INTRODUCED BY CITY ATTORNEY BARBARA J. PARKER,
COUNCILMEMBER DAN KALB, AND
COUNCILMEMBER NIKKI FORTUNATO BAS

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

As revised by the City Council at the July 14, 2020, City Council meeting

OAKLAND CITY COUNCIL

ORDINANCE NO. 13608 C.M.S.

AN ORDINANCE AMENDING CHAPTER 8.22 OF THE OAKLAND MUNICIPAL CODE (RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS) TO (1) LIMIT THE MAXIMUM RENT INCREASE IN ANY ONE YEAR TO CONFORM TO STATE LAW; (2) MAKE FAILURE TO PAY REQUIRED RELOCATION BENEFITS AN AFFIRMATIVE DEFENSE TO EVICTION; (3) LIMIT LATE FEES; (4) PROHIBIT UNILATERALLY IMPOSED CHANGES TO TERMS OF TENANCY; (5) ADD ONE-FOR-ONE REPLACEMENT OF ROOMMATES TO THE DEFINITION OF HOUSING SERVICES; (6) PROHIBIT EVICTION BASED ON ADDITIONAL OCCUPANTS IF LANDLORD UNREASONABLY REFUSED TENANT'S WRITTEN REQUEST TO ADD OCCUPANT(S); AND (7) STRENGTHEN TENANTS' RIGHTS AND ENFORCEMENT OF TENANT'S RIGHTS UNDER THE TENANT PROTECTION ORDINANCE

WHEREAS, the City Council of Oakland regards tenant displacement as one of the most significant challenges facing the City and is dedicated to pursuing policies that promote housing security for inhabitants of all income levels and preserve the integrity and character of the Oakland community; and

WHEREAS, the Oakland City Attorney considers enforcement of the Tenant Protection Ordinance and vindication of tenants' rights to be one of her top priorities; and

WHEREAS, the Oakland City Attorney and local non-profit organizations have identified weaknesses in the Tenant Protection Ordinance that have allowed unethical landlords to evade accountability; and

WHEREAS, some landlords have engaged in an array of underhanded tactics to deny long-term occupants the legal protections of tenancy status; and

WHEREAS, some landlords have dishonestly threatened or claimed owner move-ins (OMIs) in order to recover and re-rent the unit at market rate; and

WHEREAS, certain incidents of bad faith behavior have occurred in residential rental housing that would have been actionable under the Tenant Protection Ordinance if not for exemptions in the Ordinance, and tenants deserve protection from harassment under the law regardless of the type of building or its ownership; and

WHEREAS, tenants in newly constructed rental property are also subject to harassment and should be entitled to the protections of this ordinance; and

WHEREAS, certain tenants are especially vulnerable to harassment and merit heightened protections based on their status as elderly, disabled, or catastrophically ill; and

WHEREAS, violations of state housing and civil rights laws constitute tenant harassment and should be specifically prohibited by this ordinance; and

WHEREAS, the Oakland City Attorney has brought several Tenant Protection Ordinance lawsuits but found that the law lacks sufficient penalties to adequately punish violators and deter those who would consider engaging in similar harassment; and

WHEREAS, some landlords exploit the perceived documentation status of tenants and their guests in order to intimidate them; and

WHEREAS, a recent Rent Board decision held that a tenant may not file decreased housing services claim if the Owner refuses to permit a replacement roommate; and

WHEREAS, a number of other rent control jurisdictions, including San Francisco and Berkeley, recognize the right to replace roommates as a housing service; and

WHEREAS, adding the right to replace roommates to the definition of housing services will allow tenants to continue paying the same share of rent and keep their homes while providing affordable housing to the new occupants; and

WHEREAS, other jurisdictions also protect tenants from evictions based on unilaterally imposed changes of terms of tenancy; and

WHEREAS, the California Tenant Protection Act of 2019 provides a lower maximum rent increase than the Oakland Rent Adjustment Ordinance and protects tenants from eviction when an owner has failed to provide required relocation assistance; and

WHEREAS, Oakland Municipal Code Section 8.22.360.F, approved by the voters by the passage of Measure Y in November of 2018, authorizes the City Council to modify the Just Cause for Eviction Ordinance (Measure EE) for the purpose of adding limitations on a landlord's right to evict; and

