying Owner of Record must first occupy one of the units continuously as his or her principal residence for at least two ~~one~~ years. This requirement does not apply to any property in which the owner resides in the premises on or before August 1, 2016.
2. Continuation of Exemption. The owner-occupancy exemption continues until a qualifying owner of record no longer continuously occupies the property
3. Rent Increases. The owner of record qualifying for this exemption may notice the first rent increase that is not regulated by this chapter, Article I ~~one year after the effective date of this exemption or~~ two ~~one~~ years after the date the qualifying owner of record starts residing at the affected property as his or her principal place of residence.
4. An owner claiming such exemption must provide information to the Rent Program on when the owner occupancy began and documentation showing the minimum of two years continuous occupancy. Staff shall develop a form for this purpose.

~~4. Effective date of this Exemption. This exemption for owner-occupied properties of three or fewer units takes effect one year after the adoption of this ordinance modifying this chapter, Article I.~~

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

A. Notice at Commencement of Tenancy. The owner of any covered unit is required to comply with the following notice requirements at the commencement of any tenancy:

1. On or before the date of commencement of a tenancy, the owner must give the tenant a written notice in a form prescribed by the Rent Adjustment Program which must include the following information:
   a. The existence and scope of this chapter; and
   b. The tenant's rights to petition against certain rent increases.

2. The Owner must give the initial notice in four languages: English, Spanish, Mandarin, and Cantonese.

B. Evidence of Giving Notice. When filing an owner's response to a tenant petition or an owner's petition for a rent increase, the owner must submit evidence that the owner has given the notice required by this section to the affected tenants in the building under dispute in advance of the filing. When responding to a tenant petition, the owner may allege that the affected dwelling units are exempt in lieu of providing evidence of complying with the notice requirement. If an owner fails to submit the evidence and the subject dwelling unit is not exempt, then the owner's petition or response to a tenant's petition must be dismissed. This evidence can be a statement of compliance given under oath, however, the tenant may controvert this statement at the hearing. An owner's filing the notice in advance of petition or response prevents the owner's petition or response from being dismissed, but the owner may still be subject to the rent increase forfeiture if the notice was not given at the commencement of the tenancy or within the cure period set out in Section 8.22.060(C).

C. Failing to Give Notice. An owner who fails to give notice of the existence and scope of the Rent Adjustment Program at the commencement of a tenancy, but otherwise qualifies to petition or respond to a petition filed with the Rent Adjustment Program, will forfeit six months of the rent increase sought unless the owner cured the failure to give the notice. An owner may cure the failure to give the notice at the commencement of a tenancy required by this section and not be subject to a forfeiture of a rent increase if the owner gives the notice at least six months prior to serving the rent increase notice on the tenant or, in the case of an owner petition, at least six months prior to filing the petition.

8.22.065 - Rent Adjustments In General.

A. Notwithstanding any other provision of this Chapter, owners may increase rents only for increases based on the CPI Rent Adjustment or Banking, or by filing a petition to increase rent in excess of that amount. Any rent increase not based on the CPI Rent Adjustment or Banking that is not first approved by the Rent Adjustment Program is void and unenforceable.

B. Rent increases are subject to the requirements of this Chapter and Regulations.

C. The changes reflected in this O.M.C. subsection 8.22.065 apply only to rent increases noticed on or after February 1, 2017.

8.22.090 - Petition and response filing procedures.

A. Tenant Petitions.

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

   a. A rent increase exceeds the CPI Rent Adjustment, including, without limitation circumstances where:

      i. The owner failed to timely give the tenant a written summary of the basis for a rent increase in excess of the CPI rent adjustment as required by Subsection 8.22.070H.1.c.; and

ii. The owner set an initial rent in excess of the amount permitted pursuant to Section 8.22.080 (Rent increases following vacancies);

iii. A rent increase notice fails to comply with the requirements of Subsection 8.22.070H;

iv. The owner failed to give the tenant a notice in compliance with Section 8.22.060;

v. The owner decreased housing services to the tenant;

vi. The tenant alleges the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Subsection 8.22.070 D.7;

vii. The owner fails to reduce rent on the month following the expiration of the amortization period for capital improvements, or to pay any interest due on any rent overcharges from the failure to reduce rent for a capital improvement.

viii. The owner noticed a rent increase of more than the ten percent annual limit or that exceeds the rent increase limit of 30 percent in five years.

b. The tenant claims relocation restitution pursuant to Subsection 8.22.140 C.1.

c. The petition is permitted by the Just Cause for Eviction Ordinance (Measure EE) O.M.C. 8.22.300.

d. The petition is permitted by the Ellis Act Ordinance, O.M.C. 8.22.400.

e. The tenant contests an exemption from this O.M.C. 8.22, Article I.

2. For a petition contesting a rent increase, the petition must be filed within the following timelines ~~sixty (60) days of whichever of the following is later~~:

a. If the owner provided written notice of the existence and scope of this chapter as required by Section 8.22.060 at the inception of tenancy:

i. the petition must be filed within ninety (90) days of the date the owner serves the rent increase notice if the owner provided the RAP notice with the rent increase; or

ii. the petition must be filed within one hundred and twenty (120) days of the date the owner serves the rent increase if the owner did not provide the RAP notice with the rent increase.

b. If the owner did not provide written notice of the existence and scope of this chapter as required by Section 8.22.060 at the inception of tenancy, within ninety (90) days of t~~T~~he date the tenant first receives written notice of the existence and scope of this chapter as required by Section 8.22.060.

3. For a petition claiming decreased housing:

a. If the decreased housing is the result of a noticed or discrete change in services provided to the tenant (e.g., removal of parking place, requirement that tenant pay utilities previously paid by owner) the petition must be filed within ninety (90) days of whichever of the following is later:

i. The date the tenant is noticed or first becomes aware of the decreased housing service; or

ii. The date the tenant first receives written notice of the existence and scope of this chapter as required by Section 8.22.060.

b. If the decreased housing is ongoing (e.g., a leaking roof), the tenant may file a petition at any point but is limited in restitution for ninety (90) days before the petition is filed and to the period of time when the owner knew or should have known about the decreased housing service.

4. ~~3.~~ In order to file a petition or respond to an owner petition, a tenant must provide the following at the time of filing the petition or response:

a. A completed tenant petition or response on a form prescribed by the Rent Adjustment Program;

b. Evidence that the tenant's rent is current or that the tenant is lawfully withholding rent; and

c. A statement of the services that have been reduced or eliminated, if the tenant claims a decrease in housing services;

d. A copy of the applicable citation, if the tenant claims the rent increase need not be paid because the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Section 8.22.070D.7.

5. ~~4.~~ A tenant must file a response to an owner's petition within thirty (30) days of service of the notice by the Rent Adjustment Program that an owner petition was filed.

B. Owner Petitions and Owner Responses to Tenant Petitions.

1. In order for an owner to file a response to a tenant petition or to file a petition seeking a rent increase, the owner must provide the following:

a. Evidence of possession of a current city business license;

b. Evidence of payment of the Rent Adjustment Program Service Fee;

c. Evidence of service of written notice of the existence and scope of the Rent Adjustment Program on the tenant in each affected covered unit in the building prior to the petition being filed;

d. A completed response or petition on a form prescribed by the Rent Adjustment Program; and

e. Documentation supporting the owner's claimed justification(s) for the rent increase or supporting any claim of exemption.

2. An owner must file a response to a tenant's petition within thirty (30) days of service of the notice by the Rent Adjustment Program that a tenant petition was filed.

8.22.185. Miscellaneous

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

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

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

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

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

8.22.190 - Applicability—Effective date of chapter.

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

A. The CPI Rent Adjustment. The CPI Rent Adjustment is effective for rent increases taking effect on or after July 1, 2002 in accordance with Section 8.22.070(B)(1);

B. ~~Exemption for Owner-occupied Properties of Three or Fewer Units. The exemption for owner-occupied properties of three or fewer units is effective one year after this ordinance amending this chapter, Article I to provide for this exemption is adopted by the City Council in accordance with Paragraph8.22.030(D)(4).~~

C. Unless otherwise specified in a specific provision of this Chapter ~~Other Provisions.~~ All ~~other~~ provisions of this chapter take effect pursuant to Section 216 of the Oakland City Charter. Whenever a new section takes effect on a date after this amended chapter takes effect pursuant to Section 216 of the Oakland City Charter, the provisions of the former Chapter 8.22 will apply until that new section takes effect.

Article V. – Tenant Protection Ordinance

8.22.640 - Tenant harassment.

A. No Owner or such Owner's agent, contractor, subcontractor, or employee, shall do any of the following, in bad faith.

1. Interrupt, terminate, or fail to provide housing services required by contract or by State, County or municipal housing, health or safety laws, or threaten to do so;
2. Fail to perform repairs and maintenance required by contract or by State, County or municipal housing, health or safety laws, or threaten to do so;
3. Fail to exercise due diligence in completing repairs and maintenance once undertaken or fail to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts;

4. Abuse the Owner's right of access into a rental housing unit as that right is provided by law;
5. Remove from the Rental Unit personal property, furnishings, or any other items without the prior written consent of the Tenant, except when done pursuant to the procedure set forth in Civil Code section 1980, et seq. (disposition of Tenant's property after termination of tenancy).
6. Influence or attempt to influence a Tenant to vacate a Rental Unit through fraud, intimidation or coercion, which shall include threatening to report a Tenant to U.S. Immigration and Customs Enforcement, though that prohibition shall not be construed as preventing communication with U.S. Immigration and Customs Enforcement regarding an alleged violation;
7. Offer payments to a Tenant to vacate more than once in six (6) months, after the Tenant has notified the Owner in writing the Tenant does not desire to receive further offers of payments to vacate;
8. Attempt to coerce a Tenant to vacate with offer(s) of payments to vacate which are accompanied with threats or intimidation. This shall not include settlement offers made in good faith and not accompanied with threats or intimidation in pending eviction actions;
9. Threaten the tenant, by word or gesture, with physical harm;
10. Substantially and directly interfere with a Tenant's right to quiet use and enjoyment of a rental housing unit as that right is defined by California law;
11. Refuse to accept or acknowledge receipt of a Tenant's lawful rent payment, except as such refusal may be permitted by state law after a notice to quit has been served on the Tenant and the time period for performance pursuant to the notice has expired;
12. Refuse to cash a rent check for over thirty (30) days unless a written receipt for payment has been provided to the Tenant, except as such refusal may be permitted by state law after a notice to quit has been served on the Tenant and the time period for performance pursuant to the notice has expired;
13. Interfere with a Tenant's right to privacy;
14. Request information that violates a Tenant's right to privacy, including but not limited to residence or citizenship status or social security number, except as required by law or, in the case of a social security number, for the purpose of obtaining information for the qualifications for a tenancy, or not release such information except as required or authorized by law;
15. Other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy;
16. Removing a housing service for the purpose of causing the Tenant to vacate the Rental Unit. For example, taking away a parking space knowing that a Tenant cannot find alternative parking and must move.

B. Retaliation Prohibited. Retaliation against a Tenant because of the Tenant's exercise of rights under the TPO is prohibited. Retaliation claims may only be brought in court and may not be addressed administratively. A court may consider the protections afforded by the TPO in evaluating a claim of retaliation.

C. Evictions. Nothing in the TPO shall be construed as to prevent an Owner from lawfully evicting a Tenant pursuant to state law or Oakland's Just Cause for Eviction Ordinance. (O.M.C. 8.22.300, et seq.).

D. Rent Adjustments. Nothing in the TPO shall be construed as to prevent an Owner from lawfully increasing a Tenant's rent pursuant to state law or Oakland's Rent Adjustment Ordinance (O.M.C. 8.22.100, et seq.), and such increases shall not be deemed violations of Section 8.22.640 of the TPO.

E. Notice to Tenants.

1. Commencement.
   a. For Rental Units covered by the Rent Adjustment Ordinance the Notice at Commencement of Tenancy required by O.M.C. 8.22.06 shall include a reference to the TPO.
   b. For all Rental Units that are not covered by the Rent Adjustment Ordinance, Owners are required to provide a notice regarding the TPO to all Tenants using the required form prescribed by the City staff.
2. Common area. If Rental Units subject to this ordinance are located in a building with an interior common area that all of the building's Tenants have access to, the Owner must post a notice in at least one (1) such common area in the building via a form prescribed by the City staff.

F. Repairs and maintenance. Nothing in the TPO shall be construed as requiring different timelines or standards for repairs or maintenance, as required by contract or State, County or municipal housing, health, and safety laws, or according to appropriate industry protocols.

SECTION 2. DIRECTIONS TO RENT ADJUSTMENT BOARD AND STAFF. The City Council gives the following directions to the Rent Adjustment Board and Staff:

1. The Board and staff shall develop and bring forward recommendations that will create efficiencies for the Board and Rent Program administration in handling petitions and appeals.

2. The Board shall consider Just Cause regulations to require owners to report their compliance with evictions where the tenant is not at fault: O.M.C. Section 8.22.360 A.9 (Owner move-in), O.M.C. Section 8.22.360 A.10 (substantial repairs); O.M.C. Section 8.22.360 A.11 (Ellis Act).

3. The Board shall return to Council revisions to the Rent Adjustment regulations that will permit Owners to take the CPI Rent Adjustment at the same time as a Capital Improvement rent increase.

4. The Rent Adjustment Board shall propose changes to the Rent Adjustment regulations to conform the regulations to the changes hereby made to the Ordinance and propose such changes to the City Council within 120 days of the adoption of this ordinance.

5. Staff shall return to Council within 120 days of the adoption of this ordinance with proposed revisions to the Rent Adjustment Ordinance to conform the remainder of that Ordinance with the revisions adopted herein.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption. The revised amortization period for Capital improvements as set forth in amended section 8.22.020 shall be effective for all Capital improvements for which permits are first issued on or after February 1, 2017.

SECTION 5. CEQA. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: section 15378 (regulatory actions), section 15061(b)(3) (no significant environmental impact), and section 15183 (consistent with general plan and zoning).

SECTION 5. Transition. The changes to this O.M.C. Chapter 8.22 shall not apply to any rent increase noticed on or before the effective date of this Ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE: SEP 20 2016

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

NOES - Ø

ABSENT - Ø

ABSTENTION - Brooks - 1

Introduction Date

JUL 19 2016

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

Date of Attestation: 10-4-2016

NOTICE AND DIGEST

ORDINANCE AMENDING CHAPTER 8.22, ARTICLE I (RENT ADJUSTMENT) OF THE OAKLAND MUNICIPAL CODE TO: (1) MODIFY EXEMPTIONS FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES AND SUBSTANTIALLY REHABILITATED PROPERTIES; (2) REQUIRE OWNERS FILE PETITIONS FOR RENT INCREASES OTHER THAN THOSE BASED ON THE ANNUAL CONSUMER PRICE INDEX INCREASE OR BANKING; (3) CHANGE THE DEFINITION OF CAPITAL IMPROVEMENTS TO PROVIDE AMORTIZATION OF THE COST OVER THE USEFUL LIFE OF THE IMPROVEMENT; AND (4) AMEND TIMELINES FOR FILING PETITIONS, AND AMENDING CHAPTER 8.22, ARTICLE V (TENANT PROTECTION ORDINANCE) TO CLARIFY THAT INCREASING A TENANT'S RENT PURSUANT TO STATE OR OAKLAND LAW SHALL NOT BE DEEMED A VIOLATION OF THE TENANT PROTECTION ORDINANCE

The Ordinance would amend the Oakland Municipal Code Chapter 8.22. Article I (Rent Adjustment) to modify the exemption for owner-occupied duplexes and triplexes to extend the occupancy time by the owner to two years before the units become exempt; modify the substantial rehabilitation exemption to require owners petition for a certificate of exemption; require that owners file petitions for rent increases other than those based on CPI increase or banking; change the definition of capital improvements to provide for amortization of the cost over the useful life of the improvement; amend timelines for filing petitions; and clarify that increasing a tenant's rent pursuant to state or Oakland law shall not be deemed a violation of the TPO.

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COMMUNITY & ECONOMIC
DEVELOPMENT CMTE.

JAN 10 2017

Attachment C

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OFFICE OF THE CITY CLERK
OAKLAND
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APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____C.M.S.

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

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

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

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

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

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

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

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JAN 10 2017

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

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

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

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

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Modification of Chapter 8.22 of the Oakland Municipal Code. The City Council hereby adopts the amendments to the Rent Adjustment Ordinance attached to this Ordinance as Exhibit A. Additions are shown in double-underlined text (example), and deletions are shown in strike-through text (~~example~~).

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 3. Effective Date. The amendment to the Rent Adjustment Ordinance set out in Exhibit A shall be effective immediately on final adoption if it

receives six (6) or more affirmative votes, otherwise it shall become effective upon the seventh day after final adoption.

SECTION 4. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: § 15378 (regulatory actions), § 15061(b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning).

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

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

Date of Attestation: _____

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COMMUNITY & ECONOMIC DEVELOPMENT CMTE.

JAN 10 2017

NOTICE AND DIGEST

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

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

Chapter 8.22 - RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS

Sections:

Footnotes:

--- (3) ---

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

Article I. - Residential Rent Adjustment Program

8.22.010 - Findings and purpose.

