

## OAKLAND CITY COUNCIL

### ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**ORDINANCE AMENDING (1) THE RENT ADJUSTMENT ORDINANCE (O.M.C. 8.22.020 ET SEQ) TO ELIMINATE EXEMPTIONS FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES AND ALLOW A LIMITED TRANSITIONAL RENT INCREASE FOR NEWLY COVERED UNITS AND (2) THE TENANT PROTECTION ORDINANCE (O.M.C. 8.22.600 ET SEQ) TO ELIMINATE EXEMPTIONS FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES**

**WHEREAS**, the City of Oakland is experiencing a severe housing affordability crisis that requires immediate emergency action by the City government; and

**WHEREAS**, the housing affordability crisis threatens the public health and 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 by rent increases (U.S. Census Bureau, ACS 2017 Table S1101); and

**WHEREAS**, in January 2019 the median rental price for a one-bedroom unit in Oakland was \$2,370 per month, a 12.9 percent increase over January 2018, and the median rental price for a two-bedroom unit in January 2019 was \$2,860, a 15.8 percent increase over January 2019 (Zumper National Rent Report: February 2019); and

**WHEREAS**, Oakland's rental housing costs are the sixth highest in the nation, behind San Francisco, New York, San Jose, Boston, and Los Angeles (Zumper National Rent Report: February 2019); and

**WHEREAS**, in July 2018, the City Council placed on the ballot Measure Y, proposing to remove from the Just Cause for Eviction Ordinance exemption for owner-occupied two to three unit properties; and

**WHEREAS**, only the voters may modify the exemptions from the Just Cause for Eviction Ordinance, but the City Council has the authority to modify exemptions from the rent stabilization ordinance; and

**WHEREAS**, in staff reports proposing the ballot measure, Councilmembers Kalb and Gallo announced their intention to introduce an ordinance to eliminate the rent control exemption on these properties upon passage of Measure Y; and

**WHEREAS**, on November 6, 2018, Oakland voters passed Measure Y; and

**WHEREAS**, the City's current rent stabilization ordinance (O.M.C. Chapter 8.22) currently exempts from its provisions owner-occupied two to three unit properties after the owner lived in the unit for more than two years; and

**WHEREAS**, the Tenant Protection Ordinance also exempts from coverage owner-occupied two to three unit properties after the owner lived in the unit for more than one year; and

**WHEREAS**, members of the public testified at public meetings that tenants may face large rent increases as a result of the exemption while deliberations on a permanent policy proposals are ongoing; and

**WHEREAS**, tenants in exempt units under the Tenant Protection Ordinance also lack remedies to combat tenant harassment; and

**WHEREAS**, California law affords landlords the right to a fair return on their investment, which may be petitioned for through the City of Oakland's Rent Adjustment Program; and

**WHEREAS**, the City Council wishes to protect tenants in owner-occupied duplexes and triplexes under the Rent Adjustment Ordinance and the Tenant Protection Ordinance; and

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

**SECTION 1. Modification of Section 8.22.010 of the Oakland Municipal Code.** Section 8.22.010 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as strikethrough):

**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.~~

- F. 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.

**SECTION 2. Modification of Section 8.22.030 of the Oakland Municipal Code.** Section 8.22.030 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as strikethrough):

8.22.030 - Exemptions.

- A. Types of Dwelling Units Exempt from Rent Control. 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 III) 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. 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.~~

**SECTION 3. Modification of Section 8.22.630 of the Oakland Municipal Code.** Section 8.22.630 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as strikethrough):

8.22.630 - Applicability and exemptions.

- A. The TPO shall apply to all Rental Units where there is a Rental Agreement between an Owner and one or more Tenants, unless exempted herein. The application of the TPO includes units that may not be covered under the Rent Adjustment Ordinance (O.M.C. 8.22.100, et seq.) or the Just Cause for Eviction Ordinance (O.M.C. 8.22.300, et seq.)
- B. Exemptions.
  - 1. Exemption for nonprofit owned rental housing. Any Rental Unit owned by (a) a corporation or organization exempt pursuant to United States Internal Revenue Code §501(c)(3) or any successor legislation exempting charitable organizations from federal income tax, (b) a limited partnership where the managing general partner is a corporation or organization exempt pursuant to United States Internal Revenue Code §501(c)(3) or any successor legislation exempting charitable organizations from federal income tax, or (c) a limited partnership where the managing general partner is a limited liability company whose sole members are corporations or organizations exempt pursuant to United States Internal Revenue Code §501(c)(3) or any successor legislation exempting charitable organizations from federal income tax shall have an exemption from the TPO's civil enforcement pursuant to this article.
  - 2. Rental Units in any Hospital, Skilled Nursing Facility, or Health Facility.
  - 3. Rental Units in a nonprofit facility that has the primary purpose of providing short term treatment, assistance, or therapy for alcohol, drug, or other substance abuse and the housing is provided incident to the recovery program, and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception and is licensed for such purpose where such license is required.
  - 4. Rental Units in a nonprofit facility which provides a structured living environment that has the primary purpose of helping homeless persons obtain the skills necessary for independent living in permanent housing and where occupancy is restricted to a limited and specific period of time of not more than twenty-four (24) months and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception and is licensed for such purpose where such license is required.