WHEREAS, the City Council wishes to amend the Just Cause Ordinance to protect Oakland tenants facing evictions for violations of obligations not in the rental agreement at the commencement of tenancy and to add failure to make required relocation payments a defense to an eviction; and

WHEREAS, the City Council wishes to amend the Rent Adjustment Ordinance to change the maximum rent increase in any one year to 5 percent plus the Consumer Price Index change or 10 percent, whichever is lower, to conform to state law; and

WHEREAS, the City Council wishes to clarify the timing of required relocation payments for Ellis Act evictions and owner and relative move-in evictions; and

WHEREAS, in light of the increased housing pressures placed on low- and middle-income residents, the City Council finds that reasonable regulation of aspects of the landlord-tenant relationship is necessary to foster constructive communication, maintain an adequate supply of a variety of rental housing options, and protect the health, safety, and general welfare of the public; and

WHEREAS, 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), and Section 15061(b)(3) (no significant environmental impact);

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

SECTION 1. Recitals: The City Council of the City of Oakland hereby determines that the preceding recitals are true and correct and an integral part of the Council's decision to enact this legislation, and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Repeal and Reenactment of Oakland Municipal Code Chapter 8.22, Article V, Tenant Protection Ordinance. Oakland Municipal Code Chapter 8.22, Article V, is hereby repealed in its entirety and reenacted with amendments as set forth in **Attachment A** (additions are shown as double underline and deletions are shown as a ~~strikethrough~~).

SECTION 3. Repeal and Reenactment of Sections 8.22.020, 8.22.070, 8.22.090, and 8.22.110, of Oakland Municipal Code Chapter 8.22, Article I (Residential Rent Adjustment Program). Oakland Municipal Code Sections 8.22.020. 8.22.070, ~~and~~ 8.22.090, and 8.22.110 are hereby repealed and reenacted with amendments as set forth in **Attachment B** (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

SECTION 4. Repeal and Reenactment of Section 6 of Measure EE [O.M.C. Section 8.22.360 of Chapter 8.22, Article II (Just Cause for Eviction Ordinance)].

Oakland Municipal Code Section 8.22.360 is hereby repealed and reenacted with amendments as set forth in **Attachment C** (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

SECTION 5. Repeal and Reenactment of Sections 8.22.410 and 8.22.450 of Oakland Municipal Code Chapter 8.22, Article III (Terminating Tenancy to Withdraw Residential Rental Units from the Rental Market). Oakland Municipal Code Sections 8.22.410 and 8.22.450 are hereby repealed and reenacted with amendments as set forth in **Attachment D** (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

SECTION 6. Repeal and Reenactment of Sections 8.22.810 and 8.22.820 of Oakland Municipal Code Chapter 8.22, Article VII (Uniform Residential Tenant Relocation Ordinance). Oakland Municipal Code Section 8.22.810 is hereby repealed and reenacted with amendments as set forth in **Attachment E** (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

SECTION 7. Repeal and Reenactment of Section 8.22.850 of Oakland Municipal Code Chapter 8.22, Article VIII (Relocation Payments for Owner or Relative Move-Ins). Oakland Municipal Code Section 8.22.850 is repealed and reenacted with amendments as set forth in **Attachment F** (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

SECTION 8. Direction to the City Administrator. Within 90 days of adoption of the Ordinance, the City Administrator shall work with the Rent Adjustment Board to (1) develop amendments to the Rent Adjustment regulations that (a) conform the regulations to the changes hereby made to the Ordinance and (b) clarify the operation of rent increases for "Additional occupant(s)" under Section 8.22.020, including defining "principal residence" as used in the definition of "Base occupancy level" and providing a rent ceiling or maximum rent that a tenant may charge additional occupants not on the lease, and (2) develop regulations for the Just Cause for Eviction Ordinance to clarify "reasonable refusal" as used in subsection 8.22.360.A.2.b. The City Administrator shall create a lease addendum form to be provided by the Rent Adjustment Program for use by property owners to track additional residents. In addition, by June 30, 2021, the City Administrator shall conduct an equity analysis of the Tenant Protection Ordinance, including the impacts on tenants and property owners, and provide a report of the findings to City Council's Community & Economic Development Committee.

