



AGENDA REPORT

TO: Jestin Johnson
City Administrator

FROM: Emily Weinstein
Interim Director
Housing and Community
Development Department

SUBJECT: Amendment to Rent
Ordinance and Rent
Adjustment Program
Regulations

DATE: October 18, 2023

City Administrator Approval

Date: Nov 2, 2023

RECOMMENDATION

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

- 1) **An Ordinance Amending Chapter 8.22 of the Oakland Municipal Code to: (1) Amend the Rent Adjustment Ordinance to: (A) Remove the Requirement that a Tenant be Current on Rent in Order to File or Respond to a Petition with the Rent Adjustment Program; (B) Increase Restitution Period for Decreased Housing Service Petitions; (C) Clarify Certificates of Exemption following Change in Law or Circumstances; and (D) Make Other Clarifying Changes; and (2) Amend the Ellis Act Ordinance to be Consistent with State Law.**
- 2) **A Resolution Adopting Amendments to the Rent Adjustment Program Regulations to: (1) Remove the Requirement that a Tenant be Current on Rent in Order to File or Respond to a Petition with the Rent Adjustment Program; (2) Extend the Amortization Period for Mandatory Seismic Retrofits to 25 Years; (3) Reduce Appeal Argument Time to Six Minutes Per Party; (4) Remove the Appearance Requirement for Appellant at Appeal Hearings; (5) Allow Rent Board Alternates to Participate in Board Meetings in Non-Voting Capacity; (6) Add Good Cause Hearings for Failure to Appear at Hearings; (7) Change Rent Board Meeting Time to 6:00 pm; (8) Codify Existing Procedural Practices; and (9) Make Other Clarifying Changes.**

EXECUTIVE SUMMARY

The proposed legislations consist of amendments to the Oakland Municipal Code, as well as amendments to the Rent Adjustment Program Regulations (“Regulations”) promulgated and

CED Committee
November 14, 2023

adopted by the Housing Residential Rent and Relocation Board (“Rent Board”) and submitted to the City Council for ratification.

Specifically, the amendments to Chapter 8.22 of the Oakland Municipal Code would: remove the requirement that a tenant be current on rent in order to file or respond to a petition with the Rent Adjustment Program, increase the restitution period for decreased housing service petitions, clarify the status of certificates of exemption after a change in law or circumstances, make other clarifying changes to the Rent Ordinance, and amend the Ellis Act to be consistent with state law.

The amendments to the Regulations would make corresponding revisions to eliminate the current-on-rent requirement. The amendments would also make various procedural and clarifying changes as recommended by the Rent Board to improve the clarity, fairness, and efficiency of the petition process and hearings.

BACKGROUND/LEGISLATIVE HISTORY

Oakland Municipal Code (“OMC”) section 8.22.040 D.4 provides that the Rent Board may make recommendations to the City Council pertaining to Chapter 8.22 of the OMC. Over the years, City Council has amended Chapter 8.22 multiple times, most recently in June of 2022 to modify the CPI rent adjustment (Ordinance No. 13693).

On September 22, 2022, the Rent Board adopted a resolution recommending that City Council amend OMC Section 8.22.090 by removing the subsection A.4.b filing requirement, which would allow any covered tenant to file a petition or respond to petitions with the Rent Adjustment Program regardless of their rent payment status, provided they meet all other filing requirements.

On August 10, 2023, the Rent Board discussed the amendments to the Regulations outlined in this report, and on August 24, 2023, the Rent Board engaged in further discussion and unanimously approved a motion to recommend the amendments to the Regulations outlined in this report.

ANALYSIS AND POLICY ALTERNATIVES

Remove the Current-on-Rent Requirement from Ordinance and Regulations

Both staff and the Rent Board recommend removing the requirement in the Rent Ordinance and Regulations that a tenant be current on rent in order to file or respond to a petition.

The Rent Board seeks to ensure that all covered Oakland tenants and property owners have access to the protections and relief provided by the Rent Ordinance and to ensure that the Rent Ordinance’s requirements further such goals.

Tenants’ payment of rent does not fall within the scope of the Rent Ordinance and should therefore not be used as a requirement to access adjudication on matters that *are* regulated by the Rent Ordinance. Oakland is the only rent control jurisdiction where tenants must be current

on rent to file a petition. Removing this filing requirement will not limit or change property owners' rights related to tenants' rent payment obligations. Under the Just Cause for Eviction Ordinance, property owners can seek relief and seek possession of a rental unit through an unlawful detainer court action when a tenant has failed to pay rent.

In addition to being outside the scope of the Rent Ordinance, preventing tenants from submitting or responding to a rent adjustment petition because they failed to show evidence of rent payment does not further the purposes of the Rent Ordinance—particularly the purposes of regulating rent increases and encouraging repairs of rental units.

