


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER [IF APPLICABLE]

**ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE TO
ALLOW OWNERS TO PETITION FOR RENT INCREASES BASED ON
INCREASED COSTS OF WASTE SERVICE RATES**

WHEREAS, on August 13, 2014, the City Council of the City of Oakland approved Ordinance No. 13254 C.M.S., granting a Residential Recycling Collection Services franchise to California Waste Solutions, Inc. (CWS); and

WHEREAS, on September 29, 2014, the City Council of the City of Oakland approved Ordinance No. 13258 C.M.S., granting a franchise for Mixed Materials and Organics Collection Services to Waste Management of Alameda County ("WMAC"). Each Ordinance authorized the City to negotiate and enter into contracts for those services; and

WHEREAS, on June 29, 2016, Plaintiffs Zolly, McFadden, and Clayton filed a Complaint against the City for injunctive and declaratory relief, asserting claims pursuant to Article XIII of the California Constitution, challenging the franchise fees in the WMAC and CWS contracts and the rates charged to WMAC and CWS customers. Zolly v. City of Oakland, Alameda County Superior Court Case No. RG16821376; and

WHEREAS, the City and the plaintiffs reached a settlement that include the following: (1) establish an advisory that will advise with respect to the City's waste and recycling collection franchise agreements and services and maintain the committee for seven years or one year after the conclusion of the next request for proposal or renewal process for the contracts, (2) the City will recommend to the Council for its consideration in an open and public meeting, a report and proposal to amend chapter 8.22 of the Oakland Municipal Code to add a provision to allow landlords to petition for rent increases based on increased costs of waste service rates; (3) pay the plaintiffs the amount of \$720,000; and

WHEREAS, the settlement agreement makes no guarantees regarding whether the Council will enact the proposal as written, and whether the Council approves or disapproves the proposed legislation is a decision for the Council; and

WHEREAS, on December 3, 2024, the City Council approved the settlement in Resolution 90537 C.M.S.; and

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

SECTION 1. Amendments to Oakland Municipal Code Section 8.22.020. Added text is shown as double underlined type; deleted text is shown as ~~strikethrough~~ type.

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.

"Additional occupant" means an occupant whose addition to the unit has increased the total number of occupants above the base occupancy level. The owner may petition to increase the rent by an amount up to five (5) percent for each additional occupant above the base occupancy level. A rent increase shall not be based on an additional occupant who is the spouse, registered domestic partner, parent, grandparent, child, adopted child, foster child, or grandchild of an existing tenant, or the legal guardian of an existing tenant's child or grandchild who resides in the unit, or a caretaker/attendant as required for a reasonable accommodation for an occupant with a disability. A rent increase granted under this Section shall be reversed if the number of occupants decreases.

"Anniversary Date" is the date falling one (1) year after the day the tenant was provided with possession of the covered unit or one (1) 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 (1) residential rental property owner, one (1) tenant, and one (1) 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~~Ordinance.

"Base occupancy level" means the number of tenants occupying the covered unit as principal residence as of June 16, 2020, with the owner's knowledge, or allowed by the lease or rental agreement effective as of June 16, 2020, whichever is greater, except that, for units that had an initial rent established on or after June 17, 2020, "base occupancy level" means the

number of tenants allowed by the lease or rental agreement entered into at the beginning of the current tenancy.

"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 (70) percent 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 current and future regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; 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; or costs for which a landlord is reimbursed (e.g., insurance, court awarded damages, subsidies, tax credits, and grants).

"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 8.22.030 A. as exempt. "Covered Unit" includes a vehicular residential facility, as defined in Oakland Planning Code Section 17.10.700, rented or offered for rent for living or dwelling purposes, whether rent is paid for the recreational vehicle and the lot upon which it is located, or rent is paid for the lot alone.

"CPI—All items" means the Consumer Price Index—All items for all urban consumers for the San Francisco—Oakland Hayward area as published by the U.S. Bureau of Labor Statistics.

"CPI—Less Shelter" means the Consumer Price Index—All items less shelter for all urban consumers for the San Francisco—Oakland Hayward area as published by the U.S. Bureau of Labor Statistics.

"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 8.22.070 B.2. (failure of the owner to give proper notices, decreased housing services, and uncured code violations).