A. The City Council finds that a shortage of decent, safe, affordable and sanitary residential rental housing continues to exist in Oakland. This shortage is evidenced by a low vacancy rate among such units throughout the city and a continually increasing demand for such housing. Many residents of Oakland pay a substantial amount of their monthly income for rent. The present shortage of rental housing units and the prevailing rent levels have a detrimental effect on the health, safety, and welfare of a substantial number of Oakland residents, particularly senior citizens, persons in low and moderate income households, and persons on fixed incomes. Stability in their housing situation is important for individuals and families in rental housing. In particular, tenants desire to be free from the fear of eviction motivated by a rental property owner's desire to increase rents. Rental property owners desire the ability to expeditiously terminate the tenancies of problem tenants.

B. Further, the welfare of all persons who live, work, or own residential rental property in the City depends in part on attracting persons who are willing to invest in residential rental property in the city. It is, therefore, necessary that the City Council take actions that encourage investment in residential housing while also protecting the welfare of residential tenants.

C. Among the purposes of this chapter are providing relief to residential tenants in Oakland by limiting rent increases for existing tenants; encouraging rehabilitation of rental units, encouraging investment in new residential rental property in the city; reducing the financial incentives to rental property owners who terminate tenancies under California Civil Code Section 1946 ("Section 1946") or where rental units are vacated on other grounds under state law Civil Code Sec. 1954.50, et seq. ("Costa-Hawkins") that permit the city to regulate initial rents to new tenants, and allowing efficient rental property owners the opportunity for both a fair return on their property and rental income sufficient to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities, and other costs of operation.

D. The City Council also wishes to foster better relations between rental property owners and tenants and to reduce the cost and adversarial nature of rent adjustment proceedings under this chapter. For these reasons, this chapter includes options for rental property owners and tenants to mediate rent disputes that would otherwise be subject to a hearing process, and to mediate some evictions.

E. Terminations of Tenancies: On November 5, 2002, Oakland voters passed the Just Cause for Eviction Ordinance (Measure EE). The enactment of the Just Cause for Eviction

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

F. The City Council believes that the relationship between landlords and tenants in smaller owner-occupied rental properties involve special relationships between the landlord and the tenants residing in the same smaller property. Smaller property owners also have a difficult time understanding and complying with rent and eviction regulation. The Just Cause for Eviction Ordinance recognizes this special relationship and exempts from its coverage owner-occupied properties divided into a maximum of three units. For these reasons, the City Council believes owner-occupied rental properties exempt from the Just Cause for Eviction Ordinance should similarly be exempt from the Rent Adjustment Program so long as the property is owner-occupied. In order to permit tenants to adjust to the possibility of unregulated rents and to address the potential for abuse of the owner-occupancy exemption by landlords who are motivated to move into a property to gain an exemption just to increase rent and not to reside in the property, this exemption should not take effect for one year after the amendment to This chapter exempting these rental units is adopted, or one year after the landlord begins owner-occupancy, whichever is later.

G. The City Council desires to provide efficient and effective program services to rental property owners and tenants. The City Council recognizes there must be an adequate funding source in order to accomplish this objective. To provide adequate funding for the program and services provided to rental property owners and tenants under this chapter, an annual fee has been established, as set out in the Master Fee Schedule. The funds provided from this fee shall be dedicated to the administrative, public outreach, enforcement, and legal needs of the programs and services set out in this chapter and not for any other purposes. This fee is to be paid by the rental property owner not as the owner of real property, but instead as the operator of the business of renting residential units, with a reimbursement of fifty (50) percent of the fee from the tenant as provided in this chapter. The fee will sunset after two years unless the City Council acts to extend it. With the enactment of the Just Cause for Eviction Ordinance, the City Council desires to extend the Rent Program Service Fee to all residential rental units covered by either Residential Rent Adjustment Program or the Just Cause for Eviction Ordinance and, therefore, moves the section of Article I pertaining to the fee to a new Chapter 8.22, Article IV.

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

8.22.020 - Definitions.

As used in this chapter, Article I:

"1946 notice" means any notice of termination of tenancy served pursuant to California Civil Code Section 1946. This notice is commonly referred to as a thirty (30) or sixty (60) day notice of termination of tenancy, but the notice period may actually be for a longer or shorter period, depending on the circumstances.

"1946 Termination of tenancy" means any termination of tenancy pursuant to California Civil Code § 1946.

"Anniversary date" is the date falling one year after the day the tenant was provided with possession of the covered unit or one year after the day the most recent rent adjustment took

effect, whichever is later. Following certain vacancies, a subsequent tenant will assume the anniversary date of the previous tenant (Section 8.22.080).

"Appeal panel" means a three-member panel of board members authorized to hear appeals of Hearing Officer decisions. Appeal panels must be comprised of one residential rental property owner, one tenant, and one person who is neither a tenant nor a residential rental property owner. Appeal panels may be made up of all regular board members, all alternates, or a combination of regular board members and alternates.

"Banking" means any CPI Rent Adjustment (or any rent adjustment formerly known as the Annual Permissible Rent Increase) the owner chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in the regulations.

"Board" and "Residential Rent Adjustment Board" means the Housing, Residential Rent and Relocation Board.

"Capital improvements" means those improvements to a covered unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the tenant rather than the owner. Capital improvement costs that may be passed through to tenants include seventy percent (70%) of actual costs, plus imputed financing. Capital improvement costs shall be amortized over the useful life of the improvement as set forth in an amortization schedule developed by the Rent Board. Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements ("gold-plating" "over-improving") excluding: improvements approved in writing by the tenant, improvements that bring the unit up to current building or housing codes, or the cost of a substantially equivalent replacement.

"CPI—All items" means the Consumer Price Index—All items for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics for the twelve (12) month period ending on the last day of February of each year.

"CPI—Less shelter" means the Consumer Price Index—All items less shelter for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics for the twelve (12) month period ending on the last day of February of each year.

"CPI Rent Adjustment" means the maximum rent adjustment (calculated annually according to a formula pursuant to Section 8.22.070 B.3) that an owner may impose within a twelve (12) month period without the tenant being allowed to contest the rent increase, except as provided in Section 8.22.070B.2 (failure of the owner to give proper notices, decreased housing services, and uncured code violations).

"Costa-Hawkins" means the California state law known as the Costa-Hawkins Rental Hawkins Act codified at California Civil Code § 1954.50, et seq. (Appendix A to this chapter contains the text of Costa-Hawkins).

"Covered unit" means any dwelling unit, including joint living and work quarters, and all housing services located in Oakland and used or occupied in consideration of payment of rent with the exception of those units designated in Section 8.22.030A as exempt.

"Ellis Act Ordinance" means the ordinance codified at O.M.C. 8.22.400 (Chapter 8.22, Article III) setting out requirements for withdrawal of residential rental units from the market pursuant to California Government Code § 7060, et seq. (the Ellis Act).

"Fee" means the Rent Program Service Fee as set out in O.M.C. 8.22.500 (Chapter 8.22, Article IV).

"Housing services" means all services provided by the owner related to the use or occupancy of a covered unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.

"Owner" means any owner, lessor or landlord, as defined by state law, of a covered unit that is leased or rented to another, and the representative, agent, or successor of such owner, lessor or landlord.

"Owner of record" means a natural person, who is an owner of record holding an interest equal to or greater than thirty-three percent (33%) in the property, but not including any lessor, sublessor, or agent of the owner of record.

"Just Cause for Eviction Ordinance" means the ordinance adopted by the voters on November 5, 2002 (also known as Measure EE) and codified at O.M.C. 8.22.300 (O.M.C. Chapter 8.22, Article II).

"Rent" means the total consideration charged or received by an owner in exchange for the use or occupancy of a covered unit including all housing services provided to the tenant.

"Rent Adjustment Program" means the department in the city that administers this chapter and also includes the board.

"Regulations" means the regulations adopted by the board and approved by the City Council for implementation of this chapter, Article I (formerly known as "Rules and Procedures") (After regulations are approved, they will be attached to this chapter as Appendix B).

"Security deposit" means any payment, fee, deposit, or charge, including but not limited to, an advance payment of rent, used or to be used for any purpose, including but not limited to the compensation of an owner for a tenant's default in payment of rent, the repair of damages to the premises caused by the tenant, or the cleaning of the premises upon termination of the tenancy exclusive of normal wear and tear.

"Tenant" means a person entitled, by written or oral agreement to the use or occupancy of any covered unit.

"Uninsured repairs" means that work done by an owner or tenant to a covered unit or to the common area of the property or structure containing a covered unit which is performed to secure compliance with any state or local law as to repair damage resulting from fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds.

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

8.22.030 - Exemptions.

A. Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this chapter, Article I only (the Just Cause for Eviction Ordinance (Chapter 8.22, Article II) and the Ellis Act Ordinance (Chapter 8.22, Article II)) have different exemptions):

   1. Dwelling units whose rents are controlled, regulated (other than by this chapter), or subsidized by any governmental unit, agency or authority.

2. Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses, provided that such accommodations are not occupied by the same tenant for thirty (30) or more continuous days.

3. Housing accommodations in any hospital, convent, monastery, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by an educational institution.

4. Dwelling units in a nonprofit cooperative, owned, occupied, and controlled by a majority of the residents.

5. Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. This exemption does not apply to any newly constructed dwelling units that replace covered units withdrawn from the rental market in accordance with O.M.C. 8.22.400, et seq. (Ellis Act Ordinance). To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential.

6. Substantially rehabilitated buildings.

7. Dwelling units exempt pursuant to Costa-Hawkins (California Civil Code § 1954.52).

8. A dwelling unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by an owner of record as his or her principal residence. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the state of California.

B. Exemption Procedures.

1. Certificate of Exemption:

a. A certificate of exemption is a determination by the Rent Adjustment Program that a dwelling unit or units qualify for an exemption and, therefore, are not covered units. ~~An~~For units exempt as new construction, or by state law, an owner may obtain a certificate of exemption by claiming and proving an exemption in response to a tenant petition or by petitioning the Rent Adjustment Program for such exemption. For units exempt based on substantial rehabilitation, an owner must obtain a certificate of exemption by petitioning the Rent Adjustment Program for such an exemption. A certificate of exemption may be granted only for dwelling units that are permanently exempt from the Rent Adjustment Ordinance as new construction, substantial rehabilitation, or by state law (Costa Hawkins)

b. For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner. A certificate of exemption is a final determination of exemption absent fraud or mistake.

c. Timely submission of a certificate of exemption previously granted in response to a petition shall result in dismissal of the petition absent proof of fraud or mistake regarding the granting of the certificate. The burden of proving such fraud or mistake is on the tenant.

2. Exemptions for Substantially Rehabilitated Buildings.

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

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

b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.

c. An Owner seeking to exempt a property on the basis of substantial rehabilitation must first obtain a certificate of exemption after completion of all work and obtaining a certificate of occupancy. If no certificate of occupancy was required to be issued for the property, in lieu of the certificate of occupancy an owner may provide the last finalized permit. For any property that has a certificate of occupancy issued on or before the date of enactment of this subparagraph O.M.C 8.22.30B.2.c. for which an Owner claims exemption as substantially rehabilitated, the Owner must apply for such exemption not later than June 30, 2017 or such exemption will be deemed to be vacated.

C. Controlled, Regulated, or Subsidized Units. The owner of a dwelling unit that is exempt because it is controlled, regulated (other than by this chapter), or subsidized by a governmental agency (Section 8.22.030A.1) must file a notice with the Rent Adjustment Program within thirty (30) days after such dwelling unit is no longer otherwise controlled, regulated, or subsidized by the governmental agency. Once the dwelling unit is no longer controlled, regulated, or subsidized, the dwelling unit ceases to be exempt and becomes a covered unit subject to this chapter, Article I. Such notice must be on a form prescribed by the Rent Adjustment Program.

D. Exemptions for Owner-Occupied Properties of Three or Fewer Units. Units in owner-occupied properties divided into three or fewer units will be exempt from this chapter, Article I under the following conditions:

1. Two-Year Minimum Owner Occupancy. A qualifying owner of record must first occupy one of the units continuously as his or her principal residence for at least two years. This requirement does not apply to any property in which the owner resides in the premises on or before August 1, 2016.

2. Continuation of Exemption. The owner-occupancy exemption continues until a qualifying owner of record no longer continuously occupies the property.

3. Rent Increases. The owner of record qualifying for this exemption may notice the first rent increase that is not regulated by this chapter, Article I two years after the date the qualifying owner of record starts residing at the affected property as his or her principal place of residence.

4. An owner claiming such exemption must provide information to the Rent Program on when the owner occupancy began and documentation showing the minimum of two years continuous occupancy. Staff shall develop a form for this purpose.

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

8.22.040 - Composition and functions of the Board.

A. Composition.

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

rental property owners, two (2) tenants, and three (3) persons who are neither tenants nor residential rental property owners. The Board shall also have six (6) alternate members, two (2) residential rental property owners, two (2) tenants and two (2) persons who are neither a tenants nor residential rental property owners appointed pursuant to Section 601 of the Charter. An alternate member may act at Board meetings in the absence of a regular Board member of the same category, and at appeal panels meetings without such an absence.

2. Appointment. A Board member is deemed appointed after confirmation by the City Council and upon taking the oath of office.

3. Board members serve without compensation.

B. Vacancies and Removal.

1. A vacancy on the Board exists whenever a Board member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the City Council within two City Council meetings of nomination by the Mayor.

2. Removal for Cause. A Board member may be removed pursuant to Section 601 of the City Charter. Among other things, conviction of a felony, misconduct, incompetency, inattention to or inability to perform duties, or absence from three consecutive regular meetings except on account of illness or when absent from the city by permission of the Board, constitute cause for removal.

3. Report of Attendance. To assure participation of Board members, attendance by the members of the Board at all regularly scheduled and special meetings of the Board shall be recorded, and such record shall be provided annually to the Office of the Mayor and to the City Council.

C. Terms and Holdover.

1. Terms. Board members' terms shall be for a period of three (3) years beginning on February 12 of each year and ending on February 11 three (3) years later. Board members shall be appointed to staggered terms so that only one-third (⅓) of the Board will have terms expiring each year, with no more than one Board member who is neither a residential rental property owner nor a tenant, and no more than one rental property owner and no more than one tenant expiring each year. Terms will commence upon the date of appointment, except that an appointment to fill a vacancy shall be for the unexpired portion of the term only. No person may serve more than two (2) consecutive terms as a board member, nor more than two (2) consecutive terms as an alternate. Time served as a board member shall be considered separately from time served as an alternate.

2. Holdover. A Board member whose term has expired may remain as a Board member for up to one year following the expiration of his or her term or until a replacement is appointed whichever is earlier. The City Clerk shall notify the Mayor, the Rent Program, the Board, and affected Board member when a Board member's holdover status expires. Prior to notification by the City Clerk of the end of holdover status, a Board member may fully participate in all decisions in which such Board member participates while on holdover status and such decisions are not invalid because of the Board member's holdover status.

D. Duties and Functions.

1. Appeals. The Board or an Appeal Panel hears appeals from decisions of hearing officers under the procedures set out in O.M.C. Section 8.22.120.

2. Regulations. The Board may develop or amend the regulations, subject to City Council approval.

3. Reports. The Board shall make such reports to the City Council or committees of the City Council as may be required by this chapter, by the City Council or City Council Committee.

4. Recommendations. The Board may make recommendations to the City Council or appropriate City Council committee pertaining to this chapter or City housing policy when requested to do so by the City Council or when the Board otherwise acts to do so.

5. Regular Meetings. The Board or an Appeal Panel shall meet regularly on the second and fourth Thursdays of each month unless cancelled. Rent Program staff is authorized to schedule these regular meetings either for the full Board or for an Appeal Panel.

6. Special Meetings. The Board or an Appeal Panel may meet at additional times as scheduled by the Board Chair or Rent Program staff.

E. Appeal Panels.

1. Appeal Panels shall hear appeals of Hearing Officer decisions.

2. Rent Program staff shall determine whether an appeal should be heard by an Appeal Panel or the full Board. A party to an appeal may, however, elect not to have his/her case heard by a panel and instead to be heard by the full Board. A party may so elect by notifying the Rent Adjustment Program not ~~less~~more than ~~fifteen~~ten (~~15~~10) days after the notice of the panel hearing is mailed.

3. All Appeal Panel members must be present for a quorum. A majority of the Appeal Panel is required to decide an appeal.

4. Membership on an Appeal Panel is determined by Rent Program staff. Membership need not be permanent, but may be selected for each panel meeting. Appeal Panels may be comprised solely of Alternate Board Members.