Increase Restitution Period for Decreased Housing Service Petitions

OMC 8.22.090.A.3.b currently provides that if decreased housing services are ongoing, a tenant may file a petition at any point but is limited in restitution for 90 days before the petition is filed. Staff recommends changing the 90-day limit to a three-year limit. This change would make the time period for restitution in these cases consistent with Rent Board decisions that have held that restitution is available for up to three years when a tenant petition is granted on a claim of unlawful rent increases.

Clarify the Status of Certificates of Exemption following Change in Law or Circumstance

OMC 8.22.030.B.2.b. and the corresponding Regulations currently provides that a certificate of exemption is a final determination of exemption absent fraud or mistake. RAP staff recommend amending the Rent Ordinance and Regulations to provide that a certificate of exemption may also be subject to challenge and review based on a change in law or circumstances that make that certificate of exemption no longer applicable, such as when rooms in a single-family home are rented individually to tenants. RAP Staff believes that these amendments would correctly provide for a loss of exempt status when such status is no longer justified under the law.

Make Other Clarifying Changes

RAP staff recommend making clarifying changes to OMC 8.22.090 including: adding language to 8.22.090.A.1.I. to indicate that a tenant may file a petition regarding a claim that an owner has undeclared capital improvement benefits, and providing that a property owner may show evidence of exemption from the rent program fee as an alternative to showing evidence of payment of the fee.

Conform Ellis Act Ordinance Language to State Law

OMC Sections 8.22.430 and 8.22.460 currently use language deviates from the Ellis Act. RAP staff recommend that the language be amended to reflect the appropriate triggering dates for use restriction periods after withdrawal and for tenant request of reoffer of a withdrawn unit. Such changes would make the ordinance consistent with state law.

Pursuant to OMC 8.22.040 D.4, the Rent Board made the following additional recommendations, which the Rent Adjustment Program also supports:

Extend Amortization Period for Mandatory Seismic Retrofits

On January 22, 2019, the City Council adopted [Ordinance No. 13516](#) to require mandatory seismic evaluation and retrofit of certain multifamily residential buildings. This ordinance directed the Rent Board to revise the capital improvements amortization schedule in the Regulations to provide an amortization period for mandatory seismic capital improvements that conforms with the Board's final motion passed during Item 5 of their July 9, 2015 meeting, and gave the Rent Board discretion on whether to make a distinction between mandatory and voluntary seismic retrofits. Pursuant to that direction, the Rent Board recommends extension of the amortization period for both mandatory and voluntary seismic retrofits to 25 years.¹

Reduce Argument Time to Six Minutes Per Party

Regulation section 8.22.120.D.2. currently provides that unless the Rent Board or appeal panel vote otherwise, each party will have 15 minutes to present argument on or in opposition to an appeal. On October 20, 2020, the City Council adopted the Efficiency Ordinance (Ordinance No. 13618) to, among other things, streamline Rent Board meetings by allowing the Rent Board to limit argument time for each party to six minutes. To make the appeal process more efficient, the Rent Board recommends reducing argument time to six minutes per party.

Remove Appearance Requirement for Appellant at Appeal Hearings

Regulation section 8.22.120.I currently provides that if an appellant fails to appear at an appeal hearing, the Rent Board will dismiss the appeal subject to the appellant showing good cause for the failure to appear. To make the appeal process more efficient and accessible and to minimize the time commitment for parties to appeals, the Rent Board recommends making appearances at appeal hearings voluntary.²

Allow Alternates to Participate in Board Meetings in Non-Voting Capacity

Regulation section 8.22.040 does not currently address alternate board members and their participation in scheduled Rent Board meetings unless they are filling in for regular members. Allowing non-voting alternates to participate in Rent Board meetings would allow alternates to learn about the Rent Board and participate in policy discussions. For this reason, the Rent Board recommends amending the Regulations to allow alternate board members to participate in discussion and deliberations, even when they are not filling in for a regular board member and are therefore not able to vote on matters before the Rent Board.

Add Good Cause Hearings for Failure to Appear at Hearings

Regulation section 8.22.110 does not currently provide any good-cause relief for a party that fails to appear at a properly noticed hearing except through the appeals process. Because there may be a significant wait to be scheduled for a Rent Board meeting, and such wait may materially affect the relief that could be granted by the Rent Board or hearing officer, the Rent

¹ "Seismic retrofit" was not a separate enumerated category previously. These improvements were instead addressed under other categories such as foundation repair, foundation bolting or sheer wall install.

² Parties are currently required to appear in person at appeal hearings.

Board recommends amending the Regulations to provide for a process for good cause determinations by hearing officers.

Change Meeting Time to 6:00 PM

Regulation 8.22.040 currently provides that Rent Board regular meetings will start at 7:00 pm. For the convenience of the parties involved and the Rent Board members, the Rent Board recommends amending the Regulations to provide that Rent Board regular meetings will start at 6:00 pm.