"Current Business Tax Certificate" means a business tax certificate ("Certificate" under OMC Section 5.04.110) that covers the property in which the unit is located:

- i. for the current calendar year if the notice or petition is served on or after April 30 of a calendar year;

- ii. for either the current calendar year or the prior calendar year if the notice or petition is served before April 30 of a calendar year.

"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, employee services, and any other benefits or privileges permitted the tenant by agreement, whether express or implied, including the right to have a specific number of occupants and the right to one-for-one replacement of roommates, regardless of any prohibition against subletting and/or assignment.

"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).

"Mandatory Seismic Capital Improvement" means capital improvements that consist of mandatory seismic retrofitting as required in O.M.C. Chapter 15.27. Allowable adjustments of rents for work required by O.M.C. Chapter 15.27 shall be governed by Article 1, Chapter 8.22.

"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 (33) percent in the property, but not including any lessor, sublessor, or agent of the owner of record.

"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).

"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.

"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.

"Voluntary Seismic Capital Improvement" means capital improvements that consist of "seismic strengthening" as defined in O.M.C. Section 15.30.100, but is not required for compliance under Chapter 15.27.

"Waste Services" means regular solid waste collection service and recycling service as required by the O.M.C sections 8.28.090-100.

"Waste Service Rate Increase" means any increase in rates charged for Waste Services.

SECTION 2. Amendments to Oakland Municipal Code Section 8.22.070. Added text is shown as double underlined type; deleted text is shown as ~~strike through~~ type.

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.

1. 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; and/or

iii. As a result of a Hearing Officer decision that permits a Rent increase due to increased costs caused by Waste Service Rate Increases.

2. In no event may rent for any covered unit increase in any twelve-month period by more than ten percent (10%), or the amount permitted for Oakland rental units subject to California Civil Code 1947.12 (or successor provisions), whichever is lower, for any and all rent increases based on the CPI Rent Adjustment, as set out in O.M.C. 8.22.070 B. (CPI Rent Adjustment), and any justifications pursuant to O.M.C. 8.22.070 C.2. (Rent Increases In Excess of CPI Rent Adjustment) except if required for the owner to obtain a fair return pursuant to O.M.C. 8.22.070 C.1.d.
 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. 8.22.070 B. (CPI Rent Adjustment) and any justifications pursuant to O.M.C. 8.22.070 C.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.1.d.
 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. 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.6.;
 - 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 Sections 8.22.070 A.2 or A.3;
 - g. 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.
 - h. The Owner did not have a Current Business Tax Certificate.
3. Calculation of the CPI Rent Adjustment. Beginning in 2002 until July 31, 2022, the CPI Rent Adjustment is the average of the percentage increase in the CPI—All items and the CPI—Less shelter for the twelve-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 (0.1) percent. Beginning on August 1, 2022, the CPI Rent Adjustment is (1) sixty (60) percent of the percentage increase in the CPI-All items published for April of that calendar year from April of the immediately preceding calendar year calculated to the nearest one-tenth of one (0.1) percent, or (2) three (3) percent, whichever is lower.
 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 August 1 following the Rent Adjustment Program's announcement of the annual CPI Rent Adjustment through July 31 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 below, an owner may bank CPI rent adjustments and notice a Banking Rent increase concurrent with a CPI Rent Adjustment.
 - a. If an owner chooses to increase rents less than the annual CPI Adjustment 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.
 - b. Banked CPI Rent Adjustments may be used together with other Rent justifications, except Increased Housing Service Costs and Fair Return, because these justifications replace the current year’s CPI increase.
 - c. In no event may any banked CPI Rent Adjustment be implemented more than five (5) years after it accrues.
 - d. Any banked CPI Rent Adjustment expires upon transfer of ownership of the property in which the Covered Unit is located, unless:
 - (1) the transfer of ownership is through an inheritance between spouses or between parents and siblings, children or stepchildren; and
 - (2) the person(s) inheriting the property owned the property for at least one year.