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

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

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

A. Notice at the Commencement of a Tenancy. Existence and scope of this chapter (Section 8.22.060).

B. Change in Terms of Tenancy or Rent Increase. Notice of tenant's right to petition. (Section 8.22.070H).

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

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

A. Notice at Commencement of Tenancy. The owner of any covered unit is required to comply with the following notice requirements at the commencement of any tenancy:

1. On or before the date of commencement of a tenancy, the owner must give the tenant a written notice in a form prescribed by the Rent Adjustment Program which must include the following information:

a. The existence and scope of this chapter; ~~and~~

b. The tenant's rights to petition against certain rent increases~~.~~;

c. Whether the Owner is permitted to set the initial Rent to the new Tenant without limitation (such as pursuant to the Costa-Hawkins Act (California Civil Code Sec. 1954.52));

d. If the Owner is not permitted to set the initial Rent to the new Tenant (such as after an eviction noticed pursuant to California Civil Code Sec.1946), the Owner must state the Rent in effect when the prior Tenant vacated, and if the initial Rent is in excess of the Rent to the prior Tenant the basis for any Rent in excess of the Rent to the prior tenant (which can only be based on the CPI Rent Adjustment, Banking, and/or a final a final decision in an Owner's petition).

2. The Owner must give the initial notice in ~~four~~three languages: English, Spanish, ~~Mandarin~~, and ~~Cantonese~~Chinese.

B. Evidence of Giving Notice. When filing an owner's response to a tenant petition or an owner's petition for a rent increase, the owner must submit evidence that the owner has given the notice required by this section to the affected tenants in the building under dispute in advance of the filing. When responding to a tenant petition, the owner may allege that the affected dwelling units are exempt in lieu of providing evidence of complying with the notice requirement. If an owner fails to submit the evidence and the subject dwelling unit is not exempt, then the owner's petition or response to a tenant's petition must be dismissed. This evidence can be a statement of compliance given under oath, however, the tenant may controvert this statement at the hearing. An owner's filing the notice in advance of petition or response prevents the owner's petition or response from being dismissed, but the owner may still be subject to the rent increase forfeiture if the notice was not given at the commencement of the tenancy or within the cure period set out in Section 8.22.060(C).

C. Failing to Give Notice. An owner who fails to give notice of the existence and scope of the Rent Adjustment Program at the commencement of a tenancy, but otherwise qualifies to petition or respond to a petition filed with the Rent Adjustment Program, will forfeit six months of the rent increase sought unless the owner cured the failure to give the notice. An owner may cure the failure to give the notice at the commencement of a tenancy required by this section and not be subject to a forfeiture of a rent increase if the owner gives the notice at least six months prior to serving the rent increase notice on the tenant or, in the case of an owner petition, at least six months prior to filing the petition.

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

8.22.065 - Rent Adjustments In General.

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

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

B. Rent increases are subject to the requirements of this Chapter and Regulations.

C. The changes reflected in this O.M.C. subsection 8.22.065 apply only to rent increases noticed on or after February 1, 2017.

8.22.070 - Rent adjustments for occupied covered units.

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

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

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

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

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

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

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

2. ~~No individual~~In no event may rent for any covered unit increase ~~can exceed the existing rent~~ by more than ten percent in any 12-month period for any and all rent increases based on the CPI Rent Adjustment, as set out in O.M.C. 8.22.070B (CPI Rent Adjustment), and any justifications pursuant to O.M.C. 8.22.070C.2 (Rent Increases In Excess of CPI Rent Adjustment) except for the following:

a. A rent increase based on the CPI Rent Adjustment for the current year that exceeds ten percent, provided however that such Rent increase may only include a CPI Rent Adjustment;

b. The rent increase is required for the owner to obtain a fair return pursuant to O.M.C. 8.22.070C.2.f.

3. No series of rent increases in any five-year period can exceed 30 percent for any rent increases based on the CPI Rent Adjustment, as set out in, O.M.C. 8.22.070B

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

a. A series of rent increases composed solely of CPI Adjustments may exceed the 30 percent limitation;

b. Exceeding the 30 percent limitation is required for the owner to obtain a fair return pursuant to O.M.C. 8.22.070C.2.f.

4. If an owner is entitled to a rent increase or increases that cannot be taken because of the Rent increase limitations pursuant to Subsections 2. or 3. above, the owner may defer the start date of the increase to a future period, provided that in the rent increase notice that limits the owner's ability to take the increases, the owner must identify the justification and the amount or percentage of the deferred increase that may be applied in the future.

B. CPI and Banking Rent Adjustments.

1. Effective Date of this Section. An owner may first impose CPI Rent Adjustments pursuant to this section that take effect on or after July 1, 2002.

2. CPI and Banking Rent Adjustment Not Subject to Petition. ~~The tenant~~A Tenant may not petition to contest a rent increase justified in an amount up to and including the CPI Rent Adjustment and/or any Banking Rent increase unless the tenant alleges one or more of the following:

a. The owner failed to provide the notice required at the commencement of tenancy and did not cure such failure (Section 8.22.060);

b. The owner failed to provide the notice required with a rent increase (Section 8.22.070 H);

c. The owner decreased housing services;

d. The covered unit has uncured health, safety, fire, or building code violations pursuant to Section 8.22.070 D.7)~~.~~;

e. Any or all of a Banking Rent increase is not correctly calculated or the Owner is not eligible for a Banking Rent increase;

f. The Rent increase exceeds the limitations set out in Section 8.22.090A.3;

g The Rent increase is inoperative pursuant to Section 8.22.090D.7;

h. The Owner has increased the rent once during the preceding twelve (12) month period without qualifying for an exception pursuant to Section 8.22.070.A.1.

3. Calculation of the CPI Rent Adjustment. Beginning in 2002, the CPI Rent Adjustment is the average of the percentage increase in the CPI—All items and the CPI—Less shelter for the twelve (12) month period starting on March 1 of each calendar year and ending on the last day of February of the following calendar year calculated to the nearest one tenth of one percent.

4. Effective Date of CPI Rent Adjustments. An owner may notice a rent increase for a CPI Rent Adjustment so that the rent increase is effective during the period from July 1 following the Rent Adjustment Program's announcement of the annual CPI Rent Adjustment through June 30 of the next year. The rent increase notice must comply with state law and take effect on or after the tenant's anniversary date.

5. Banking. In accordance with rules set out in the regulations, an owner may bank CPI rent adjustments and annual permissible rent adjustments previously authorized by this chapter and notice a Banking Rent increase concurrent with a CPI Rent Adjustment.

6. Schedule of Prior Annual Permissible Rent Adjustments. Former annual permissible rent adjustments available under the prior versions of this chapter:

   a. May 6, 1980 through October 31, 1983, the annual rate was ten percent.

   b. November 1, 1983 through September 30, 1986, the annual rate was eight percent.

   c. October 1, 1986 through February 28, 1995, the annual rate was six percent.

   d. March 1, 1995 through June 30, 2002, the annual rate was three percent.

C. Rent Increases in Excess of the CPI Rent Adjustment or Banking.

1. ~~A tenant may file a petition in accordance with the requirements of Section 8.22.110 contesting any rent increase which exceeds~~For Rent increases based on grounds other than the CPI Rent Adjustment. ~~2. If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond by either claiming an exemption and/or justifying the rent~~ or Banking, an Owner must first petition the Rent Program and receive approval for the Rent increase before the Rent increase can be imposed. A Rent increase in excess of the CPI Rent Adjustment or a Banking increase must be justified on one or more of the following grounds:

   a. ~~Banking;b.~~ Capital improvement costs, including financing of capital improvement costs;

   ~~c~~b. Uninsured repair costs;

   ~~d~~c. Increased housing service costs;

   ~~e~~d. The rent increase is necessary to meet constitutional or fair return requirements.

~~3.~~2. The amount of rent increase allowable for the grounds listed in Section 8.22.070 C.2 are subject to the limitations set forth in the regulations.

~~4. An owner must provide a summary of the justification for a rent increase upon written request of the tenant.~~

D. Rent Increase Notices and Operative ~~Date of~~Dates for Rent ~~Adjustment when Petition Filed.~~Increases

1. ~~{While a tenant petition is pending, a tenant must pay when due, pursuant to the rent increase notice, the amount of the rent increase that is equal to the CPI Rent Adjustment unless: }~~CPI and Banking Increases not subject to a Petition. Rent increase notices for CPI and Banking Rent increases that are not the subject of a Petition shall be operative in accordance with this Chapter and State law.

2. Owner Petitions.

   a. An Owner may notice a Rent increase based on a petition after the service date of the decision subject to the limitation of one Rent Increase each twelve (12) months (the effective date of the Rent increase).

b. Except for any portion of the petioned-for Rent increase that is based on a CPI Rent or Banking Rent Increase, a Tenant is not required to pay the Rent increase until there is a final decision on the petition pursuant to Section 8.22.070 D.5 (the operative date of the Rent increase). However if the Tenant chooses not to pay the Rent increase, the Tenant owes the increased Rent starting from the effective date of the Rent increase if the final decision upholds the Hearing Officer's decision.

c. In a decision by the board or an appeals panel, the decision may (or may direct staff to) calculate the amount due and determine a repayment schedule consistent with the rent board regulations for the Tenant to pay any back Rent due or for the Tenant to receive any rent credits if the Tenant paid a Rent increase that is not upheld on appeal. However, a Hearing Officer shall calculate the amount due if there is a factual dispute regarding such amount.

d. If a final decision permits a greater Rent increase than the amount permitted in the Hearing Officer's decision, the Owner may issue another Rent increase notice up to the amount allowed in the final decision, and such additional notice is not subject to the limitation of no more than one Rent increase with in twelve (12) month period.

e. If the final decision permets a smaller Rent increase than the amount permitted in the Hearing Officer's decision, the Tenant need only pay the Rent increase based on the amount of the final decision.

3. Tenant Petitions.

a. While a tenant petition is pending, a tenant must pay when due, pursuant to the rent increase notice, the amount of the rent increase that is equal to the CPI Rent Adjustment unless:

~~a~~i. The tenant's petition claims decreased housing services; or

~~b~~ii. The owner failed to separately state in the rent increase the amount that equals the CPI Rent Adjustment pursuant to Section 8.22.070 H.

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

~~3.~~4. When a party appeals the decision of a hearing officer, the tenant must continue to pay the amount of the rent adjustment due during the period prior to the issuance of the decision and the remaining amount of the noticed rent increase is not operative until the board has issued its written decision.

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

~~a. In the case of a rent increase, the date the increase would have been effective pursuant to a valid rent increase notice given to the tenant, unless a six month forfeiture applies for an uncured failure to give the required notice at the commencement of tenancy;~~

~~b. In the case of a decrease in housing services, on the effective date for a noticed decrease in housing services or, if no notice was given, the date the decrease in housing services occurred.~~

5. ~~A tenant who files a petition following a thirty (30) day rent increase notice and who does not file a petition before the increased rent becomes due, must pay the increased rent when due until the tenant files the petition. Once the tenant files the petition, the portion of rent increase above the CPI Rent Adjustment need not be paid until the decision on the petition is final.~~ Final decision. The decision on a petition is final when any one of the following events have occurred:

   a. A hearing officer decision has been issued and the time for appeal has passed without an appeal being filed;

   b. An appeal decision is issued and the time to file a writ of administrative mandamus has passed without a writ being filed; or

   c. When a court issues a final decision, including any further court appeals, on any writ of administrative mandamus contesting a Rent Board appeal decision.

6. ~~A rent increase following an owner's petition is operative on the date the decision is final and following a valid rent increase notice based on the final decision. 7.~~ No part of any noticed rent increase is operative during the period after the tenant has filed a petition and the applicable covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations as defined by Section 17920.3 of the California Health and Safety Code, excluding any, violation caused by a disaster or where the owner proves the violation was solely caused by the willful conduct of the tenant. In order for such rent increase to be operative the owner must provide proof that the cited violation has been abated. The owner must then issue a new rent increase notice pursuant to California Civil Code Section 827. The rent increase will be operative in accordance with Section 827. However, if an Owner files a petition for a Rent increase, the Tenant must include the allegation of code violations in the response to the petition for this subsection to be considered.

E. An owner cannot increase the rent for a covered unit except by following the procedures set out in this chapter (including the Just Cause for Eviction Ordinance (O.M.C. Chapter 8.22, Article II) and the Ellis Act Ordinance (O.M.C. Chapter 8.22, Article III)) or where Costa-Hawkins allows an owner to set the initial rent for a new tenant without restriction.

F. Decreased housing services. A decrease in housing services is considered an increase in rent. A tenant may petition for an adjustment in rent based on a decrease in housing services under standards in the regulations. The tenant's petition must specify the housing services decreased. Where a rent or a rent increase has been reduced for decreased housing services, the rent or rent increase may be restored in accordance with procedures set out in the regulations when the housing services are reinstated.

G. Pass-through of Fee. An owner may pass-through one half of the fee to a tenant in accordance with Section 8.22.500G. The allowed fee pass-through shall not be added to the rent to calculate the CPI Rent Adjustment or any other rent adjustment and shall not be considered a rent increase.

H. Notice Required to Increase Rent or Change Other Terms of Tenancy.

   1. All Rent Increase Notices. As part of any notice to increase rent or change any terms of tenancy, an owner must include:

      a. Notice of the existence of this chapter; and

      b. The tenant's right to petition against any rent increase in excess of the CPI Rent Adjustment~~;~~ unless such rent increase is pursuant to an approved Petition.

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

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

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

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

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

a. The amount of the CPI Rent Adjustment; and

b. The amount of any Banking increase.

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

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

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

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

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

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

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

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

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

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

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

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

~~2.~~4. A notice to increase rent must include the information required by Subsection 8.22.070H.1. using the language and in a form prescribed by the Rent Adjustment Program.

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

~~3.~~6. A rent increase is not permitted unless the notice required by this section is provided to the tenant. An owner's failure to provide the notice required by this section invalidates the rent increase or change of terms of tenancy. This remedy is not the exclusive remedy for a violation of this provision~~. If the owner fails to timely give the tenant a written summary of the basis for a rent increase in excess of the CPI Rent Adjustment, as required by Subsection 8.22.070H.1.c., the amount of the rent increase in excess of the CPI Rent Adjustment is invalid~~.

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

1. The owner did not comply with the notice requirements for a rent increase; or

2. The tenant's petition was based on decreased housing services~~; or~~.

~~3. That the owner failed to give the tenant a written summary of the basis for a rent increase in excess of the CPI Rent Adjustment as required by Section 8.22.070 H.1.c.~~

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

8.22.080 - Rent increases following vacancies.

A. Purpose of Section. This section sets forth how an owner may set the rents to a new tenant following vacancies. Rent increases following an owner's setting the initial rent are regulated by this chapter.

B. Setting Initial Rents to Tenants Without Restriction. Costa-Hawkins provides that owners may set an initial rent to a new tenant without restriction except in certain circumstances.

C. Costa-Hawkins Exceptions. Costa-Hawkins permits an owner to set initial rents to a new tenant without restriction except where the previous tenant vacated under the following circumstances:

1. 1946 Termination of Tenancy. ("The previous tenancy has been terminated by the owner by notice pursuant to California Civil Code § 1946 ...") (California Civil Code § 1954.53(a)(1)).

2. Change of Terms of Tenancy or Rent Increase Not Permitted by This chapter. The previous tenancy was terminated following a notice of a rent increase not permitted by this chapter. ("The previous tenancy ... has been terminated upon a change in the terms of the tenancy pursuant to [California Civil Code §] 827, except a change permitted by law in the amount of rent or fees.") (California Civil Code § 1954.53(a)(1)).

3. Failure to Renew Contract with Government That Limits Rent Increases. In certain circumstances, "... an owner ... [who] terminates or fails to renew a contract or recorded agreement with a government agency that provides for a rent limitation to a qualified tenant" ... "shall not be eligible to set an initial rent for three years following the date of the termination or nonrenewal of the contract or agreement". (California Civil Code § 1954.53(a)(1)(A)).

4. Owner Agrees to Rent Restriction in Exchange for Subsidy. The owner has agreed to a rent restriction in return for public financial support. (California Civil Code § 1954(a)(1)(B)(2)).

5. Unabated Serious Code Violations. The dwelling unit was cited for serious health, safety, fire, or building code violations at least sixty (60) days prior to the vacancy and the violations were not abated by the time the unit was vacated. (California Civil Code § 1954.53(f)).

D. Sublets and Assignments. Under specified conditions, Costa-Hawkins permits an owner to set initial rents without restriction when a covered unit is sublet or assigned and none of the original occupants permanently reside in the covered unit. (California Civil Code § 1954.53(d)).

E. Rent Increases After Setting an Initial Rent Without Restriction. After the owner sets an initial rent without restriction pursuant to Costa-Hawkins, the owner may only increase rent in conformance with the requirements of Section 8.22.070, based on circumstances or cost increases that arise after the beginning of the new tenancy. The owner may not increase rents based on banking, cost increases, capital improvements, or other circumstances that arose before the new tenancy began.

F. Restrictions Where the Owner May Not Set the Initial Rent.

1. The Just Cause for Eviction Ordinance (O.M.C. 8.22.300 (Chapter 8.22, Article II)) provides for certain restrictions on setting initial rents to new tenants and upon re-rental to former tenants.

2. The Ellis Act Ordinance (O.M.C. 8.22.400 (Chapter 8.22, Article III)) provides for certain restrictions on setting initial rents to new tenants and upon re-rental to former tenants.