Codify Existing Procedural Practices

The Rent Board recommends revising the Regulations to clarify Rent Board's practices and procedures based on case precedents, and to codify such practices/ procedures in the Regulations. These proposed revisions include the following: (1) elimination of the substantial rehabilitation exemption (section 8.22.030.B.); (2) provision that if either party fails to appear for a properly noticed mediation, the hearing officer will refer the matter for administrative review or hearing on the petition, whichever is appropriate (section 8.22.100.B.); (3) clarification that a party's right to introduce exhibits is dependent on that party's timely provision of the exhibits to the other party and the Rent Adjustment Program, and that a party who fails to file a timely response is limited to cross examination absent good cause for the failure (8.22.110.E); (4) elimination of the requirement that a hearing officer state the effective date of a rent increase when an increase is granted (8.22.110.F); (5) modification of the time that a party responding to an appeal has to file the response and supporting documentation and serve it on the opposing party (8.22.120); and (6) elimination of the provision that parties may mutually agree to an appeal hearing postponement at any time (8.22.120.C.).

Make Other Clarifying Changes

The Rent Board recommends making the following changes to the Regulations to improve the Regulations' clarity: (1) addition of several defined terms and elimination of the reference to the LIBOR (London Interbank Offer) rate which ceased to exist (section 8.22.020); (2) reorganization of the section that sets out the justifications for rent increases above the CPI (section 8.22.070); (3) update of the section addressing rent increases based on capital improvements, including correction of terms used and clarification about documentation required (8.22.070.C.1.a.); (4) update of the section addressing rent increases based on increased housing service costs, including correction of references to where "deferred maintenance" is defined and the principle that property tax is not a housing service cost (8.22.070.C.1.c); (5) update of the section addressing rent increases based on decreased housing services, including clarification as to the calculation of utility costs (8.22.070.D.); and (6) remove petition and response requirements that duplicate the same requirements in the ordinance (8.22.090.B-C).

FISCAL IMPACT

Staff does not anticipate any fiscal impact caused by any of the recommended changes to the Rent Ordinance and Rent Adjustment Program Regulations.

PUBLIC OUTREACH / INTEREST

The recommended ordinance change related the current on rent requirement was initially agendized and debated with no decision reached at the September 8, 2022 Rent Board meeting. Then, it was again agendized, debated, and a recommending resolution was adopted by the Rent Board at its September 22, 2022 meeting. There were four and two public speakers addressing this item at those public meetings respectively.

The recommended Regulation changes were agendized and discussed at the Rent Board's [August 10, 2023](#) and [August 24, 2023](#) meetings. A recommending resolution was adopted by the Rent Board at its [August 24, 2023 meeting](#).

COORDINATION

The report was written in coordination with the City Attorney's Office and Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: Removal of the requirement to show evidence of rent payment with the submission of a petition or the response to a petition will help with the implementation of the Rent Ordinance and preserve the affordable housing inventory for families, seniors, and disabled residents in the City of Oakland by allowing them access to and seek relief when facing improper rent increases or seeking a rent adjustment due to a decrease in the housing services. Extending the amortization period for mandatory seismic retrofits will ensure that the significant costs associated with such work are distributed over an appropriate time period. Adding the opportunity for a good cause determination to be made by a hearing officer provides for faster and potentially more comprehensive relief to the parties.

Environmental: Adoption of these proposed legislations will help mitigate adverse environmental impacts resulting from existing rental housing through the resolution of petitions involving code violations and lack of maintenance, uncovering health and safety hazards in the process of its execution, in turn encouraging cohesion and vested interest of owners and tenants in established neighborhoods.

Race and Equity: Removal of the requirement to show evidence of rent payment with the submission of a petition or the response to a petition will help to improve the diversity, landscape and climate of Oakland's neighborhoods by encouraging and protecting long-term tenancies in rental housing and decent and safe housing. Tenant access to the petition process without a restriction that seeks compliance with a non-Ordinance subject matter can help to prevent and resolve disputes due to unwarranted rent increases and decreased housing services and to ensure low- and moderate-income tenants can access the decent, affordable, and healthy housing without restricting the property owner's right to seek court relief for unpaid rents. Eliminating the requirement for an appellant to appear at appeal hearings will allow for greater access to appeal hearings. Codification of existing practices and clarification to the Regulations will make Rent Program procedures more transparent, understandable and accessible to parties and other stakeholders.

Several of these policies bolster tenants' rights by removing barriers of needing to be current on rent to file a petition, increasing the restitution they can receive, removing the barrier of needing to attend appellate hearings, and other changes. The Rent Board debated these issues, which reflects community engagement to get to these decisions.

ACTION REQUESTED BY THE CITY COUNCIL

Staff recommends that the City Council adopt the following pieces of legislation:

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For questions regarding this report, please contact the Rent Adjustment Program Manager, Victor Ramirez, at 510.238.3220.

Respectfully submitted,



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