5. Rental Units exempted from Part 4, Title 4, Chapter 2 of the California Civil Code (CCC) by CCC § 1940(b) (transient occupancy in hotels/motels).
- ~~6. A rental unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by the owner of record as his or her principal residence for a period of no less than twelve (12) months. 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. Reserved.~~
7. A rental unit in a newly constructed residential property that has a certificate of occupancy issued after the effective date of O.M.C. 8.22.600, et seq. For the purposes of this exemption, "newly constructed" means all units on the parcel were built from the ground up under the same certificate of occupancy and not converted from property previously used for non-residential purposes. In the event the property is not issued a certificate of occupancy, then the exemption starts on the date that the last building related permit is finalized, if after the effective date of O.M.C. 8.22.600, et seq. This exemption is a limited duration exemption and expires fifteen (15) years from the date the exemption commences.

**SECTION 4. 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 5. 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 6. Initial Base Rent for Newly Covered Units and Limited Transitional Rent Increase.**

- A. The initial base rent for all newly covered units shall be the rent that was in effect for the rental unit on November 6, 2018. If no rent was in effect for the newly covered unit on November 6, 2018, the initial base rent shall be the first rent in effect after that date.
- B. An owner of a newly covered unit may petition for a transitional rent increase of:
  1. For tenancies with the same owner commenced after November 6, 2017, the difference between the cumulative rent increase imposed after November 6, 2017 and 3.4 percent, if it is established that less than a 3.4 percent rent increase went into effect between November 7, 2017 and November 6, 2018; or
  2. For tenancies with the same owner commenced between November 7, 2016 and November 6, 2017, the difference between the cumulative rent increase



imposed after November 6, 2016 and 5.7 percent, if it is established that less than a 5.7 percent rent increase went into effect between November 7, 2016 and November 6, 2018; or

3. For tenancies with the same owner commenced before November 7, 2016, the difference between the cumulative rent increase imposed after November 6, 2015 and 7.7 percent, if it is established that less than a 7.7 percent rent increase went into effect between November 7, 2015 and November 6, 2018.

- C. The owner must petition for the transitional rent increase on or before January 31, 2020 in order to receive the increase. The transitional rent increase must otherwise comply with the Rent Adjustment Ordinance, including the rent increase limitations in O.M.C. 8.22.070, except that an owner of a newly covered unit is deemed to have complied with the RAP notice requirement in O.M.C. 8.22.060 and is exempt from the timing requirement in O.M.C. 8.22.060C if the owner serves the RAP notice within 60 days of the effective date of this ordinance.

**SECTION 7. Communication.** City council directs staff within 360 days of the adoption of this ordinance to communicate in writing to all property owners with newly covered units and the occupants of these units, informing them of (i) the new ordinance, (ii) their rights as rental property owners to petition for a rent adjustment that ensures a fair rate of return on their investment, (iii) how they can file with the City for review of their petition, and (iv) where the petition application can be acquired, either online or in person.

**SECTION 8.** 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 - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

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

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

**ORDINANCE AMENDING (1) THE RENT ADJUSTMENT ORDINANCE (O.M.C. 8.22.020 ET SEQ) TO ELIMINATE EXEMPTIONS FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES AND ALLOW A LIMITED TRANSITIONAL RENT INCREASE FOR NEWLY COVERED UNITS AND (2) THE TENANT PROTECTION ORDINANCE (O.M.C. 8.22.600 ET SEQ) TO ELIMINATE EXEMPTIONS FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES**

This Ordinance eliminates the owner-occupied duplex and triplex exemptions from the Rent Adjustment Ordinance and the Tenant Protection Ordinance. The Ordinance also allows a limited transitional rent increase for newly covered units.