G. Initial Rent to New Tenant Where Owner Not Entitled to Set Initial Rent. An Owner may not set an initial Rent to a new Tenant that is more than the lawful Rent that had been charged to the previous Tenant on the date that Tenant vacated, plus any allowable CPI Rent Adjustments and Banking rent increases, unless the Owner is authorized to charge a higher initial rent by a final decision in response to an Owner petition of which the new Tenant had been given proper notice.

H. Rent After a Tenant Returns to a Unit Following Vacation for Repairs. Where a Tenant returns to a Unit after vacating for repairs pursuant to a notice from the Owner, or an order from the City or other government agency, the Owner must petition the Rent Adjustment

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

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

8.22.090 - Petition and response filing procedures.

A. Tenant Petitions.

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

a. A rent increase ~~exceeds~~was given that is not based on the CPI Rent Adjustment, ~~including, without limitation circumstances where:~~Banking; and/or a final decision in an owner petition

~~i. The owner failed to timely give the tenant a written summary of the basis for a rent increase in excess of the CPI rent adjustment as required by Subsection 8.22.070H.1.c.; and~~

~~ii~~b. The owner set an initial rent in excess of the amount permitted pursuant to Section 8.22.080 (Rent increases following vacancies);

~~iii~~c. A rent increase notice ~~fails~~failed to comply with the requirements of Subsection 8.22.070H;

~~iv~~d. The owner failed to give the tenant a notice in compliance with Section 8.22.060 and State law;

~~v~~e. The owner decreased housing services to the tenant;

~~vi~~f. The tenant alleges the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Subsection 8.22.070 D.7;

~~vii~~g. The owner fails to reduce rent on the month following the expiration of the amortization period for capital improvements, or to pay any interest due on any rent overcharges from the failure to reduce rent for a capital improvement.

~~viii~~h. The owner noticed a rent increase of more than the ten (10) percent annual limit or that exceeds the rent increase limit of thirty (30) percent in five years.

~~b. The tenant claims relocation restitution pursuant to Subsection 8.22.140 C.1.~~

~~c~~i. The petition is permitted by the Just Cause for Eviction Ordinance (Measure EE) O.M.C. ~~8.22.300.~~8.22.300 or its regulations.

~~d~~j. The petition is permitted by the Ellis Act Ordinance, O.M.C. ~~8.22.400.~~8.22.400, or its regulations.

~~e~~k. The tenant contests an exemption from this O.M.C. 8.22, Article I or Article II.

2. For a petition contesting a rent increase, the petition must be filed ~~within the following timelines~~as follows:

a. If the owner provided written notice of the existence and scope of this chapter as required by Section 8.22.060 at the inception of tenancy:

i. the petition must be filed within ninety (90) days of the date the owner serves the rent increase notice if the owner provided the RAP notice with the rent increase; or

ii. the petition must be filed within one hundred and twenty (120) days of the date the owner serves the rent increase if the owner did not provide the RAP notice with the rent increase.

b. If the owner did not provide written notice of the existence and scope of this chapter as required by Section 8.22.060 at the inception of tenancy, within ninety (90) days of the date the tenant first receives written notice of the existence and scope of this chapter as required by Section 8.22.060.

3. For a petition claiming decreased housing services:

a. If the decreased housing is the result of a noticed or discrete change in services provided to the tenant (e.g., removal of parking place, requirement that tenant pay utilities previously paid by owner) the petition must be filed within ninety (90) days of whichever of the following is later:

i. The date the tenant is noticed or first becomes aware of the decreased housing service; or

ii. The date the tenant first receives written notice of the existence and scope of this chapter as required by Section 8.22.060.

b. If the decreased housing is ongoing (e.g., a leaking roof), the tenant may file a petition at any point but is limited in restitution for ninety (90) days before the petition is filed and to the period of time when the owner knew or should have known about the decreased housing service.

4. In order to file a petition or respond to an owner petition, a tenant must provide the following at the time of filing the petition or response:

a. A completed tenant petition or response on a form prescribed by the Rent Adjustment Program;

b. Evidence that the tenant's rent is current or that the tenant is lawfully withholding rent; and

c. A statement of the services that have been reduced or eliminated, if the tenant claims a decrease in housing services;

d. A copy of the applicable citation, if the tenant claims the rent increase need not be paid because the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Section 8.22.070D.7.

5. A tenant must file a response to an owner's petition within thirty (30) days of service of the notice by the Rent Adjustment Program that an owner petition was filed.

B. Owner Petitions and Owner Responses to Tenant Petitions.

1. In order for an owner to file a response to a tenant petition or to file a petition seeking a rent increase, the owner must provide the following:

a. Evidence of possession of a current city business license;

b. Evidence of payment of the Rent Adjustment Program Service Fee;

c. Evidence of service of written notice of the existence and scope of the Rent Adjustment Program on the tenant in each affected covered unit in the building prior to the petition being filed;

d. A completed response or petition on a form prescribed by the Rent Adjustment Program; and

e. Documentation supporting the owner's claimed justification(s) for the rent increase or supporting any claim of exemption.

2. An owner must file a response to a tenant's petition within thirty (30) days of service of the notice by the Rent Adjustment Program that a tenant petition was filed.

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

8.22.100 - Mediation of rent disputes.

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

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

8.22.110 - Hearing procedures.

A. Hearing Officer. A hearing shall be set before a Hearing Officer to decide the issues in the petition.

B. Hearings.

1. All hearings on petitions shall be open to the public and recorded;

2. Any party to a hearing may be assisted by a representative who may be an attorney or any other person. A party must designate his or her representative in writing.

C. Notification and Consolidation. Rent Adjustment Program staff shall notify the owner and tenant in writing of the time and place set for hearing. Representatives of parties shall also be notified of hearings, provided that the Rent Adjustment Program has been notified in writing of a party's designation of a representative at least ten days prior to the notice of the hearing being sent. Disputes involving more than one covered unit in any single building may be consolidated for hearing.

D. Time of Hearing and Decision.

1. The Hearing Officer shall have the goal of hearing the matter within sixty (60) days of the original petition's filing date.

2. The Hearing Officer shall have a goal of rendering a decision within sixty (60) days after the conclusion of the hearing or the close of the record, whichever is later. The decision shall be issued in writing.

3. The decision of the examiner shall be based entirely on evidence placed into the record.

E. A Hearing Officer may order a rent adjustment as restitution for any overcharges or undercharges due, subject to guidelines set out in the regulations.

F. Administrative Decisions.

1. Notwithstanding the acceptance of a petition or response by the Rent Adjustment Program, if any of the following conditions exist, a hearing may not be scheduled and a Hearing Officer may issue a decision without a hearing:

   a. The petition or response forms have not been properly completed or submitted;

   b. The petition or response forms have not been filed in a timely manner;

   c. The required prerequisites to filing a petition or response have not been met; or

   d. ~~Conclusive proof~~A certificate of exemption ~~has been provided~~was previously issued and is not challenged by the tenant.

2. A notice regarding the parties' appeal rights will accompany any decision issued administratively. Appeals are governed by Section 8.22.120.

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

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

8.22.120 - Appeal procedure.

A. Filing an Appeal.

1. Either party may appeal the Hearing Officer's decision, including an administrative decision, within fifteen (15) days after service of the notice of decision by filing with the Rent Adjustment Program a written notice on a form prescribed by the Rent Adjustment Program setting forth the grounds for the appeal.

2. The matter shall be set for an appeal hearing and notice thereof shall be served on the parties not less than ten days prior to such hearing.

B. Appeal Hearings. The following procedures shall apply to all Board and Appeal Panel appeal hearings:

1. The Board or Appeal Panel shall have a goal of hearing the appeal within thirty (30) days of filing the notice of appeal.

2. All appeal hearings conducted by the Board or Appeal Panel shall be public and recorded.

3. Any party to a hearing may be assisted by an attorney or any person so designated.

4. Appeals shall be based on the record as presented to the Hearing Officer unless the Board or Appeal Panel determines that an evidentiary hearing is required. If the Board or Appeal Panel deems an evidentiary hearing necessary, the case will be continued and the Board or Appeal Panel shall issue a written order setting forth the issues on which the parties may present evidence. All evidence submitted to the Board or Appeal Panel must be submitted under oath.

5. Should the appellant fail to appear at the designated hearing, the Board or Appeal Panel may dismiss the appeal.

C. Board or Appeal Panel's Decision Final. The Board's decision is final. Parties cannot appeal to the City Council. Parties cannot appeal the decision of an Appeal Panel to the full Board.

D. Court Review. A party may seek judicial review of a final decision of the Board or Appeal Panel pursuant to California Civil Code Section 1094.5 within the time frames set forth therein.

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

8.22.130 - Retaliatory Evictions.

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

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

8.22.140 - Voluntary mediation of evictions.

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

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

8.22.150 - General Remedies.

A. Violations of this chapter.

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

B. General Administrative Remedies.

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

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

3. The City Manager shall designate staff authorized to issue administrative citation and civil penalties.

4. Each and every day or any portion of a day during which a violation of any provision of this chapter is committed, continued, or permitted is a separate violation and shall be punishable accordingly.

C. General Civil Remedies. An aggrieved party or the City Attorney, on behalf of such party, may bring a civil action for injunctive relief or damages, or both, for any violation of the provisions of this chapter or an order or decision issued by a Hearing Officer or the Board.

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

8.22.160 - Computation of time.

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

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

8.22.170 - Severability.

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

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

8.22.180 - Non-waiverability.

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

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

8.22.185 - Miscellaneous.

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

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

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

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

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

8.22.190 - Applicability—Effective date of chapter.

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

A. The CPI Rent Adjustment. The CPI Rent Adjustment is effective for rent increases taking effect on or after July 1, 2002 in accordance with Section 8.22.070(B)(1);

B. Unless otherwise specified in a specific provision of this Chapter. All provisions of this chapter take effect pursuant to Section 216 of the Oakland City Charter. Whenever a new section takes effect on a date after this amended chapter takes effect pursuant to Section 216 of the Oakland City Charter, the provisions of the former Chapter 8.22 will apply until that new section takes effect.

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

8.22.200 - Reduced rents to disaster victims.

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

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

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

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

C. Notice to Displacee. An owner who seeks to rent to a displacee, prior to entering into a rental agreement with a displacee, must give the displacee a notice provided by the Rent Adjustment Program. This notice must specify the amount of the rent the owner will charge after the end of the term of the temporary rental agreement; and at a minimum shall include information about the Rent Adjustment Ordinance and the Just Cause Ordinance.

D. Determination of Eligibility as Displacee.

1. The City Administrator will develop a list of public or private agencies, including but not limited to the Federal Emergency Management Agency, that will identify and certify that persons are displacees and can provide documentation of certification as to whether a person is a displacee.

2. The City Administrator may develop a procedure for owners to receive approval in advance of entering into a rental agreement with a displacee. A rental agreement that is approved in advance would not be subject to challenge on the ground that the agreement violates this Section 8.22.200 or Chapter 8.22, absent fraud by the owner.

3. An owner who enters into a rental agreement that is based on fraud or misrepresentation by the tenant is not subject to any penalty under this Chapter 8.22 unless the owner knew or should have known of the fraud or misrepresentation in advance of entering into the rental agreement with the tenant.

4. Eligibility to receive benefits as a displacee of the disaster for which this Section 8.22.200 is invoked is implied as material term of the tenancy created by a rental agreement entered into under this section. The tenancy of an ineligible tenant who knowingly or fraudulently enters into a rental agreement under this section is subject to termination under subsection 8.22.360(A)(1) on the ground that he or she violated a material term of the tenancy and the rent for the rental unit may be increased to the rate given in the notice required by subsection 8.22.200(D), unless the owner knew or should have known of the tenant's fraud or ineligibility. The owner also may recover the difference in the rent the tenant actually paid and the rent set out in the notice required by subsection 8.22.200(D) and such owner's costs and reasonable attorney's fees.

E. Termination of Tenancy by Displacee. Any rental agreement entered into pursuant to this section must permit the displacee to terminate the rental agreement pursuant to California Civil Code § 1946.

F. Definitions. The following definitions are applicable to this Section 8.22.200.

1. For purposes of this section, "displacee" means a person or household who has been displaced as a result of the Katrina Hurricane disaster for which this section has been invoked by City Council, and who has been certified as such by FEMA or other agency designated by the City Administrator pursuant to subsection 8.22.200(E)(1) of this section.

G. Procedures, Standards, and Regulations. The Rent Adjustment Board is authorized to develop regulations pursuant to O.M.C. 8.22.040(D)(2). The City Administrator is authorized to develop any procedures and standards to carry out this section that are not in conflict with this Section 8.22.200 or any regulations that may later be adopted.

H. Retroactivity. This Section 8.22.200 may be applied to rental agreements that displacees and owners executed before the ordinance codified in this chapter became effective if it meets all requirements of Section 8.22.200 including this subsection H. The City Administrator is authorized to develop the procedures and requirements that rental agreements must comply with to be eligible for the protections provided by this section.

(Ord. 12707 § 1, 2005)

attachment D

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 DEC 29 PM 2:43

Approved as to form and legality

OFFICE OF THE CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION RATIFYING AMENDMENTS TO THE RENT ADJUSTMENT REGULATIONS AND APPENDIX A TO THE REGULATIONS APPROVED BY THE HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD TO (1) CONFORM THE REGULATIONS TO RECENT AMENDMENTS TO THE RENT ADJUSTMENT ORDINANCE (ARTICLE I OF O.M.C CHAPTER 8.22); (2) ENACT A CAPITAL IMPROVEMENT AMORTIZATION SCHEDULE; (3) MAKE OTHER CLARIFYING AMENDMENTS FOR INTERNAL CONSISTENCY AND EFFICIENT PROGRAM OPERATION; AND (4) REMOVE INACTIVE PROVISIONS.

WHEREAS, the Oakland City Council amended the Rent Adjustment Ordinance (O.M.C 8.22.100, et seq.) on several occasions, most recently June 7, 2016 (Ordinance No. 13373 C.M.S.) and September 20, 2016 (Ordinance No. 13391 C.M.S.), and Oakland's voters approved Measure JJ on November 8, 2016, but the Rent Adjustment Program Regulations and Appendix A to the Regulations ("Regulations") have not been updated to conform to these amendments; and

WHEREAS, In Ordinance No. 13391 C.M.S. the City Council directed the Housing, Residential Rent and Relocation Board ("Rent Board") to consider and approve proposed regulations to conform the Regulations to the Ordinance amendments and to improve Rent Program efficiency and to return the Regulations to the Council within 120 days; and

WHEREAS, on October 20, 2016, the Rent Board held a public hearing regarding potential amendments to the Regulations presented by staff in response to the Council's direction to consider and adopt revised Regulations; and

WHEREAS, following public comment and Rent Board discussion regarding the potential amendments to the Regulations, staff revised the potential amendments and presented them for the Rent Board's consideration; and

WHEREAS, on December 8, 2016, the Rent Board held a public hearing on the potential amendments to the Regulations and continued the item to its December 15, 2016 meeting; and

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COMMUNITY & ECONOMIC DEVELOPMENT CMTE.

JAN 10 2017

WHEREAS, on December 15, 2016, the Rent Board concluded the public hearing regarding the potential amendments to the Regulations and adopted the amended Regulations subject to the ratification of such amendments by the Council; and

WHEREAS, as amended, the Regulations would: (1) allow regular Rent Board meeting dates to be either full Rent Board meetings or Appeal Panels; (2) establish when Owners can be penalized for failing to provide notices in required languages and provide a grace period; (3) allow Owners to increase rents by the annual CPI Adjustment along with a capital improvement increase amortized over the useful life of the improvement; (4) modify appeal procedures to make appeals more efficient; (5) clarify citation procedures; (6) eliminate sections no longer needed due to Ordinance amendments; (7) modify the time frame for capital improvement pass through to take into account the new Owner petitioning requirement; (8) add regulations regarding "Gold plating" capital improvements; (9) include a definition for imputed interest; and (10) clarifying fair return standards and add implementing guidelines; now therefore be it

RESOLVED: that the City Council hereby ratifies the amendments to the Rent Adjustment Regulations adopted by the Rent Board and attached to this Resolution as Exhibit A.

RESOLVED FURTHER: that the amendment to the Rent Adjustment Program Regulations set out in Exhibit A shall be effective seven (7) days after ratification.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES:

ABSENT:

ABSTENTION:

ATTEST:

_____

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

Date of Attestation: _____

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COMMUNITY & ECONOMIC
DEVELOPMENT CMTE.
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RENT ADJUSTMENT PROGRAM REGULATIONS

8.22.010 FINDINGS AND PURPOSE.

A. Purpose of Regulations

1. These Regulations entirely replace the Regulations approved by the City Council in Resolution No. 71518 C.M.S. on December 6, 1994 except as provided for herein.

8.22.020 DEFINITIONS.

~~A. Definitions from Chapter 8.22~~

~~1. The following definitions are contained in Chapter 8.22 and are inserted for convenience:~~

"1946 Notice" means any notice of termination of tenancy served pursuant to California Civil Code §1946. This notice is commonly referred to as a 30-day notice of termination of tenancy, but the notice period may actually be for a longer or shorter period, depending on the circumstances.

"1946 Termination of Tenancy" means any termination of tenancy pursuant to California Civil Code § 1946.