SECTION 9. Transition. The amendments herein to Chapter 8.22, Article I, shall not apply to any rent increase noticed on or before the effective date of this Ordinance.

SECTION 10. 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 11. 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 12. 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), and Section 15061(b)(3) (no significant environmental impact). The legislation contains no provisions modifying the physical design, development, or construction of residential or nonresidential structures. Accordingly, it can be seen with certainty that there is no possibility that it: (1) may have a significant effect on the environment and/or (2) would result in any physical changes to the environment.

SECTION 13. No Effect on Emergency Ordinance. Nothing in this ordinance is intended to affect, supersede, or replace any protections provided by the Eviction Moratorium Emergency Ordinance (CMS 13589) enacted on March 27, 2020.

SECTION 14. Findings Regarding Just Cause for Eviction Ordinance Provided Pursuant to Civil Code Section 1946.2. The City Council finds that the Just Cause for Eviction Ordinance is consistent with Civil Code Section 1946.2 (as enacted by the Tenant Protection Act of 2019), and, in comparison to Civil Code Section 1946.2, further limits the reasons for termination of residential tenancy, provides additional tenant protections, and, in conjunction with other City ordinances, provides for higher relocation assistance amounts. The City Council finds that the Just Cause for Eviction Ordinance as amended herein is more protective than the provisions of Civil Code Section 1946.2.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 21 2020

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN — 8

NOES – Ø

ABSENT – Ø

ABSTENTION – Ø

Introduction Date

JUL 14 2020

ATTEST: _____
ASHA REED
Acting City Clerk and Clerk of the Council of the City of Oakland, California

Date of Attestation: July 24, 2020

ATTACHMENT A

Article V – Tenant Protection Ordinance

8.22.600 - Tenant protection ordinance.

This ordinance shall be known as the "Tenant Protection Ordinance" ("TPO").

8.22.610 - Findings and purpose.

A. There is a very significant demand for rental housing in Oakland leading to rising rents, caused in part by the spillover of increasingly expensive housing costs in San Francisco.

B. Rents in Oakland increased twelve percent (12%) in 2012 and 15% in 2013 (Source: East Bay Express, February 12-18, 2014, "The Rise of the New Land Lords," sourcing Oakland Department of Housing and Community Development). As noted by a February 8, 2014 Oakland Tribune article ("High prices sending Bay Area renters and homebuyers to outlying communities"), "Squeezed by astronomical home prices and rents that are almost as unaffordable, a growing number of Bay Area residents are pulling up stakes and trading long commutes for cheaper housing."

C. According to Oakland Department of Housing and Community Development citing to Zillow Real Estate Research, the estimated rent for all homes in Oakland for June 2014 two thousand one hundred twenty-four dollars ($2,124.00) is nearly eleven percent (11%) higher than that for the same month last year ($1,918.00), and rents have risen every month except for one (1) since January 2013 (18 months total). If current patterns persist, the estimated rent for all homes in June 2015 will be two thousand three hundred eighty-six dollars ($2,386.00). By comparison, the estimated median rent for all Oakland homes for June 2012 was $1,818.00, a thirty-one percent (31%) increase in only thirty-six (36) months.

D. On September 12, 2014, the San Francisco Examiner reported that "San Francisco and Oakland have the distinction of having some of the highest rental rate increases in the nation for the month of August," with Oakland's rents increasing fourteen and four-tenths percent (14.4%) since last year, according to data collected by Trulia.

E. The rising market demand for rental housing in Oakland creates an incentive for some landlords to engage in harassing behavior or fail to make repairs to pressure existing tenants in rent controlled units to move so that rents can be raised. Existing remedies, such as petitioning the Rent Adjustment Program to restore a rental rate or order repairs, or employing an attorney at great cost to file a lawsuit to enforce state law of lease provisions, are insufficient deterrents to engaging in the illegal conduct in the first place.

F. The imbalance between supply and demand creates an imbalance of bargaining power between landlords and tenants, which has resulted in many tenants,

especially those not in rent controlled units, being unwilling or unable to assert their legal rights, which is detrimental to the health, safety and general welfare of Oakland because the stability, security and quality of housing opportunities are reduced.

