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CITY OF OAKLAND



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October 14, 2008

HONORABLE CITY COUNCIL
CITY OF OAKLAND

**RE: AMENDMENT TO THE RENT ADJUSTMENT ORDINANCE
(O.M.C. 8.22.010, ET SEQ) TO ALLOW A PASS-THROUGH OF
ONE HALF OF THE AMOUNT OF THE PARCEL TAX KNOWN
AS THE 2008 OAKLAND POLICE SERVICES EXPANSION
MEASURE (MEASURE NN) BY OWNERS OF RESIDENTIAL
RENTAL PROPERTY TO RESIDENTIAL TENANTS OF THAT
PROPERTY**

Dear Members of the City Council:

On November 4, Oakland voters will vote on Measure NN, the police parcel tax known as the 2008 Oakland Police Services Expansion Measure ("Police Services Measure"). As you know, Measure NN would assess an annual tax on all parcels of real estate in the city. Single family houses will be taxed at the rate of \$276 per year (by year 3 of the tax and each year thereafter). Each residential unit in multi-family properties will be taxed at the rate of \$188 per year (by year 3 of the tax and each year thereafter).

The purpose of the Police Services Measure is to fund an increased number of police officers in order to enhance the Police Department's ability to provide safe neighborhoods throughout the city. Should the measure pass, all residents of Oakland will enjoy the benefits of having more officers: suffering fewer crimes and gaining peace of mind, increasing property values, and improving quality of life from having safer neighborhoods. Under the current arrangement, these benefits will be shared by all Oaklanders, but the cost of providing the benefits will be born solely by homeowners, commercial property owners, and residential rental property owners, not by residential renters. It is estimated that 60% of Oakland residents are renters and 40% are homeowners. I have heard objections from some homeowners and residential property owners that they feel it is unfair that their neighbors who are renters get to vote to impose the tax, yet do not have to share the cost of it. To address that concern, I am offering this proposal, which is to allow owners of rental properties covered by the Rent Adjustment Ordinance to share half the cost of the Measure NN tax with their tenants.

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There is no provision of Measure NN that would prohibit such a pass-through of the tax to the renter of the unit. However, a change in Oakland's Rent Ordinance would be necessary in order to permit owners of properties subject to the Rent Ordinance to pass-through half the tax to their renters. Therefore, I am submitting to the City Council an amendment to the Rent Ordinance that would specifically permit this pass-through only for Measure NN, and not for any other cost or any other tax.

Based on projections from Rent Program staff, I believe the cost of administering this pass-through would be \$82,500.00 for the first year and likely decreasing thereafter. The cost is likely to be negligible after the third year because after the tax would be subsumed into the based rent. This expenditure could be paid from the current Rent Program funding by using the Program's reserves. A summary of Rent Program costs is attached.

FISCAL IMPACT

The Police Parcel Tax pass-through will increase the workload, and consequently, will have a financial impact on the Rent Adjustment Program. Although information about the Parcel Tax pass-through will be incorporated into existing outreach, additional outreach specific to the pass-through will be necessary. The actual amounts are highly speculative. The following estimate excludes additional work that may be required of other City agencies, including the City Attorney and the Finance and Management Agency.

- The largest cost will be the additional public contact to answer questions and explain the pass-through. Both landlords and tenants will call to question the legitimacy of the landlord's additional rent increase. Estimate 1000 additional calls per year for 2 years. Based on past experience, the calls will begin to diminish in the 3rd year to a permanent level. Estimate in the first year, 200 hours @ \$100/hr. \$20,000. In the 3rd year and thereafter, 70 hours @ \$100/hr. \$7,000
- Public information materials must be updated and translated, both written materials (including the Notice to Tenants) and the rent adjustment web site. Estimate 25 staff hours @ \$100/hour. \$2,500. Printing and translation costs for outreach materials are estimated as \$5,000
- The program to calculate the correct rent when the landlord defers increases will have to be revised. The pass through will have to be added to the calculations. 40 staff hours @ \$140, \$5,600
- Staff with public contact duties must be trained on application of the pass-through. 24 staff hours @ \$100 \$2400.
- Resolution of disputes between landlords and tenants in all Rent Adjustment cases will be complicated by addition of the pass-through to the cases in all stages of

processing. This will require an additional staff time, estimated as 70 staff hours per year @\$100, \$7,000. This will be an ongoing expense.

- Additional petitions will be generated by the issues regarding availability of the pass-through as a new reason to challenge a rent increase. An example is whether the landlord paid the tax or not. Although the number of such petitions is speculative, staff's best estimate is an additional 25 petitions per year. The number could be much larger or smaller the first year. The approximate cost of processing these additional petitions is estimated at \$30,000
- Additional City Attorney Costs. The City Attorney's Office estimates that up to an additional 60 hours of attorney time would be required for the first year as a result of the proposed Rent Adjustment Ordinance Amendments for a cost of approximately \$10,000. The activities covered would be advising staff, reviewing new forms and explanatory documents, responding to the public, review and attend meetings for appeals based on the ordinance amendments. This cost would not include any litigation based on the amendments.