"Anniversary Date" is the date falling one year after the day the Tenant was provided with possession of the Covered Unit or one year after the day the most recent rent adjustment took effect, whichever is later. Following certain vacancies, a subsequent Tenant will assume the Anniversary Date of the previous Tenant (OMC 8.22.080).

"Appeal panel" means a three-member panel of board members authorized to hear appeals of Hearing Officer decisions. Appeals panels[must be comprised of one]residential rental property owner, one tenant, and one person who is neither a tenant nor a residential rental property owner. Appeals panels may be made up of all regular board members, all alternates, or a combination of regular board members and alternates.

"Banking" means any CPI Rent Adjustment (or any rent adjustment formerly known as the Annual Permissible Rent Increase) the Owner chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in the Regulations.

"Board" and "Residential Rent Adjustment Board" means the Housing, Residential Rent and Relocation Board.

"Capital Improvements" means those improvements to a Covered Unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the Tenant rather than the Owner. Capital improvement costs that may be passed through to tenants include seventy percent (70%) of actual costs, plus imputed financing. Capital improvement costs shall be amortized over the useful life of the

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improvement as set forth in an amortization schedule developed by the Rent Board. Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements ("gold-plating" "over-improving") excluding improvements approved in writing by the tenant, improvements that bring the unit up to current building or housing codes, or the cost of a substantially equivalent replacement.

"CPI--All Items" means the Consumer Price Index – all items for all urban consumers for ~~Rent Adjustment Program Regulations Effective 8-1-14-2~~ the San Francisco-Oakland-San Jose area as published by the U.S. Department of Labor Statistics for the 12 month period ending on the last day of February of each year.

"CPI--Less Shelter" means the Consumer Price Index- all items less shelter for all urban consumers for the San Francisco-Oakland-San Jose area as published by the U.S. Department of Labor Statistics for the 12 month period ending on the last day of February of each year.

"CPI Rent Adjustment" means the maximum Rent adjustment (calculated annually according to a formula pursuant to OMC 8.22.070 B. 3) that an Owner may impose within a twelve (12) month period without the Tenant being allowed to contest the Rent increase, except as provided in OMC 8.22.070 B. 2 (failure of the Owner to give proper notices, decreased Housing Services, and uncured code violations).

"Costa-Hawkins" means the California state law known as the Costa-Hawkins Rental Housing Act codified at California Civil Code § 1954.50, et seq. (Appendix A to this Chapter contains the text of Costa-Hawkins).

"Covered Unit" means any dwelling unit, including joint living and work quarters, and all Housing Services located in Oakland and used or occupied in consideration of payment of Rent with the exception of those units designated in OMC 8.22.030 A as exempt.

"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. NOTE: Debt Service for newly-acquired units has been eliminated as a justification for new rent increases in excess of the CPI pursuant to Ordinance No. 13221 C.M.S., adopted by the Oakland City Council on April 1, 2014.

"Housing Services" means all services provided by the Owner related to the use or occupancy of a Covered Unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.

"Imputed interest" means the average of the 10 year United States treasury bill rate and the 10 year LIBOR swap rate for the quarter prior to the date the permits for the improvements were obtained plus an additional one and one-half percent, to be taken as simple interest. The Rent Program will post the quarterly interest rates allowable.

"Owner" means any owner, lessor or landlord, as defined by state law, of a Covered Unit that is leased or rented to another, and the representative, agent, or successor of such owner, lessor or landlord.

"Rent" means the total consideration charged or received by an Owner in exchange for the use or occupancy of a Covered Unit including all Housing Services provided to the Tenant.

"Rent Adjustment Program" means the department in the City of Oakland that administers this Ordinance and also includes the Board.

"Regulations" means the regulations adopted by the Board and approved by the City Council for implementation of this Chapter (formerly known as "Rules and Procedures") (After Regulations that conform with this Chapter are approved they will be attached to this Chapter as Appendix B).

"Security Deposit" means any payment, fee, deposit, or charge, including but not limited to, an advance payment of ~~Rent~~, used or to be used for any purpose, including but not limited to the compensation of an Owner for a Tenant's default in payment of ~~Rent~~, the repair of damages to the premises caused by the Tenant, or the cleaning of the premises upon termination of the tenancy exclusive of normal wear and tear.

"Staff" means the staff appointed by City ~~Manager~~Administrator to administer the Rent Adjustment Program.

"Tenant" means a person entitled, by written or oral agreement to the use or occupancy of any Covered Unit.

"Uninsured Repairs" means that work done by an Owner or Tenant to a Covered Unit ~~Rent Adjustment Program Regulations~~ or to the common area of the property or structure containing a Covered Unit which is performed to secure compliance with any state or local law as to repair damage resulting from fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds.

~~B. New Definitions for Regulation{"Staff" means the staff appointed by City }Manager{ to administer the Rent Adjustment Program.}~~

8.22.030 EXEMPTIONS.

A. Dwelling Units That Are Not Covered Units

1. In order to be a Covered Unit, the Owner must be receiving Rent in return for the occupancy of the dwelling unit.

a. Rent need not be cash, but can be in the form of "in-kind" services or materials that would ordinarily be the Owner's responsibility.

i. For example, a person who lives in a dwelling unit and paints the premises, repairs damage, or upgrades the unit is considered to be paying Rent unless the person caused the damage.

b. Payment of some of expenses of the dwelling unit even though not all costs are paid is Rent.

i. Payment of all or a portion of the property taxes or insurance.

ii. Payment of utility costs that are not directly associated with the use of the unit occupied.

2. If California law determines that an "employee of the Owner", including a manager who resides in the Owner's property, is not a Tenant, then the dwelling unit occupied by such person is not subject to OMC Chapter 8.22 so long as the person is an employee and continues to reside in the unit.

B. Types of Dwelling Units Exempt

1. Subsidized units. Dwelling units whose rents are subsidized by a governmental unit, including the federal Section 8 voucher program.

2. Newly constructed dwelling units (receiving a certificate of occupancy after January 1, 1983).

a. Newly constructed units include legal conversions of uninhabited spaces not used by Tenants, such as:

i. Garages;

ii. Attics;

iii. Basements;

iv. Spaces that were formerly entirely commercial.

b. Any dwelling unit that is exempt as newly constructed under applicable interpretations of the new construction exemption pursuant to Costa-Hawkins (California Civil Code Section 1954.52).

c. Dwelling units not eligible for the new construction exemption include:

i. Live/work space where the work portion of the space was converted into a separate dwelling unit;

ii. Common area converted to a separate dwelling unit.

3. Substantially rehabilitated buildings.

a. In order to qualify for the substantial rehabilitation exemption, the rehabilitation work must be completed within a two (2) year period after the issuance of the building permit for the work unless the Owner demonstrates good cause for the work exceeding two (2) years.

b. For the substantial rehabilitation exemption, the entire building must qualify for the exemption and not just individual units.

4. Dwelling Units Exempt Under Costa-Hawkins. Costa-Hawkins addresses dwelling units that are exempt under state law. The Costa Hawkins exemptions are contained at California Civil Code Section 1954.52. The text of Costa-Hawkins is attached as an appendix to OMC Chapter 8.22.

C. Certificates of Exemption

1. Whenever an Owner seeks a Certificate of Exemption the following procedures apply:

a. The petition cannot be decided on a summary basis and may only be decided after a hearing on the merits;

b. Staff may intervene in the matter for the purpose of better ensuring that all facts relating to the exemption are presented to the Hearing Officer;

c. In addition to a party's right to appeal, Staff or the Hearing Officer may appeal the decision to the Rent Board; and,

d. A Certificate of Exemption shall be issued in the format specified by Government Code Section 27361.6 for purposes of recording with the County Recorder.

2. In the event that a previously issued Certificate of Exemption is found to have been issued based on fraud or mistake and thereby rescinded, the Staff shall record a rescission of the Certificate of Exemption against the affected real property with the County Recorder.

8.22.040 THE BOARD.

A. Meetings

1. Notice. Meetings shall be noticed and the agenda posted in accordance with the Ralph M. Brown Act (California Government Code Sections 54950, et. seq. ("Brown Act") and Sunshine Ordinance (OMC Chapter 2.20).)

2. Regular Meetings. The Board or an Appeal Panel shall meet regularly on the second and fourth Thursdays of each month, unless cancelled. Rent Program staff is authorized to schedule these regular meetings either for the full Board or for an Appeal Panel.

3. Special Meetings. Meetings called by the Mayor or City ~~Manager~~Administrator, or meetings scheduled by the Board for a time and place other than regular meetings are to be designated Special Meetings.

The agenda of Special Meetings shall be restricted to those matters for which the meeting was originally called and no additional matters may be added to the agenda.

4. Adjourned or Rescheduled Meetings. A meeting may be adjourned to a time and place to complete the agenda if voted by the Board members present. A rescheduled meeting may be held when a quorum cannot be convened for a regular meeting or when a quorum votes to substitute another time and/or place for a scheduled meeting. Notice of change of meeting time and/or place shall be sent to the City Clerk and absent Board members and provided in accordance with the Brown Act and Sunshine Ordinance.

5. Time of Meetings. Board meetings shall start at 7 p.m. and end by 10:00 p.m. unless some other time is set in advance or the meeting is extended by a vote of the Board.

6. Location of Meetings. The Board meetings shall be held at City Hall, One Frank H. Ogawa Plaza, Oakland, CA 94612, unless otherwise designated.

7. Agenda. The agenda for each meeting shall be posted at such time and places as required by the Brown Act and Sunshine Ordinance.

8. Board meetings shall be conducted in accordance with "Robert's Rules of Order (Revised)," unless modified by these Regulations, requirements of the Brown Act or Sunshine Ordinance, or the Board.

9. Open to Public. The meetings shall be open to the public in accordance with the Brown Act and the Sunshine Ordinance, except for circumstances where the Brown Act or Sunshine Ordinance permits the Board to address a matter in closed session, such as litigation or personnel matters.

10. Board Vacations. The Board may schedule dates during the year when no regular Board meetings may be held so that the entire Board may take vacations. The Board must schedule vacation times at least two (2) months prior to the date of the vacation time.

B. Quorum and Voting

1. Four Board members constitutes a quorum of the Board.

2. Decisions of the Board. For the Board to make a decision on the first time a matter comes before the Board, the quorum must include at least one of each of the three categories of Board members (Tenant, residential rental property Owner, and one who is neither of the foregoing). If a matter cannot be decided because at least one of each of the three categories of Board members is not present, the matter will be considered a second time at a future meeting where the matter can be decided even if at least one member from each category is not present. A majority of the Board members present are required to make decisions, provided a quorum is present and sufficient members of each category are present.

3. A Board member who does not participate in a matter because of a conflict of interest or incompatible employment neither counts towards a quorum nor in calculating the number of Board members required to make a majority.

C. Officers

1. The Board shall select a Chair from among the Board members who are neither tenants nor residential rental property owners. Each Appeal Panel shall be chaired by the member of that panel who is neither a tenant nor a residential rental property owner.

2. The Board may also select a Vice-Chair (who is neither a Tenant nor an Owner) to act as Chair in the Chair's absence.

3. The Officers shall serve one-year terms.

4. The Board shall elect Officers each year at the second meeting in February.

5. The Chair votes on matters as any other Board member.

D. Standing Committees

~~1. The Board may establish one or more Appeal Committees to hear appeals of Hearing Officer decisions under procedures set out in Regulation 8.22.120.~~

~~a. The purpose of an Appeal Committee is to consider appeals in the extraordinary circumstance when the number of appeals is such that the Board cannot reasonably meet the timetable set out in OMC Chapter 8.22 and the Regulations considering and deciding appeals.~~

~~b. An Appeal Committee should only hear those appeals that involve issues of type previously decided by the Board. Rent Adjustment Program Regulations Effective 8-1-14 7~~

~~c. An Appeal Committee{ must be comprised of one }tenant, one owner, and one Board member who is neither an owner nor tenant. No Board member can sit on more than one Appeal Committee at one time.~~

~~d. All Appeal Committee members must be present for a quorum. A majority of the Appeal Committee is required to decide an appeal.~~

~~e. Staff shall determine which appeals are appropriate for an Appeal Committee and which should go to the Board unless the Appeal Committee or Board decide otherwise.~~

~~f. A party to an appeal may elect not to have his/her case heard by an appeal panel and instead, be heard by the full Board. A party may so elect by notifying the Rent Adjustment Program not less than five (5) days prior to the first scheduled date for the appeal hearing.~~

~~2.~~ The Board may establish standing committees subject to prior approval of the City Council. ~~a.~~ A request to create a standing committee must include:

i. The staffing costs for the committee; and

ii. The costs of complying with meeting noticing requirements.

8.22.050 SUMMARY OF NOTICES REQUIRED BY OMC CHAPTER 8.22.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.050.

8.22.060 NOTICE OF THE EXISTENCE OF CHAPTER 8.22 REQUIRED AT COMMENCEMENT OF TENANCY.

A. Providing Notice in Multiple Languages

1. The requirement to provide the Notice of the Existence of Chapter 8.22 Required at Commencement of Tenancy in multiple languages took effect on September 21, 2016 and only applies to new tenancies that commenced on or after that date..

2. No Owner will be penalized for failing to comply with this requirement until the later of sixty (60) days after the Rent Program makes a general announcement of the requirement or all the translations are available on the Rent Program website.

3. Until September 21, 2017, no Owner will be denied a Rent increase for failing to provide the notice in the required languages, unless:

a. the Tenant is proficient in one of the non-English languages specified in OMC 8.22.060 (Spanish or Chinese), and is not proficient in English;

or

b. the Owner negotiated the terms of the rental agreement in either Spanish or Chinese and failed to give the notice in that language.

8.22.065 RENT ADJUSTMENTS IN GENERAL

[Reserved for potential future regulations]. See Ordinance, OMC ~~8.22.060.~~ 8.22.065.

8.22.070 RENT ADJUSTMENTS FOR OCCUPIED COVERED UNITS.

A. Purpose

This section sets forth the Regulations for a Rent adjustment exceeding the CPI Rent Adjustment and that is not authorized as an allowable increase following certain vacancies.

B. Justifications for a Rent Increase in Excess of the CPI Rent Adjustment

~~1. The~~Regulations regarding the justifications for a Rent increase in excess of the CPI Rent Adjustment are attached as Appendix A to these Regulations. The justifications are: banking; capital improvement costs; uninsured repair costs; increased housing service costs; and the rent increase is necessary to meet constitutional or fair return requirements.

~~2. Except for a Rent increase justified by banking, Rent may be increased by~~

~~a. the CPI Rent Adjustment, or~~

~~b. the total amount justified under provisions of OMC Section 8.22.070.D.1, whichever is greater.~~

~~3. Section 8.22.070.B.2. does not apply to any Rent increase based on Banking pursuant to Appendix A, Section 10.5~~

8.22.080 RENT INCREASES FOLLOWING VACANCIES.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.080.

8.22.090 PETITION AND RESPONSE FILING PROCEDURES.

A. Filing Deadlines

In order for a document to meet the filing deadlines prescribed by OMC Chapter 8.22.090, documents must be received by the Rent Adjustment Program offices no later than 5 PM on the date the document is due. A postmark is not sufficient to meet the requirements of OMC Chapter 8.22.090. Additional Regulations regarding electronic and facsimile filing will be developed when these filing methods become available at the Rent Adjustment Program.

B. Tenant Petition and Response Requirements

1. A Tenant petition or response to an Owner petition is not considered filed until the following has been submitted:

a. Evidence that the Tenant is current on his or her Rent or is lawfully withholding Rent. For purposes of filing a petition or response, a statement under oath that a Tenant is current in his or her Rent or is lawfully withholding Rent is sufficient, but is subject to challenge at the hearing;

b. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath; and

c. For Decreased Housing Services claims, organized documentation clearly showing the Housing Service decreases claimed and the claimed value of the services, and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file.

2. Staff shall serve on respondents copies of the completed petition forms accepted for filing with notification that the petition has been filed. Staff shall serve on petitioners completed response forms accepted for filing. Attachments to petitions and responses shall not be included but will be available to review upon request of either party.

C. Owner Petition and Response Requirements

1. An Owner's petition or response to a petition is not considered filed until the following has been submitted:

a. Evidence that the Owner has paid his or her City of Oakland Business License Tax;

b. Evidence that the Owner has paid his or her Rent Program Service Fee;

c. Evidence that the Owner has provided written notice, to all Tenants affected by the petition or response, of the existence and scope of the Rent Adjustment Program as required by OMC 8.22.060. For purposes of filing a petition or response, a statement that the Owner has provided the required notices is sufficient, but is subject to challenge at the hearing;

d. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath;

e. Organized documentation clearly showing the Rent increase justification and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file.

2. Staff shall serve on respondents copies of the completed petition forms accepted for filing with notification that the petition has been filed. Staff shall serve on petitioners completed response forms accepted for filing. Attachments to petitions and responses shall not be included but will be available to review upon request of either party.

D. Time of Hearing and Decision

1. The time frames for hearings and decisions set out below are repeated from OMC 8.22.110 D.

2. The Hearing Officer shall have the goal of hearing the matter within sixty (60) days of the original petition's filing date.