G. The Rent Adjustment Program office of the City of Oakland has conservatively estimated receiving one hundred (100) to two hundred (200) complaints each month from tenants claiming landlord harassment, many of which are completely outside the jurisdiction of the Rent Adjustment Program.

H. Numerous press articles have reported on the rise of tenant harassment throughout the Bay Area.

I. Data from organizations providing services to low-income renters in Oakland, including East Bay Community Law Center and Centro Legal de la Raza, indicate that some of their clients live in housing with habitability problems and experience landlord harassment.

J. Of the approximately four hundred eighty (480) Oakland tenants who received legal services at Centro Legal de la Raza during fiscal year 2014 (July 1, 2013 through June 30, 2014), approximately forty percent (40%) faced harassment by their landlords. The forms of harassment varied, but included one or more of the following in each case:

1. Interrupting, terminating, failing to provide or threatening to interrupt, terminate or fail to provide housing services required by contract or by State, County or municipal housing, health or safety laws;

2. Failing to perform required repairs and/or maintenance or threatening to fail to do so;

3. Failing to exercise due diligence in completing repairs and maintenance once undertaken or failing to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts;

4. Abusing the owner's right of access into a rental housing unit as that right is provided by law;

5. Unlawfully removing from the rental unit personal property, furnishings, or any other items without the prior written consent of the tenant;

6. Influencing, or attempting to influence, a tenant to vacate a rental unit through fraud, intimidation or coercion;

7. Attempting to coerce a tenant to vacate with offer(s) of payments to vacate which ate accompanied with threats or intimidation;

8. Threatening the tenant, by word or gesture, with physical harm;

9. Substantially and directly interfering with a Tenant's right to quiet use and enjoyment of a rental housing unit as that right is defined by California law;

10. Fraudulently refusing to accept or acknowledge receipt of a Tenant's lawful rent payment.

K. A majority of Oakland residents are renters. The rental housing units in the City of Oakland include many subject to rent stabilization and some that are not. The cities of San Francisco, Santa Monica, West Hollywood, and East Palo Alto have each passed ordinances prohibiting various forms of harassment by landlords and their agents against tenants.

L. The City Council of Oakland recognizes that displacement of tenants is a major concern and is interested in putting forth policies that help to maintain the ability of people in all income categories to live in our city. The increased housing pressures for residents across a range of lower and middle income levels warrants improved rent stabilization and tenant protection policies, as well as assessment of statutory damages against landlords who engage in tenant harassment. The City Council finds that reasonable regulation of aspects of the landlord-tenant relationship is necessary in order to foster constructive communication, maintain an adequate supply of a variety of rental housing options, and protect health, safety, and the general welfare of the public.

M. The purpose of this policy is to deter harassing behavior by landlords, to encourage landlords to follow the law and uphold their responsibility to provide habitable rental properties, and to give tenants and the City of Oakland legal recourse ~~in instances~~ where ~~they~~ tenants are subjected to harassing behavior by landlords.

N. The provisions of the Tenant Protection Ordinance shall be construed liberally for the accomplishment of its purposes.

O. In order to carry out the purposes of the Tenant Protection Ordinance and safeguard tenants' rights against harassing behavior, the limitations period set out in Section 8.22.670.E of the Ordinance should be interpreted so as to promote the resolution of potentially meritorious claims.

8.22.620 - Definitions.

As used in this Chapter, Article V:

"Affordable housing provider" means an owner that provides housing in a building in which at least 80% of the units are restricted to occupancy at an affordable rent or an affordable housing cost for persons and families of low and moderate income as defined in California Health and Safety Code Section 50093. The terms "affordable rent" and "affordable housing cost" shall be as defined in California Health and Safety Code Sections 50053 and 50052.5 and their implementing regulations. Such housing shall have terms of affordability equivalent to those prescribed in California Health and Safety Code Sections 33334.3(f)(1)(A) for rental housing and 33334.3(f)(1)(B) for owner occupied housing.

"Catastrophically Ill" means Disabled and suffering from a life-threatening illness, as certified by the Tenant's primary care physician.

“City Administrator” means the Oakland City Administrator or his or her designee.

"City Attorney" means the Oakland City Attorney or his or her designee.