The estimated startup costs to the Rent Adjustment Program are:

Additional public contact	\$20,000
Produce public information materials	\$2,500
Translate and print materials	\$5,000
Revise rent calculations	\$5,600
Staff training	\$2,400
Resolve of existing cases	\$7,000
Process additional petitions	\$30,000
Additional City Attorney costs	<u>\$10,000</u>
TOTAL	\$82,500

The estimated ongoing additional costs are about half of the startup costs.

KEY ISSUES AND IMPACTS:

City staff and I explored the possibility of establishing a low income exemption to this pass-through. However, their analysis showed that the administrative mechanism for gathering and evaluating the petitions and proof of income would be extremely complicated and expensive. Further, the analysis of the number of properties that would then be exempt from the tax substantially reduced the proceeds of the tax, such that the Measure would not be fully funded to deliver the promised services. Therefore, I am not recommending a low income exemption to this pass-through, should it be enacted.

RECOMMENDATION:

I submit for your consideration and approval the attached Resolution amending the Rent Ordinance to allow residential property owners to pass-through half the Police Services Measure tax to the tenants of the units on which the tax is assessed.

Respectfully submitted,

A handwritten signature in black ink that reads "Patricia Kernighan". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Patricia Kernighan
Councilmember, District 2

INTRODUCED BY COUNCILMEMBER KERNIGHAN

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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY

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ORDINANCE NO. _____ C.M.S.

**AMENDMENT TO THE RENT ADJUSTMENT ORDINANCE
(O.M.C. 8.22.010, ET SEQ) TO ALLOW A PASS-THROUGH OF
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PROPERTY.**

WHEREAS, the Oakland City Council placed the parcel tax measure known as the 2008 Oakland Police Services Expansion Measure (Measure NN, the "Police Services Measure") on the November 4, 2008 municipal ballot;

WHEREAS, if adopted by the voters, the Police Services Measure would enact a parcel tax to provide additional police services to the City to fund an increased number of police officers in order to enhance the Police Department's ability to provide safe neighborhoods throughout the city;

WHEREAS, should the Police Services Measure pass, all residents of Oakland, including residential rental property owners and tenants will enjoy the benefits of having more police officers: suffering fewer crimes and gaining peace of mind, increasing property values, and improving quality of life from having safer neighborhoods;

WHEREAS, each residential unit in multi-family properties would be taxed at the rate of \$188 per year (by year 3 of the tax and each year thereafter);

WHEREAS, because both residential rental property owners and their tenants would benefit from increased police services, it is fair that such owners and tenants share in the cost of the Police Services Measure and therefore one half of the tax should be passed through to tenants in the form by rent increase;

WHEREAS, because, if adopted, the Police Services Measure would be a permanent parcel tax, subject to some exceptions, the one half of the tax that would be passed on to tenants would become a permanent part of the tenants rent and treated as part of the annual CPI Rent Adjustment each owner is permitted to give tenants annually;

WHEREAS, as part of the tenants rent, the amount of the parcel tax would be automatically adjusted by future CPI Rent Adjustments and therefore any adjustments to the amount of the

Police Services Measure parcel tax for consumer price indexes would not have to be passed on to tenants;

NOW THEREFORE, the Council of the City of Oakland does hereby ordain as follows:

Section 1. Oakland Municipal Code, Chapter 8.22 is hereby amended as follows (additions are underlined):

8.22.070 Rent adjustments for occupied covered units.

B. CPI 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 Rent Adjustment Not Subject to Petition. The tenant may not petition to contest a rent increase in an amount up to and including the CPI Rent Adjustment, nor the Pass-through of one-half of Police Services Expansion Measure Parcel Tax set out in subdivision O.M.C. 8.22.0703b, 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.

3. Calculation of the CPI Rent Adjustment.

a. 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.

b. Pass-through of One-half of Police Services Expansion Measure Parcel Tax.

An Owner may pass through to a Tenant one-half of the parcel tax known as the 2008 Oakland Police Services Expansion Measure ("Police Services Tax") as a Rent increase in addition to a CPI Rent Adjustment with the first CPI Rent Adjustment after the Police Services Tax, or a subsequent increase in the base amount of that tax, is paid. Rent Program Staff will announce the amount and effective date of the Police Services Tax pass-through. An Owner may not increase Rent for any adjustments in the Police Services Tax based on the consumer price index tax adjustments. The Police Services Tax, or any increase to its base amount, can only be passed-through to a Tenant in residence at the time the Owner pays the Police Services Tax or any increase in the tax. Unless the Police Services Tax or increase is paid during a tenancy, the Owner cannot pass along the Police Services Tax or increase to a subsequent Tenant, where the Owner had the opportunity to set the Rent to that subsequent Tenant at market; in such case the Owner is deemed to have taken into account the Police Services Tax in setting the new Tenant's rent. If an Owner fails to increase the Rent for the Police Services Tax when the tax is first assessed or increased, the increase is deferred and may be applied in a future Rent increase to that Tenant, but not to a subsequent Tenant. If the Police Services Tax is reduced, eliminated, or suspended, the Rent must be adjusted to reflect in the amount of the tax reduction.

Section 2. The Oakland Municipal Code amendment set out in Section 1 of this Ordinance will only go into effect if the voters adopt the 2008 Oakland Police Services Expansion Measure (Measure NN) at the November 4, 2008 municipal election and then will take effect on the date the City Council confirms the election results.

IN COUNCIL, OAKLAND, CALIFORNIA, , 2008

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

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