3. The Hearing Officer shall have a goal of rendering a decision within sixty (60) days after the conclusion of the hearing or the close of the record, whichever is later.

E. Designation of Representative

Parties have the right to be represented by the person of their choice. A Representative does not have to be a licensed attorney. Representatives must be designated in writing by the party. Notices and correspondence from the Rent Adjustment Program will be sent to representatives as well as parties so

long as a written Designation of Representative has been received by the Rent Adjustment Program at least ten (10) days prior to the mailing of the notice or correspondence. Parties are encouraged to designate their representatives at the time of filing their petition or response whenever possible.

8.22.100 MEDIATION OF RENT DISPUTES.

A. Availability of Mediation

Voluntary mediation of Rent disputes will be available to all parties participating in Rent adjustment proceedings after the filing of a petition and response. Mediation will only be conducted in those cases in which all parties agree in advance to an effort to mediate the dispute.

B. Procedures

1. Parties who desire mediation shall have the choice between the use of Rent Adjustment Program Staff Hearing Officers acting as mediators or the selection of an outside mediator. Staff Hearing Officers shall be made available to conduct mediations free of charge. The Rent Adjustment Program will develop a list of available outside mediators for those who do not wish to have Staff Hearing Officers mediate rent disputes. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

2. The following rules apply to mediations conducted by Staff Hearing Officers and notices regarding the scheduling of a mediation session shall explain the following:

a. Participation in a mediation session is voluntary;

b. A request by any party for a hearing on the petition instead of the mediation session received prior to or during the scheduled mediation will be granted. Such a request will be immediately referred to the Rent Adjustment Program and a hearing on the petition will be scheduled;

c. Written notice of the mediation session shall be served on the parties by the Rent Adjustment Program in accordance with OMC 8.22.110.

d. It is the goal to have the mediation scheduled within the first 30 days after the response to the petition is filed.

e. Absence Of Parties

i. If a petitioner fails to appear at a properly noticed mediation, the Hearing Officer may, in the Hearing Officer's discretion, dismiss the case.

ii. If a respondent fails to appear, the Hearing Officer will refer the matter to the Rent Adjustment Program for administrative review or hearing on the petition, whichever is appropriate.

3. The following rules apply to mediations conducted by outside mediators and notices regarding the scheduling of a mediation session shall explain the following:

a. Participation in a mediation session is voluntary;

b. The Rent Adjustment Program will not schedule the mediation; the parties will be responsible for scheduling the mediation between themselves and the mediator and for notifying the Rent Adjustment Program of the time and date for the mediation;

c. A request by any party for a hearing on the petition instead of the mediation session received prior to or during the scheduled mediation will be granted. Such a request will be immediately referred to the Rent Adjustment Program and an administrative hearing will be scheduled. In the event that the responding party fails to appear for the mediation session, the case will be referred back to the Rent Adjustment Program for administrative review and or hearing on the petition, whichever is appropriate.

d. In the event that the petitioning party fails to appear for the mediation session, the case will be referred back to the Rent Adjustment Program for administrative dismissal of the petition.

4. The Regulations regarding representation by an agent and translation apply to mediations.

5. If the parties fail to settle the rent dispute through the mediation process after a good faith effort, a hearing on the petition will be scheduled on a priority basis with a Staff Hearing Officer. If the mediation was conducted by a Staff Hearing Officer, the hearing on the petition will be conducted by a different Hearing Officer.

6. If the parties reach an agreement during the mediation, a written mediation agreement will be prepared immediately by the mediator and signed by the parties at the conclusion of the mediation. To the extent possible, mediation agreements shall be self-enforcing. The Hearing Officer will issue an order corresponding to the mediated agreement and signed by the parties that either dismisses the petition or grants the petition according to terms set out in the mediation agreement.

7. A settlement agreement reached by the parties will become a part of the record of the proceedings on the petition unless the parties otherwise agree.

8. The parties cannot agree to grant an Owner a permanent exemption of for dwelling unit. Permanent exemption claims must be decided by a Hearing Officer after a hearing on the evidence.

C. Postponements of Mediations Before Hearing Officers

1. A Hearing Officer or designated Staff member may grant a postponement of the mediation only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" includes but is not limited to:

a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party;

b. Verified travel plans scheduled before the receipt of notice of hearing;

c. Any other reason that makes it impractical to appear at the scheduled mediation date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of a mediation must be made in writing at the earliest date possible after receipt of the notice of mediation with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date set for the mediation.

8.22.110 HEARING PROCEDURE.

A. Postponements

1. A Hearing Officer or designated Staff member may grant a postponement of the hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" includes but is not limited to: a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party; b. Verified travel plans scheduled before the receipt of notice of hearing; c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of a hearing must be made in writing at the earliest date possible after receipt of the notice of hearing with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent ~~Arbitration~~Adjustment Program office must be notified in writing at the earliest date possible prior to the date set for the hearing.

B. Absence Of Parties

1. If a petitioner fails to appear at a properly noticed hearing, the Hearing Officer may, in the Hearing Officer's discretion, dismiss the case.

2. If a respondent fails to appear, the Hearing Officer may rule against the respondent, or proceed to a hearing on the evidence.

C. Record Of Proceedings

1. All proceedings before a Hearing Officer or the Rent Board, except mediation sessions, shall be recorded by tape or other mechanical means. A party may order a ~~Rent Adjustment Program Regulations Effective 8-1-14 13~~ duplicate or transcript of the tape recording of any hearing provided that

the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.

2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

D. Translation

~~Petitioners~~Translation services for documents, procedures, hearings and mediations in languages other than English pursuant to the Equal Access to Services ordinance (O.M.C. Chapter 2.3) shall be made available to persons requesting such services subject to the City's ability to provide such services. In the event that the City is unable to provide such services, petitioners and respondents who do not speak or are not comfortable with English must provide their own translators. The translators will be required to take an oath that they are fluent in both English and the relevant foreign language and that they will fully and to the best of their ability translate the proceedings.

E. Conduct Of Hearings Before Hearing Officers

1. Each party, attorney, other representative of a party or witness appearing at the hearing shall complete a written Notice of Appearance and oath, as appropriate, that will be submitted to the Hearing Officer at the commencement of the hearing. All Notices of Appearance shall become part of the record.

2. All oral testimony must be given under oath or affirmation to be admissible.

3. Each party shall have these rights:

a. To call and examine witnesses;

b. To introduce exhibits;

c. To cross-examine opposing witnesses on any matter relevant to the issues even if that issue was not raised on direct examination;

d. To impeach any witness regardless of which party called first called him or her to testify;

e. To rebut the evidence against him or her;

f. To cross-examine an opposing party or their agent even if that party did not testify on his or her own behalf or on behalf of their principal.

4. Unless otherwise specified in these Regulations or OMC Chapter 8.22, the rules of evidence applicable to administrative hearings contained in the California Administrative Procedures Act (California Government Code Section 11513) shall apply.

F. Decisions Of The Hearing Officer

1. The Hearing Officer shall make written findings of fact and issue a written decision on petitions filed.

2. If an increase in Rent is granted, the Hearing Officer shall state the amount of increase that is justified, and the effective date of the increase.

3. If a decrease in Rent is granted, the Hearing Officer shall state when the decrease commenced, the nature of the service decrease, the value of the decrease in services, and the amount to which the rent may be increased when the service is restored. When the service is restored, any Rent increase based on the restoration of service may only be taken following a valid change of terms of tenancy notice pursuant to California Civil Code Section 827. A Rent increase for restoration of decreased Housing Services is not considered a Rent increase for purposes of the limitation on one Rent increase in twelve (12) months pursuant to OMC 8.22.070 A. (One Rent Increase Each Twelve Months).

4. The Hearing Officer may order Rent adjustment for overpayments or underpayments over a period of months, however, such adjustments shall not span more than a twelve (12) month period, unless longer period is warranted for extraordinary circumstances. The following is a schedule of adjustments for underpayment and overpayments that Hearing Officers must follow unless the parties otherwise agree or good cause is shown:

a. If the underpayment or overpayment is 25% of the Rent or less, the Rent will be adjusted over 3 months;

b. If the underpayment or overpayment is 50% of the Rent or less, the Rent will be adjusted over 6 months;

c. If the underpayment or overpayment is 75% of the Rent or less, the Rent will be adjusted over 9 months;

d. If the underpayment or overpayment is 100% of the Rent or more, the Rent will be adjusted over 12 months.

5. For Rent overpayments based on an Owner's failure to reduce Rent after the expiration of the amortization period for a Capital Improvement, the decision shall also include a calculation of any interest that may be due pursuant to Reg. 10.2.5 (see Appendix A).

6. If the Landlord has petitioned for multiple capital improvements covering the same unit or building, the Hearing Officer may consolidate the capital improvements into a single amortization period and, in the Hearing Officer's discretion, determine the length for that amortization period in the Decision.

8.22.120 APPEALS.

A. Statement of Grounds for Appeal and Supporting Documentation

1. A party who appeals a decision of a Hearing Officer or administrative decision must clearly state the grounds for the appeal on the appeal form or an attachment. The grounds for appeal must be stated sufficiently clearly for the responding party, and the Board to reasonably determine the basis for the appeal so that the responding party can adequately respond and the Board adequately adjudicate the appeal.

2. A party who files an appeal must file any supporting argument documentation and serve it on the opposing party within fifteen (15) days of filing the appeal along with a proof of service on the opposition party.

3. A party responding to an appeal must file any response to the appeal and any supporting documentation and serve it on the opposing party within fifteen (15) days of the service of the supporting documentation along with a proof of service on the opposing party.

4. Any argument and supporting documentation may not be any more than twenty-five (25) pages. Arguments must be legible and double-spaced if typed. Any submissions not conforming to these requirements may be rejected by Staff. Staff may limit the pages for argument and supporting documentation submitted in consolidated cases.

5. Staff, in its discretion, may modify or waive the above requirements for good cause. The good cause must be provided in writing by the party seeking a waiver or modification.

B. Grounds for Appeal

The grounds on which a party may appeal a decision of a Hearing Officer include, but are not limited to, the following:

1. The decision is inconsistent with OMC Chapter 8.22, the Regulations, or prior decisions of the Board;

2. The decision is inconsistent with decisions issued by other Hearing Officers;

3. The decision raises a new policy issue that has not previously been decided by the Board;

4. The decision violates federal, state, or local law;

5. The decision is not supported by substantial evidence~~;~~. Where a party claims the decision is not supported by substantial evidence, the party making this claim has the burden to ensure that sufficient record is before the Board to enable the Board to evaluate the party's claim;

~~5.~~6. The Hearing Officer made a procedural error that denied the party sufficient opportunity to adequately present his or her claim or to respond to the opposing party; or

~~6.~~7. The decision denies the Owner a fair return.

a. This appeal ground may only be used by an Owner when his or her underlying petition for approval of a rent increase was based on a fair return claim.

b. Where an Owner claims the decision denies a fair return, the Owner must specifically state on the appeal form the basis for the claim, including any calculations, and the legal basis for the claim.

C. Postponements

1. The Board or Staff may grant a postponement of the appeal hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" shall include but is not limited to:

a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party;

b. Verified travel plans scheduled before the receipt of notice of hearing;

c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of an appeal hearing must be made in writing at the earliest date possible after receipt of the notice of appeal hearing with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent ~~Arbitration~~Adjustment Program office must be notified in writing at the earliest date possible prior to the date for the appeal hearing.

D. Procedures at Appeal Hearings

1. It is the Board's or Appeal Panel's goal to hear three (3) appeals per meeting.

2. Unless the Board or Appeal Panel votes otherwise, each party will have fifteen (15) minutes to present argument on or in opposition to the appeal. This time includes opening argument and any response.

3. Whenever the Board or Appeal Panel considers an appeal at more than one meeting, any Board member not present at a prior hearing must listen to a tape of the prior hearing in order to participate at a subsequent hearing.

4. Only those grounds presented in the written appeal may be argued before the Board or the Appeal Panel.

E. Record Of Proceedings

1. All proceedings before the Rent Board shall be recorded by tape or other mechanical means. A party may order a duplicate or transcript of the tape recording of any appeal hearing provided that the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.

2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

F. Evidentiary Hearings

1. As a general rule, the Board and Appeal Panels should not conduct evidentiary hearings. When the Board or Appeal Panel determines that additional evidence or reconsideration of evidence is necessary, the Board or Appeal Panel should remand the matter back to a Hearing Officer for consideration of evidence.

2. The Board or Appeal Panel should only consider evidence when the evidence is limited in scope and resolution of the matter is more efficient than having it remanded to a Hearing Officer for consideration of the evidence.

3. In order for new evidence to be considered, the party offering the new evidence must show that the new evidence could not have been available at the Hearing Officer proceedings.

4. If the Board or Appeal Panel deems an evidentiary hearing necessary, the appeal will be continued and the Board will issue a written order setting forth the issues on which the parties may present evidence.

5. The parties must file any new documentary evidence with the Board or Appeal Panel and also serve it the opposing party not ~~less~~more than ~~five working days prior to the~~ten (10) days after notice is given that a date has been set for the evidentiary appeal hearing.

a. Parties must also file with the ~~Board~~Rent Program proofs of service of the evidence on the opposing party.

b. Failure to file the evidence and the proofs of service may result in the evidence not being considered by the Board or Appeal Panel.

6. When the Board or Appeal Panel conducts an evidentiary hearing, the same rules will apply as to hearings before Hearing Officers.

G. Appeal Decisions

1. Vote Required. Provided a quorum of the Board is present, or all three Appeal Panel members if a matter is being heard by an Appeal Panel, a majority vote of the Board members present is required to overturn or modify a Hearing Officer's decision. A tie vote upholds the Hearing Officer's decision. If no

Board member makes a motion to uphold, reverse, or modify the Hearing Officer's decision on appeal or no motion receives a second, the appeal is deemed denied without comment.

2. Vote at Close of Appeal Hearing. Unless the Board or Appeal Panel votes otherwise, it shall vote on each appeal at the close of the appeal. The motion should include the reasons for the decisions so that the reasons can be set forth in a written decision.

a. Form of Decision. An appeal decision must be in writing and include findings and conclusions.

b. Time for Written Decision. The Board has the goal of issuing a written decision within thirty (30) days of the close of the appeal hearing.

c. Final decision. ~~The Board must approve written decisions. A decision is not final until a written decision is approved by the Board, signed by the Chair or~~

i. Written appeal decisions are drafted by Staff, reviewed by the City Attorney, signed by staff as the Board's designee, and served on the parties.

ii. In any individual matter, however, the Board or Appeal Panel may vote to require that a decision first come to the full Board or full Appeal Panel or to the Board or Appeal Panel Chair for final approval and signature of that Chair. A decision is not final until signed by Staff or the Board or Appeal Panel Chair and served on the parties.

d. In its decision, the Board is authorized to designate a schedule for refunds or repayments consistent with Reg. 8.22.110 F.4 in cases where its decision results in under- or over-payments by a party; alternatively, the Board may remand to the Hearing Officer for purposes of devising a refund or repayment plan.

e. Staff shall serve decisions on the parties.

H. Dismissal of Appeal

1. Untimely appeal filing.

a. Staff may dismiss an appeal that is not timely filed.

b. Within ten (10) days following Staff's notice of the dismissal, the party filing the late appeal may submit a written statement explaining any good cause for the late filing.

c. If the good cause appears within the guidelines for acceptable good cause set out in Rent Board decisions, Staff may reinstate the appeal or set a hearing before the Board on whether there is good cause for the late appeal.

d. If the good cause does not appear within the acceptable good cause parameters, Staff may reject the good cause and affirm the appeal dismissal.

2. Failing to adequately state grounds for appeal.

a. If Staff determines that an appeal fails to adequately state the grounds for appeal, Staff will send a deficiency notice to the appellant notifying the appellant of the deficiency and giving the appellant ten (10) days to correct the deficiency.

b. If the appellant fails to respond to the deficiency notice or fails to correct the deficiency in the response, Staff may dismiss the appeal, or ask the Rent Board to determine the adequacy of the appeal.

I. Failure to Appear.

1. Appellant. If an appellant fails to appear at an appeal hearing, the Board will consider the appeal dropped and will issue a decision dismissing the appeal, subject to the appellant showing good cause for the failure to appear.

a. Any excuse for failing to appear, along with supporting documentation, must be submitted to Staff with ten(10) days of the date of the service of the appeal decision.

b. Staff will, in the first instance determine if the excuse represents a prima facie case of good cause based on the standards for failing to appear at a hearing and any Board decisions interpreting good cause for failure to appear.

c. If a prima facie case of good cause is shown, Staff will schedule an appeal hearing on whether the Board or Appeal Panel accepts the good cause.

2. Responding party. If the responding party fails to appear, the Board or Appeal Panel must still hear and decide the appeal.

8.22.130 ~~NOTICE REQUIREMENTS FOR A CIVIL CODE 1946 TERMINATION OF TENANCY.~~ RETALIATORY EVICTIONS.