"Elderly" means elderly as that term is defined in O.M.C. 8.22.410.

"Disabled" means disabled as that term is defined in O.M.C. 8.22.410.

"Health Facility" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Owner" has the same meaning as “Landlord” in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Owner of Record" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Rent" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Rent Board" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Rental Agreement" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Rental Unit" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Tenant" ~~has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340)~~means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or any group of renters, tenants, subtenants, lessees, sublessees of a rental unit, or any other person entitled to the use or occupancy of such rental unit. This includes occupants of residential hotels against whom violations of California Civil Code Section 1940.1 have occurred.

"Skilled Nursing Facility" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

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. 8.22.010~~0~~, 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.~~ RESERVED.

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) unless the Owner violates CCC § 1940.1 to avoid tenancy status. In those circumstances, the specific Rental Units where such violations have taken place shall not be exempt.

~~6. 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.~~

8.22.640 - Tenant harassment.

A. No Owner or such Owner's agent, contractor, subcontractor, or employee, shall do any of the following, in bad faith. Subsections 15 and 17-21 shall apply beginning April 21, 2020.

1. Interrupt, terminate, or fail to provide housing services required by contract or by State, County or municipal housing, health or safety laws, or threaten to do so;

2. Fail to perform repairs and maintenance required by contract or by State, County or municipal housing, health or safety laws, or threaten to do so;

3. Fail to exercise due diligence in completing repairs and maintenance once undertaken or fail to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts;

4. Abuse the Owner's right of access into a rental housing unit as that right is provided by law;

5. Remove from the Rental Unit personal property, furnishings, or any other items without the prior written consent of the Tenant, except when done pursuant to the procedure set forth in Civil Code section 1980, et seq. (disposition of Tenant's property after termination of tenancy).

6. Influence or attempt to influence a Tenant to vacate a Rental Unit through fraud, intimidation or coercion. This ~~, which shall~~ includes threatening to report a Tenant or other person known to the Owner to be associated with a Tenant to ~~U.S. Immigration and Customs Enforcement~~any local, state, or federal agency on the basis of their perceived or actual immigration status.~~, though that~~ The prohibition shall not be construed as preventing communication with ~~U.S. Immigration and Customs Enforcement~~ such agencies regarding an alleged immigration violation;

7. Offer payments to a Tenant to vacate more than once in six (6) months, after the Tenant has notified the Owner in writing the Tenant does not desire to receive further offers of payments to vacate;

8. Attempt to coerce a Tenant to vacate with offer(s) of payments to vacate which are accompanied with threats or intimidation. This shall not include settlement offers made in good faith and not accompanied with threats or intimidation in pending eviction actions;

9. Threaten the ~~tenant~~ Tenant or their guests, by word or gesture, with physical harm;

10. Substantially and directly interfere with a Tenant's right to quiet use and enjoyment of a rental housing unit as that right is defined by California law;

11. Refuse to accept or acknowledge receipt of a Tenant's lawful rent payment, except as such refusal may be permitted by state law after a notice to quit has been served on the Tenant and the time period for performance pursuant to the notice has expired;

12. Refuse to cash a rent check or money order for over thirty (30) days unless a written receipt for payment has been provided to the Tenant, except as such refusal may be permitted by state law after a notice to quit has been served on the Tenant and the time period for performance pursuant to the notice has expired;

13. Interfere with a Tenant's right to privacy. This includes, but is not limited to: video or audio recording that captures the interior of a Tenant's unit, entering or photographing portions of a Rental Unit that are beyond the scope of a lawful entry or inspection, unreasonable inquiry into a Tenant's relationship status or criminal history, and unreasonable restrictions on or inquiry into overnight guests;

14. Request information that violates a Tenant's right to privacy, including but not limited to residence or citizenship status or social security number, except as required by law or, in the case of a social security number, for the purpose of obtaining information for the qualifications for a tenancy, or not release such information except as required or authorized by law. This includes a refusal to accept equivalent alternatives to information or documentation that does not concern immigration or citizenship status, e.g. an Individual Taxpayer Identification Number (ITIN);