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. For Rent increases based on grounds other than the CPI Rent Adjustment 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. Capital improvement costs, including financing of capital improvement costs;
 - b. Uninsured repair costs;
 - c. Increased housing service costs;
 - d. The rent increase is necessary to meet constitutional or fair return requirements;
 - e. The rent increase is imposed for an additional occupant, as defined by Section 8.22.020.
 - f. The unlimited rent increase is imposed because the tenant is not residing in the unit as their principal residence.
 - g. Increased costs caused by Waste Service Rate Increases, in addition to the CPI Rent Adjustment.
 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.
- D. Rent Increase Notices and Operative Dates for Rent Increases.
1. CPI and Banking Increases not subject to a Petition. Rent increase notices for CPI and Banking Rent increases that are not the subject of a Petition shall be operative in accordance with this Chapter and State law.
 2. Owner Petitions.
 - a. An Owner may notice a Rent increase based on a petition after the service date of the decision subject to the limitation of one Rent Increase each twelve (12) months (the effective date of the Rent increase).
 - b. Except for any portion of the petitioned-for Rent increase that is based on a CPI Rent or Banking Rent Increase, a Tenant is not required to pay the Rent increase until there is a final decision on the petition pursuant to Section

8.22.070 D.5 (the operative date of the Rent increase). However if the Tenant chooses not to pay the Rent increase, the Tenant owes the increased Rent starting from the effective date of the Rent increase if the final decision upholds the Hearing Officer's decision.

- c. In a decision by the board or an appeals panel, the decision may (or may direct staff to) calculate the amount due and determine a repayment schedule consistent with the rent board regulations for the Tenant to pay any back Rent due or for the Tenant to receive any rent credits if the Tenant paid a Rent increase that is not upheld on appeal. However, a Hearing Officer shall calculate the amount due if there is a factual dispute regarding such amount. Any portion of a Waste Service Increase that was the subject of an Owner petition that is granted, but corresponds to a period prior to the petition being granted, may be combined with a CPI or Banking Rent Increase thereafter.
 - d. If a final decision permits a greater Rent increase than the amount permitted in the Hearing Officer's decision, the Owner may issue another Rent increase notice up to the amount allowed in the final decision, and such additional notice is not subject to the limitation of no more than one Rent increase with in twelve (12) month period.
 - e. If the final decision permits a smaller Rent increase than the amount permitted in the Hearing Officer's decision, the Tenant need only pay the Rent increase based on the amount of the final decision.
3. Tenant Petitions.
- a. While a tenant petition is pending, a tenant must pay when due, pursuant to the rent increase notice, the amount of the rent increase that is equal to the CPI Rent Adjustment unless:
 - i. The tenant's petition claims decreased housing services; or
 - 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.
 - b. The amount of any noticed rent increase above the CPI Rent Adjustment and Banking that is the subject of a petition is not operative until the decision is final.
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.
5. 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. 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.
 - 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; and
 - c. A copy of a current Business Tax Certificate:
 - i. If the rent increase includes Banking, a copy of a Current Business Tax Certificate;
 - ii. If the rent increase is based solely on the CPI Rent Adjustment, a copy of a Current Business Tax Certificate or a copy of a current signed payment plan with the City for delinquent business taxes.
3. Notices for Rent Increases Based on Owner Petition. As part of a notice to increase rent based on an owner 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 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.
 - 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.
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.
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.
- 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.

SECTION 3. Amendments to Oakland Municipal Code Section 8.22.090. Added text is shown as double underlined type; deleted text is shown as ~~strikethrough~~ type.

8.22.090 Petition and response to filing procedures.

- A. Tenant Petitions and Responses.

1. Tenant may file a petition regarding any of the following:
 - a. A rent increase given that is not based on the CPI rent adjustment, banking; and/or a final decision in an owner petition;
 - b. The owner set an initial rent in excess of the amount permitted pursuant to Section 8.22.080 (Rent increases following vacancies);
 - c. A rent increase notice failed to comply with the requirements of Subsection 8.22.070H;
 - d. The owner failed to give the tenant a notice in compliance with Section 8.22.060 and State law;
 - e. The owner decreased housing services to the tenant;
 - 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.6;
 - 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.
 - h. The owner noticed a rent increase that exceeds the annual limit as provided in Section 8.22.070 A.2. or that exceeds the rent increase limit of thirty percent (30%) in five (5) years.
 - i. The petition is permitted by the Just Cause for Eviction Ordinance (Measure EE) O.M.C. 8.22.300 or its regulations.
 - j. The petition is permitted by the Ellis Act Ordinance, O.M.C. 8.22.400, or its regulations.
 - k. The tenant contests an exemption from this O.M.C. 8.22, Article I or Article II.
 - l. The tenant claims the owner has received reimbursements for any portion of cost or financing of capital improvements after a capital improvement rent increase has been approved, and has not prorated and refunded such reimbursement, or has other undeclared capital improvement benefits.
 - m. After a rent increase imposed for an additional occupant as defined by Section 8.22.020, the owner fails to reduce the rent following a decrease in occupancy.
 - n. A primary tenant overcharges a subtenant in violation of the regulations. Only a subtenant may file a petition for this reason.
 - o. The Owner did not have a Current Business Tax Certificate.
2. For a petition contesting a rent increase, the petition must be filed 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, the petition must be filed within one hundred eighty (180) days of the date the owner serves the rent increase notice.