~~A. Public Access to Notices and Information Required to be Filed Relating to a 1946 Termination of Tenancy~~

~~1. Purpose of Regulation. This Reg. 8.22.130 A is to implement OMC 8.22.130 F regarding the privacy of notices and reports that an Owner is required to file in connection with a 1946 Termination of Tenancy. Of concern is public access to:~~

~~a. The identity of the Tenant; and~~

~~b. Any information the Owner put into the 1946 Notice of any alleged misconduct by the Tenant.~~

~~2. Notices and Reports Affected. This Regulation covers the following notices and reports:~~

~~a. 1946 Notice (OMC 8.22.130 A).~~

~~b. Notice to New Tenant (OMC 8.22.130 B).~~

~~c. Report to the Rent Adjustment Program of the New Tenant's Rent (OMC 8.22.130 C).~~

~~d. Status Report to the Rent Adjustment Program after 1946 Termination of Tenancy (OMC 8.22.130 D).~~

~~3. Access to notices and reports identified in 8.22.130 A.2, above.~~

~~a. The following persons have full access to the notices and reports.~~

~~i. The Tenant whose tenancy was termination by the 1946 Notice;~~

~~ii. The Owner who terminated the tenancy.~~

~~iii. An attorney or other representative designated in writing by the Tenant or Owner.~~

~~b. The following persons have access to the notices and reports so long as any allegations of misconduct by the Tenant are first redacted from the documents.~~

~~i. Any Tenant who occupies the subject Covered Unit in the twelve (12) month period following the vacancy of the Tenant whose tenancy was terminated with a 1946 Notice.~~

~~ii. An attorney or other representative designated in writing by such Tenant. c. Any member of the public may have access to the notices and reports so long as the name of the Tenant and any alleged misconduct of the Tenant are first redacted from the documents.~~

~~4. Neither OMC 8.22.130 F nor this Reg. 8.22.130 is intended to nor shall create a private right of action or claim against the City of Oakland or any of its officers or employees for any release of information that is not in accordance with this Reg. 8.22.130.~~

~~**8.22.140 UNLAWFUL TERMINATIONS OF TENANCIES{.}**~~

~~{[Reserved for potential future regulations]. See Ordinance, OMC }{8.22.140.}~~

~~**8.22.150 RETALIATORY EVICTIONS.**~~

~~{[Reserved for potential future regulations]. See Ordinance, OMC }8.22.150.~~

[[Reserved for potential future regulations]. See Ordinance, OMC]~~8.22.150.~~ 8.22.130.

~~**8.22.160**~~**8.22.140 VOLUNTARY MEDIATION OF EVICTIONS.**

[Reserved for potential future regulations]. See Ordinance, OMC {~~8.22.160.~~}[8.22.140.]

~~**8.22.170**~~**8.22.150 GENERAL REMEDIES.**

A. Administrative Citation

1. General Intent of Administrative Citation. The intent of this section is to provide a means to secure compliance with the Rent Adjustment Law without the parties having to go to court. This section

provides an opportunity to cure a violation without penalty so long as compliance is demonstrated within 10 days of the notice of an initial violation. This section also provides for a series of increasing fines if violations of the law are not cured.

2. Violations Subject to Administrative Citation. Violations of the specific provisions of OMC Chapter 8.22 set forth in this Regulation are subject to administrative citation. The provisions of OMC Chapter 8.22 subject to administrative citation are:

a. Failure to give the required notice at commencement of the tenancy (OMC 8.22.060 A.)

b. Demanding payment of a rent increase if the increase is based on a notice that does not conform to OMC 8.22.070 H.

~~c. Terminating a tenancy pursuant to California Civil Code Section 1946 without giving the form of notice required by OMC 8.22.130.~~

~~d. Failing to file a 1946 Notice with the Rent Adjustment Program (OMC 8.22.130 A.2).~~

~~e. Following a 1946 Termination of Tenancy, a failure to either:~~

~~i. Give the new Tenant the required notice (OMC 8.22.130 B);~~

~~ii. Report the new Tenant's Rent to the Rent Adjustment Program (OMC Section 8.22.130 C); or~~

~~iii. File the rent report with the Rent Adjustment Program twelve (12) months after a 1946 Termination of Tenancy (OMC 8.22.130 D).~~

f. Demanding payment of a Rent increase in excess of that permitted after a Tenant has filed a petition challenging a Rent increase (OMC 8.22 .070 D).

g. Failure or refusal to abide by a final order of a Hearing Officer or the Board.

h. Failure to pay the Rent Adjustment Program Service Fee or passthrough as required pursuant to OMC 8.22.180.

i. Failure to file notice that a unit is no longer exempt as required under OMC 8.22.030 C.

j. Failure to remove a Capital Improvement Rent increase on the first month following the end of the amortization period.

3. Procedures for Issuing Administrative Citation.

a. Any person, including the City, who is affected by a violation of the Rent Adjustment Law may request that the Rent Adjustment Program issue an administrative citation. The Rent Adjustment Program may issue a notice of intent based on having reason to believe a violation has occurred.

b. Upon a sworn allegation of a violation of the Rent Adjustment Law, the Rent Adjustment Program may, at its discretion, serve a notice of intent to issue an administrative citation on the person allegedly committing the violation.

c. The notification by the Rent Adjustment Program shall be served by one or more of the following methods to the last known mailing address:

i. First-class mail accompanied by a proof of service;

ii. Personal delivery; or

iii. Certified mail with return receipt.

d. In response to the notice of intent to issue a citation, the party served with the notice of intent to issue a citation may, within ten (10) days of service of the notice of intent to issue a citation:

i. Cure the violation and send the Rent Adjustment Program evidence that the violation is cured; or

ii. Deny that the violation exists and send the Rent Adjustment Program evidence that the violation does not exist.

e. If the recipient of a notice of intent to issue citation does not respond within ten (10) days after service, the Rent Adjustment Program may issue a citation for the violation.

f. If the recipient of a notice of intent to issue a citation has responded within the ten (10) day period, the Rent Adjustment Program may either:

i. Issue a notice of no violation if the respondent's response is sufficient to demonstrate that there was no violation or that the violation is cured;

ii. Issue a citation if the respondent's response is insufficient to show that there was no violation;

iii. Issue a citation if this is the second violation of the same section of OMC Chapter 8.22, even if the violation is cured.

g. Both the recipient of a notice of intent to issue a citation and the person seeking the citation will be notified of the issuance or non-issuance of a citation.

4. Administrative Citation Penalties. The following are the penalties for administrative citations:

a. A first violation that is cured within the cure period set out in Regulation is not subject to a penalty.

b. If the recipient of a notice of intent to issue citation fails to cure the violation within the cure period or commits a second violation of the same provision of OMC Chapter 8.22, the citation amount is $100;

c. If the recipient of a notice of intent to issue a citation commits a third violation of the same provision of Chapter 8.22 or fails to cure a second violation within the cure period, the citation amount is $250;

d. For each violation after the third violation or failure to cure a third violation within the cure period, the citation amount is $500.

e. An uncured violation that is re-noticed is considered a subsequent violation and the citation amount equals that for a subsequent violation.

f. The following are required for a violation to be considered a subsequent violation:

i. The succeeding violation must have occurred within the twelve (12) month period following the date of service of the immediately prior violation;

ii. The succeeding violation must be for a violation of the same section of OMC Chapter 8.22 (for example failing to give a notice at the commencement of the tenancy (OMC 8.22.060).)

iii. Subsequent violation can occur for a different Tenant, at a different dwelling unit, or a different property as the first violation so long as the violator is the same.

g. Each day following the end of the cure period that a violation remains uncured may be subject to a separate violation.

h. Administrative citations for any individual recipient of a notice of violation, excluding accrued interest, shall not be assessed at more than five thousand dollars ($5000) cumulatively per twelve (12) month period starting with the date of issuance of the first violation.

i. After a recipient of a notice of violation has committed three (3) violations of any provision of OMC Chapter 8.22 subject to administrative citation, the Rent Adjustment Program may assess administrative costs, charges, fees, and interest as established in the master fee schedule of the city pursuant to OMC Section 1.12.070.

j. Full or partial reimbursement for recovery administrative penalties and administrative expenses shall not

i. Excuse the failure to correct violations wholly and permanently; nor

ii. Preclude the assessment of additional administrative citations or other abatement actions by the Rent Adjustment Program; nor iii. Preclude any other claims or penalties that may be available to any person under OMC Chapter 8.22.

5. Hearing on Administrative Citation.

a. ~~Any~~The cited party may request a hearing before a Hearing Officer on the issuance ~~or non-issuance~~ of a violation.

b. A hearing must be requested within 10 (ten) days of service of the citation ~~or non-issuance of the citation~~.

c. The ~~party seeking the hearing~~City has the burden ~~of~~ proving ~~the existence or non-existence of~~ the violation by a preponderance of the evidence.

d. The cited party has the option of requesting a hearing officer other than the Rent Program Hearing Officers under the same terms as hearing officers used for Building Code violations.

e. Hearings shall be conducted under the same rules and time frames as for Rent adjustment hearings as set out in OMC Section 8.22.110.

6. Appeal.

a. ~~Any~~The cited party may request an appeal of the Hearing Officer's decision to the Board.

b. The timeframes and procedures for appeal shall be the same as those for a Rent adjustment proceeding as set out in OMC Section 8.22.120.

B. Administrative Assessment of Civil Penalties

1. Violations of OMC Chapter 8.22 that are subject to civil penalties.

a. Five concurrent uncured administrative citations received by any recipient for any violation subject to administrative citation.

2. Amount of Civil Penalties.

a. ~~An Owner~~A cited party will be assessed $500 as the first civil penalty.

b. ~~An Owner~~A cited party will be assessed $750 as the second civil penalty.

c. ~~An Owner~~A cited party will be assessed $1,000 as the third civil penalty.

d. ~~An Owner~~A cited party may be assessed a maximum of $5,000 in any one twelve (12) month period commencing from the date of the initial civil penalty.

3. Procedures for issuing and appealing civil penalties will be the same as for administrative citations.

8.22.160 COMPUTATION OF TIME.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.160.

8.22.170 SEVERABILITY.

[Reserved for potential future regulations]. See Ordinance, OMC~~8.22.200.~~ 8.22.170.

8.22.180 NONWAIVERABILITY.

[Reserved for potential future regulations]. See Ordinance, OMC ~~8.22.210.~~ 8.22.180.

8.22.190 APPLICABILITY—EFFECTIVE DATE OF CHAPTER.

A. Effective Date of Regulations

1. The amended and restated OMC Chapter 8.22 passed by the City Council on February 5, 2002 provided that it was not to go into effect until July 1, 2002, unless otherwise provided in OMC Chapter 8.22.

2. The Regulations adopted herein take effect as follows unless otherwise stated in the applicable regulation:

a. Rent adjustments:

i. To any Rent increase wherein the notice is served on the Tenant on or after July 1, 2002;

ii. To any decrease in Housing Services wherein the notice is served on the Tenant on or after July 1, 2002, or, if no notice is served, to any Housing Service decrease that occurs on or after July 1, 2002.

b. Terminations of Tenancy

i. To any tenancy terminated by a notice served by either the Owner or the Tenant on or after July 1, 2002.

[NOTE: Following Section Moved From Fromer Section 8.22.180 Pursuant to Ordianance Re-Organization]

8.22.500 RENT PROGRAM SERVICE FEE.

A. Payment of Fee After Loss of Exemption

1. A dwelling unit that was exempt from Chapter 8.22 less than nine months during a year must pay the full fee for that year.

2. After a dwelling unit loses its exemption, the Fee is due within 30 days after the loss of the exemption and late 90 days after the loss of the exemption.

B. Pass-through of One-half of the Fee to Tenant

1. If an Owner elects to pass through one half of the Fee to the Tenant, the Owner must pass through the one half of the Fee in the fiscal year in which the Fee is due, provided the Owner has paid the Fee before it is deemed delinquent.

2. The pass-through amount may be part of the Rent or simply a debt due from the Tenant to the Owner at the Owner's option.

3. The Owner may submit a request for payment of the pass-through amount, in which case the pass-through will be a debt to the Owner and not collectable as part of the Rent.

4. Pass-through as Rent. The pass-through of one-half of the fee to the Tenant will be considered part of the Tenant's Rent provided that the Owner does the following:

a. If the Tenant has a month to month rental agreement, the Owner must first give the Tenant a notice of change of term of tenancy pursuant to state law (California Civil Code Section 827) and the requirements of OMC 8.22.070 H. (requirements for Rent increase notices). The Fee may be passed on in a lump sum amount or spread out at the Owner's option.

b. If the tenant has a term other than month to month, the Owner must give the Tenant a notice in accordance with the terms of the rental agreement.

c. Any notice of Rent increase for the fee is not subject to the restriction of one Rent increase per year pursuant to OMC 8.22.070 H.

d. The Fee is not part of the Base Rent for purposes of calculating the Rent increases.

C. Fee is not a Housing Service Cost

The Owner's portion of the Fee cannot be used to calculate an increase in costs to justify a Rent increase.

D. Fees and Delinquencies Payable by Successor to Owner

Fees and delinquent charges are payable by any successor to the Owner's business of renting the Covered Units on which the Fee is charged.

E. Fee Regulations Repealed if Fee Sunsets

1. The Fee sunsets on June 30, 2003 unless extended by the City Council (OMC ~~8.22.180 I.~~8.22.500.).

2. If the Fee is allowed to sunset, this Reg. ~~8.22.180~~8.22.500 is automatically repealed, except to the extent necessary to complete collection of any Fees, delinquencies, or other costs that became during the period when the Fee was in place.

3. If the Fee is reinstated in the future, then this regulation will also be reinstated.

Attachment E

RENT ADJUSTMENT BOARD REGULATIONS
APPENDIX A
EXCERPTS FROM OAKLAND CITY COUNCIL RESOLUTION NO. 71518
(SUPERSEDED)
RESIDENTIAL RENT ARBITRATION BOARD RULES AND REGULATIONS SECTIONS
2.0 AND 10.0 (all other section omitted, pages 1, 5-13, 21 omitted)

2.0 DEFINITIONS

2.1 **Base Rent**: The monthly rental rate before the latest proposed increase
2.2 **Current Rent**: To keep current means that the tenant is paid up to date on rental payments at the base rental rate.
2.3 **Landlord**: For the purpose of these rules, the term "landlord" will be synonymous with owner or lessor of real property that is leased or rented to another and the representative, agent, or successor of such owner or lessor.
2.4 **Manager**: A manager is a paid (either salary or a reduced rental rate) representative of the landlord.
2.5 **Petitioner**: A petitioner is the party (landlord or tenant) who first files an action under the ordinance.
2.6 **Respondent**: A respondent is the party (landlord or tenant) who responds to the petitioner.
2.7 **Priority 1 Condition**: The City of Oakland Housing Code Enforcement Inspectors determine housing conditions(s)/repair(s) as a "Priority 1" condition when housing condition (s)/repair(s) are identified as a major hazardous or inhabitable condition(s). A "Priority 1" condition must be abated immediately by correction, removal or disconnection. A Notice to Abate will always be issued.
2.8 **Priority 2 Condition**: The City of Oakland Housing Code Enforcement Inspectors determine housing condition(s)/repair(s) as a Priority condition when housing condition (s)/repair(s) are identified as major hazardous or inhabitable condition(s) that may be deferred by an agreement with the Housing Code enforcement Section.

2.9 The following describe five major hazard conditions classified as Priorities 1 & 2:

I. MECHANICAL

Priority 1
A. Unvented heaters
B. No combustion chamber, fire or vent hazard
C. Water heaters in sleeping rooms, bathrooms
D. Open gas lines, open flame heaters

Priority 2
A. Damaged gas appliance
B. Flame impingement, soot
C. Crimped gas line, rubber gas connections
D. Dampers in gas heater vent pipes, no separation or clearance, through or near combustible surfaces
E. Water heater on garage floor

II. PLUMBING

Priority 1
A. Sewage overflow on surface

Priority 2
A. Open sewers or waste lines
B. Unsanitary, inoperative fixtures; leaking toilets
C. T & P systems, newly or improperly installed

III. ELECTRICAL

Priority 1

A. Bare wiring, open splices, unprotected knife switches, exposed energized electrical parts
B. Evidence of overheated conductors including extension cords
C. Extension cords under rugs

Priority 2

A. Stapled cord wiring; extension cords
B. Open junction boxes, switches, outlets
C. Over-fused circuits
D. Improperly added wiring

IV. STRUCTURAL

Priority 1

A. Absence of handrail, loose, weakly-supported handrail
B. Broken glass, posing potential immediate injury
C. Hazardous stairs
D. Collapsing structural members

Priority 2

A. Garage wall separation
B. Uneven walks, floors, tripping hazards
C. Loose or insufficient supporting structural members
D. Cracked glass, leaky roofs, missing doors (exterior) and windows
E. Exit, egress requirements; fire safety

Note: Floor separation and stairway enclosures in multi-story handled on a case basis.

V. OTHER

Priority 1

A. Wet garbage
B. Open wells or unattended swimming pools
C. Abandoned refrigerators
D. Items considered by field person to be immediate hazards

Priority 2

A. Broken-down fences or retaining walls
B. High, dry weeds, next to combustible surfaces
C. Significant quantity of debris
D. Abandoned vehicles

Questions concerning permits, repairs and compliance schedules should be referred to code enforcement office of the City of Oakland -- (510) 238-3381.

10.0 JUSTIFICATION FOR ADDITIONAL RENT INCREASES

10.1 Increased Housing Service Costs: Increased Housing Service Costs are services provided by the landlord related to the use or occupancy of a rental unit, including, but not limited to, insurance, repairs, replacement maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service and employee services. Any repair cost that is the result of deferred maintenance, as defined in Appendix A, Section 10.2.2, cannot be considered a repair for calculation of Increased Housing Service Costs.

10.1.1 In determining whether there has been an increase in housing service costs, consider the annual operating expenses for the previous two years. (For example: if the rent increase is proposed in

1993, the difference in housing service costs between 1991 and 1992 will be considered.) The average housing service cost percentage (%) increase per month per unit shall be derived by dividing this difference by twelve (12) months, then by the number of units in the building and finally by the average gross operating income per month per unit (which is determined by dividing the gross monthly operating income by the number of units). Once the percentage increase is determined the percentage amount must exceed the allowable rental increase deemed by City Council. The total determined percentage amount is the actual percentage amount allowed for a rental increase.

10.1.2 Any major or unusual housing service costs (i.e., a major repair which does not occur every year) shall be considered a capital improvement. However, any repair cost that is not eligible as a capital improvement because it is deferred maintenance pursuant to Appendix A, Section 10.2.2, may not be considered a repair for purposes of calculating Increased Housing Service Costs.

10.1.3 Any item which has a useful life of one year or less, or which is not considered to be a capital improvement, will be considered a housing service cost (i.e., maintenance and repair).

10.1.4 Individual housing service cost items will not be considered for special consideration. For example, PG&E increased costs will not be considered separately from other housing service costs.

10.1.5 Documentation (i.e., bills, receipts, and/or canceled checks) must be presented for all costs which are being used for justification of the proposed rent increase.

10.1.6 Landlords are allowed up to 8% of the gross operating income of unspecified expenses (i.e., maintenance, repairs, legal and management fees, etc.) under housing service costs unless verified documentation in the form of receipts and/or canceled checks justify a greater percentage.

10.1.7 If a landlord chooses to use 8% of his/her income for unspecified expenses, it must be applied to both years being considered under housing service cost (for example, 8% cannot be applied to 1980 and not 1981).

10.1.8 A decrease in housing service costs (i.e., any items originally included as housing service costs such as water, garbage, etc.) is considered to be an increase in rent and will be calculated as such (i.e., the average cost of the service eliminated will be considered as a percentage of the rent). If a landlord adds service (i.e., cable TV, etc.) without increasing rent or covers costs previously paid by a tenant, this is considered to be a rent decrease and will be calculated as such.

10.1.9 The transfer of utility costs to the tenant by the landlord is not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs .

10.1.10 When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of PG&E. The best way to remedy the bill is to install individual meters. If this is too expensive, then the property owner should pay the utility bill himself/herself and build the cost into the rent.

10.2 Capital Improvement Costs: Capital Improvement Costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements primarily must benefit the tenant rather than the landlord.

10.2.1 Credit for capital improvements will only be given for those improvements which have been completed and paid for within the twenty-four (24) month period prior to the date ~~of~~ the ~~proposed~~petition for a rent increase based on the improvements is filed.

10.2.2 Eligible capital improvements include, but are not limited to, the following items:

1. Those improvements which primarily benefit the tenant rather than the landlord. (For example, the remodeling of a lobby would be eligible as a capital improvement, while the construction of a sign advertising the rental complex would not be eligible). However, the complete painting of the exterior of a building, and the complete interior painting of internal dwelling units are eligible capital improvement costs.

2. In order for equipment to be eligible as a capital improvement cost, such equipment must be permanently fixed in place or relatively immobile (for example, draperies, blinds, carpet, sinks, bathtubs, stoves, refrigerators, and kitchen cabinets are eligible capital improvements. Hot plates, toasters, throw rugs, and hibachis would not be eligible as capital improvements).

3. Except as set forth in subsection 4, repairs completed in order to comply with the Oakland Housing Code may be considered capital improvements.

4. The following may not be considered as capital improvements:

a. Repairs for code violations may not be considered capital improvements if the Tenant proves the following:

i. That a repair was performed to correct a Priority 1 or 2 Condition that was not created by the Tenant, which may be demonstrated by any of the following:

(a) the condition was cited by a City Building Services Inspector as a Priority 1 or 2 Condition;

(b) the Tenant produces factual evidence to show that had the property or unit been inspected by a City Building Services Inspector, the Inspector would have determined the condition to be a Priority 1 or 2 Condition, but the Hearing Officer may determine that in order to decide if a condition is a Priority 1 or 2 Condition expert testimony is required, in which case the Hearing Officer may require such testimony.

ii. That the tenant

(a) informed the Owner of the condition in writing;

(b) otherwise proves that the landlord knew of the conditions, or

(c) proves that there were exceptional circumstances that prohibited the tenant from submitting needed repairs in writing; and

iii. That the Owner failed to repair the condition within a reasonable time after the Tenant informed Owner of the condition or the Owner otherwise knew of the condition.

iv. A reasonable time is determined as follows:

(a) If the condition was cited by a City Building Services Inspector and the Inspector required the repairs to be performed within a particular time frame, or any extension thereof, the time frame set out by the Inspector is deemed a reasonable time; or

(b) Ninety (90) days after the Owner received notice of the condition or otherwise learned of the condition is presumed a reasonable time unless either of the following apply:

(1) the violation remained unabated for ninety (90) days after the date of notice to the Owner and the Owner demonstrates timely, good faith efforts to correct the violation within the ninety the (90) days but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause; or

(2) the Tenant demonstrated that the violation was an immediate threat to the health and safety of occupants of the property, [in which case] fifteen (15) business days is presumed a reasonable time unless:

(i) the Tenant proves a shorter time is reasonable based on the hazardous nature of the condition, and the ease of correction, or

(ii) the Owner demonstrates timely, good faith efforts to correct the violation within the fifteen (15) business days after notice but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause.

(c) If an Owner is required to get a building or other City permit to perform the work, or is required to get approval from a government agency before commencing work on the premises, the Owner's attempt to get the required permit or approval within the timelines set out in (i) and (ii) above shall be deemed evidence of good faith and the Owner shall not be penalized for delays attributable to the action of the approving government agency.

b. Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.

i. Among the factors that may be considered in determining if the landlord knew or should reasonably have known of the problem that caused the damage:

(a) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?

(b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?

(c) Did the landlord conduct routine inspections of the property?

(d) Did the tenant permit the landlord to inspect the interior of the unit?

ii. Examples:

(a) A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak causes ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the repair. In this case, replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.

(b) A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord or landlord's agents either had not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition, and tenant complaints.

iii. Burden of Proof

(a) The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair.

(b) Once a tenant meets the burden to prove the landlord knew or should have reasonably known, the burden shifts to the landlord to prove that the landlord exercised reasonable diligence in making timely repairs after the landlord knew or should have known of the problem.

c. "Gold-plating" or "Over-improvements"

i. Examples:

(a) A landlord replaces a Kenmore stove with a Wolf range. In such a case, the landlord may only pass on the cost of the substantially equivalent replacement.

(b) A landlord replaces a standard bathtub with a jacuzzi bathtub. In such a case, the landlord may only pass on the cost of the substantially equivalent replacement.

ii. Burden of Proof

(a)The tenant has the initial burden to prove that the improvement is greater in character or quality than existing improvements.

~~c~~(b) Once a tenant meets the burden to prove that the improvement is greater in character or quality than existing improvements, the burden shifts to the landlord to prove that the tenant approved the improvement in writing, the improvement brought the unit up to current building or housing codes, or the improvement did not cost more than a substantially equivalent replacement.d. Use of a landlord's personal appliances, furniture, etc., or those items inherited or borrowed are not eligible for consideration as capital improvements.

~~d~~e. Normal routine maintenance and repair of the rental until and the building is not a capital improvement cost, but a housing service cost. (For example: while the replacement of old screens with new screens would be a capital improvement).

10.2.3 Rent Increases for Capital Improvement costs are calculated according to the following rules:

1. For mixed-use structures, only the percent of residential square footage will be applied in the calculations. The same principle shall apply to landlord-occupied dwellings (i.e., exclusion of landlord's unit).

2. Items ~~defined as~~determined to be capital improvements ~~will be given a~~pursuant to Section 10.2.2. shall be amortized over the useful life ~~period of five (5) years or sixty (60) months~~of the improvement as set out in the Amortization Schedule attached as Exhibit 1 to these regulations and the total costs shall be amortized over that time period, unless the Rent increase using this amortization would ~~excess~~exceed ten percent (10%) of the existing Rent for a particular unit. Whenever a Capital

Improvement Rent increase alone or with any other Rent increases noticed at the same time for a particular Unit exceeds ten percent (10%) or thirty percent (30%) in five years, if the Owner elects to recover the portion of the Capital Improvement that causes the Rent Increase to exceed ten percent (10%) or thirty percent (30%), the excess can only be recovered by extending the Capital Improvement's amortization period in yearly increments sufficient to cover the excess, and complying with any requirements to notice the Tenant of the extended amortization period with the initial Capital Improvement increase. When a Rent increase that includes a Capital Improvement increase does not exceed ten percent (10%) or thirty percent (30%), the amortization period remains five (5) years. The dollar amount of the rent increase justified by Capital Improvements shall be removed from the allowable rent in the sixty-first month or at the end of the extended amortization period.

3. A monthly Rent increase for a Capital Improvement is determined as follows:

a. A maximum of seventy percent (70%) of the total cost for the Capital Improvement (~~including financing~~plus imputed interest calculated pursuant to the formula set forth in Regulation 8.22.020) may be passed through to the Tenant;

b. The amount of the Capital Improvement calculated in a. above is then divided equally among the Units that benefit from the Capital Improvement;

c. The monthly Rent increase is the amount of the Capital Improvement that may be passed through as determined above, divided by the number of months the Capital Improvement is amortized over for the particular Unit.

4. If a unit is occupied by an agent of the landlord, this unit must be included when determining the average cost per unit. (For example, if a building has ten (10) units, and one is occupied by a nonpaying manager, any capital improvement would have to divided by ten (10), not nine (9), in determining the average rent increase). This policy applies to all calculations in the financial statement which involve average per unit figures.

5. Undocumented labor costs provided by the landlord cannot exceed 25% of the cost of materials.

6. Equipment otherwise eligible as a Capital Improvement will not be considered if a "use fee" is charged (i.e., coin-operated washers and dryers).

7. ~~If the Capital Improvements are finished with a loan to make capital improvements which term exceeds five (5) years (sixty (60) months), the following formula for the allowable increase is: monthly loan payment divided by number of units. 8.~~ Where a landlord is reimbursed for Capital Improvements (i.e., insurance, court-awarded damages, subsidies, etc.), this reimbursement must be deducted from such Capital Improvements before costs are amortized and allocated among the units.

10.2.4 In some cases, it is difficult to separate costs between rental units; common vs. rental areas; commercial vs. residential areas; or housing service costs vs. Capital Improvements. In these cases, the Hearing Officer will make a determination on a case-by-case basis.

10.2.5 Interest on Failure to Reduce Capital Improvement Increase After End of Amortization Period.

1. If an Owner fails to reduce a Capital Improvement Rent increase in the month following the end of the amortization period for such improvement and the Tenant pays any portion of such Rent increase after the end of the amortization period, the Tenant may recover interest on the amount overpaid.

2. The applicable rate of interest for overpaid Capital Improvements shall be the rate specified by law for judgments pursuant to California Constitution, Article XV and any legislation adopted thereto and shall be calculated at simple interest.

10.3 Uninsured Repair Costs: Uninsured Repair Costs are costs for work done by a landlord or tenant to a rental unit or to the common area of the property or structure containing a rental unit which is performed to secure compliance with any state or local law as to repair damage resulting from, fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds

10.3.1 Uninsured Repair Costs are those costs incurred as a result of natural causes and casualty claims; it does not include improvement work or code correction work. Improvements work or code correction work will be considered either capital improvements or housing services, depending on the nature of the improvement.

10.3.2 Increases justified by Uninsured Repair Costs will be calculated as Capital Improvement costs.

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 newly-acquired units has been eliminated as a justification for new rent increases in excess of the CPI, effective April 1, 2014. This restriction 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 April 1, 2014, the effective date of this amendment. The regulations previously in effect regarding debt service are attached to these Regulations as Exhibit 2.

10.5 Rent History/"Banking"

10.5.1 If a landlord chooses to increase rents less than the annual CPI Adjustment [formerly Annual Permissible Increase] permitted by the Ordinance, any remaining CPI Rent Adjustment may be carried over to succeeding twelve (12) month periods ("Banked"). However, the total of CPI Adjustments imposed in any one Rent increase, including the current CPI Rent Adjustment, may not exceed three times the allowable CPI Rent Adjustment on the effective date of the Rent Increase notice.

10.5.2 Banked CPI Rent Adjustments may be used together with other Rent justifications, except Increased Housing Service Costs, ~~Debt Service~~ and Fair Return, because these justifications replace the current year's CPI increase.

10.5.3 In no event may any banked CPI Rent Adjustment be implemented more than ten years after it accrues.

10.6 "Fair Return"

10.6.1 Owners are entitled to the opportunity to receive a fair return. Ordinarily, a fair return will be measured by maintaining the net operating income (NOI) produced by the property in a base year, subject to CPI related adjustments. Permissible rent increases will be adjusted upon a showing that the NOI in the comparison year is not equal to the base year NOI.

10.6.2 Maintenance of Net Operating Income (MNOI) Calculations

1. The base year shall be the calendar year 2014.
    a. New owners are expected to obtain relevant records from prior owners.
    b. Hearing officers are authorized to use a different base date, however, if an owner can demonstrate that relevant records were unavailable (e.g., in a foreclosure sale) or that use of base year 2014 will otherwise result in injustice.

2. The NOI for a property shall be the gross income less the following: property taxes, housing service costs, and the amortized cost of capital improvements. Gross income shall be the total of gross rents lawfully collectible from a property at 100% occupancy, plus any other consideration received or receivable for, or in connection with, the use or occupancy of rental units and housing services. Gross rents collectible shall include the imputed rental value of owner-occupied units.

3. When an expense amount for a particular year is not a reasonable projection of ongoing or future expenditures for that item, said expense shall be averaged with the expense level for that item for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses.

10.6.3 Owners may present methodologies alternative to MNOI for assessing their fair return if they believe that an MNOI analysis will not adequately address the fair return considerations in their case. To pursue an alternative methodology, owners must first show that they cannot get a fair return under an MNOI analysis. They must specifically state in the petition the factual and legal bases for the claim, including any calculations.

Exhibit 1
Amortization Schedule

Improvement	Years	Improvement	Years
Air Conditioners	10	Heating	
Appliances		Central	10
Refrigerator	5	Gas	10
Stove	5	Electric	10
Garbage Disposal	5	Solar	10
Water Heater	5	Insulation	10
Dishwasher	5	Landscaping	
Microwave Oven	5	Planting	10
Washer/Dryer	5	Sprinklers	10
Fans	5	Tree Replacement	10
Cabinets	10	Lighting	
Carpentry	10	Interior	10
Counters	10	Exterior	10
Doors	10	Locks	5
Knobs	5	Mailboxes	10
Screen Doors	5	Meters	10
Earthquake Expenses		Plumbing	
Architectural and Engineering Fees	5	Fixtures	10
Emergency Services		Pipe Replacement	10
Clean Up	5	Re-Pipe Entire Building	20
Fencing and Security	5	Shower Doors	5
Management	5	Painting	

Tenant Assistance	5	Interior	5
Structural Repair and Retrofitting		Exterior	5
Foundation Repair	10	Paving	
Foundation Replacement	20	Asphalt	10
Foundation Bolting	20	Cement	10
Iron or Steel Work	20	Decking	10
Masonry-Chimney Repair	20	Plastering	10
Shear Wall Installation	10	Pumps	
Electrical Wiring	10	Sump	10
Elevator	20	Railing	10
Fencing and Security		Roofing	
Chain	10	Shingle/Asphalt	10
Block	10	Built-Up, Tar and Gravel	10
Wood	10	Tile and Linoleum	10
Fire Alarm System	10	Gutters/Downspots	10
Fire Sprinkler System	20	Security	
Fire Escape	10	Entry Telephone Intercom	10
Flooring/Floor Covering		Gates/Doors	10
Hardwood	10	Fencing	10
Tile and Linoleum	5	Alarms	10
Carpet	5	Sidewalks/Walkways	10
Carpet Pad	5	Stairs	10
Subfloor	10	Stucco	10
Fumigation		Tilework	10
Tenting	5	Wallpaper	5
Furniture	5	Window Coverings	5

Automatic Garage Door Openers	10	Drapes	5
Gates		Shades	5
Chain Link	10	Screens	5
Wrought Iron	10	Awnings	5
Wood	10	Blinds/Miniblinds	5
Glass		Shutters	5
Windows	5		
Doors	5		
Mirrors	5		

Exhibit 2
Debt Service: Old Regulations

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.
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.

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