- 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 one hundred eighty (180) 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 three (3) years 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 petition, a tenant, including a subtenant contesting overcharges by a primary 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. Reserved;
 - 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.6; and
 - e. Proof of service by first-class mail or in person of the tenant petition or response and any supporting documents on the opposing party (owner, subtenant, or primary tenant).
 - 5. A tenant must file a response to an owner's or subtenant's petition within thirty (30) days of service of the petition.
- 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, the owner must provide the following:
 - a. Evidence of possession of a current ~~City~~ business tax certificate;
 - b. Evidence of payment of the Rent Adjustment Program service fee or evidence of exemption from the fee;

- c.
 - i. Evidence of service of written notice of the existence and scope of the Rent Adjustment Program as required by Section 8.22.060 on all tenants in covered units affected by the petition or response;
 - ii. After July 1, 2023, evidence of registration with the Rent Adjustment Program as provided in O.M.C. Section 8.22.510 for each affected covered unit in the building prior to the petition or response being filed;
 - d. A completed response or petition on a form prescribed by the Rent Adjustment Program;
 - e. Organized documentation supporting the owner's claimed justification(s) for the rent increase or supporting any claim of exemption
 - i. “Organized documentation” with respect to rent increases due to Waste Services Rate Increases will be satisfied by identification of the rate category and increase in the annual published rates, and the prior month’s bill documenting the rate category at the building(s) to which the petition applies; and
 - f. Proof of service by first-class mail or in person of the owner petition or response and any supporting documents on the tenants of all units affected by the petition. Supporting documents that exceed twenty-five (25) pages are exempt from the service requirement, provided that: (1) the owner petition form must be served by first-class mail or in person; (2) the petition or attachment to the petition must indicate that additional documents are or will be available at the Rent Adjustment Program; and (3) the owner must provide a paper copy of supporting documents to the tenant or the tenant's representative within ten (10) days if a tenant requests a paper copy in the tenant's response.
2. An owner must file a response to a tenant's petition within thirty (30) days of the service of the tenant petition.
 3. Subsection 8.22.090 B. shall not apply to primary tenant responses to subtenant petitions.

SECTION 4. Amendments to Oakland Municipal Code Section 8.22.110. Added text is shown as double underlined type; deleted text is shown as ~~strikethrough~~ type.

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 (10) days prior to the notice of the hearing being sent. Disputes involving more than one (1) 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;
 - d. A certificate of exemption was previously issued and is not challenged by the tenant; or
 - e. The petition and response forms raise no genuine dispute as to any material fact, and the petition may be decided as a matter of law.
 - f. The petition is based on increased costs due to Waste Services Rate Increases, which are not subject to factual dispute, and can be decided as a matter of law.
 2. A notice regarding the parties' appeal rights will accompany any decision issued administratively. Appeals are governed by Section 8.22.120.
 3. The Hearing Officer shall have the goal of issuing any Administrative Decisions resolving petitions based on increased costs due to Waste Services Rate Increases within sixty (60) days of the original petition's filing date.
- G. Should the petitioner fail to appear at the designated hearing, the Hearing Officer may dismiss the petition.

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of

competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 6. 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 7. CEQA Compliance. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to sections of the CEQA Guidelines, taken together and each as a separate and independent basis, including but not limited to: Section 15378 (regulatory actions), Section 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), Section 15061(b)(3) (no significant environmental impact), and Section 15183 (consistent with the general plan or zoning).

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROWN, FIFE, GALLO, HOUSTON, RAMACHANDRAN, UNGER, WANG, AND
PRESIDENT JENKINS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

3395065v3 kkq

NOTICE AND DIGEST

ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE TO ALLOW OWNERS TO PETITION FOR RENT INCREASES BASED ON INCREASED COSTS OF WASTE SERVICE RATES

This Ordinance amends the Rent Adjustment Ordinance to allow owners to petition for rent increases based on increased costs of waste service rates.