15. ~~Other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy~~ Unilaterally impose or require an existing tenant to agree to new material terms of tenancy or a new rental agreement, unless: (1) the change in the terms of the tenancy is authorized by the Rent Adjustment Ordinance or California Civil Code Sections 1946.2(f),1947.5, or 1947.12, or required by federal, state, or local law or regulatory agreement with a government agency; or (2) the change in the terms of the tenancy was accepted in writing by the Tenant after receipt of written notice from the Owner that the Tenant need not accept such new term as part of the rental agreement;

16. Removing a housing service for the purpose of causing the Tenant to vacate the Rental Unit~~. For example, taking away a parking space knowing that a Tenant cannot find alternative parking and must move~~;

17. Engage in conduct that violates California Civil Code Section 789.3, including but not limited to an illegal lockout and utility shutoff;

18. Violate the Unruh Civil Rights Act (California Civil Code 51 *et seq.*);

19. Commit elder financial abuse as defined by California Welfare and Institutions Code 15610.30 *et seq.* of a Tenant;

20. Misrepresent to a Tenant that they are required to vacate a Rental Unit or otherwise entice a Tenant to vacate a Rental Unit through misrepresentations or concealment of material facts;

21. Force a Tenant to vacate their Rental Unit and reregister in order to avoid classification as a tenant under Civil Code 1940.1. Forced vacation can be implied from the totality of the circumstances;

22. Other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy.

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

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

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

E. Notice to Tenants.

1. Commencement.

a. For Rental Units covered by the Rent Adjustment Ordinance the Notice at Commencement of Tenancy required by O.M.C. 8.22.060 shall include a reference to the TPO.

b. For all Rental Units that are not covered by the Rent Adjustment Ordinance, Owners are required to provide a notice regarding the TPO to all Tenants using the required form prescribed by the City staff.

2. Common area. If Rental Units subject to this ordinance are located in a building with an interior common area that all of the building's Tenants have access to, the Owner must post a notice in at least one (1) such common area in the building via a form prescribed by the City staff.

F. Repairs and maintenance. Nothing in the TPO shall be construed as requiring different timelines or standards for repairs or maintenance, as required by

contract or State, County or municipal housing, health, and safety laws, or according to appropriate industry protocols.

G. Severances Prohibited. The following amenities, supplied in connection with use or occupancy of a rental unit, may not be severed from a tenancy without good cause: (1) Garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks, patios, or gardens on the same lot; (2) kitchen facilities, toilet facilities, or lobbies in residential hotels. For purposes of this subsection, good cause shall include (1) requirement by federal, state, or local law, such as O.M.C. Chapter 15.27, (2) acceptance of the severance in writing by the Tenant after receipt of written notice from the Owner that the Tenant need not accept the severance, (3) ownership by an affordable housing provider as defined by Section 8.22.620 where either (a) the severance is unavoidable in order for the addition of one or more new affordable housing units to proceed and the owner has obtained all necessary permits for constructing the additional unit(s) or (b) the severance results from the removal of a balcony for which repair or removal was necessary for safety and the owner has obtained all necessary permits for the removal, (4) addition of one or more Accessory Dwelling Units (as defined by Government Code Section 65852.2(j)(1), provided that the owner has obtained all necessary permits for constructing the additional unit(s) and the severance is not of a garage facility, parking facility, or driveway more than one-half mile from a designated transit hub, or a laundry room, and is unavoidable in order for the addition of the unit(s) to proceed, and (5) other good cause as provided by regulation, adopted in the same manner as provided by Rent Adjustment Program Regulation Section 8.22.040.B.4.b. A severance does not include noticed temporary unavailability of the above housing services in order to perform necessary work with all required permits. For units covered under the Rent Adjustment Ordinance, any severance permitted under this Section shall be offset by a corresponding reduction in rent. Either an owner or a tenant may file a petition with the Rent Adjustment Program to determine the amount of the rent reduction. This subsection shall apply beginning April 21, 2020.

H. Late payment fees. Late fees may not be imposed except if provided for in a written rental agreement. Notwithstanding any lease provision to the contrary, fees for late payment of rent shall not exceed a total of three (3) percent of the monthly rent for each payment of rent and may only be applied for rent which is five or more days overdue. This subsection shall only apply if the applicable written rental agreement was entered into or renewed on or after April 16, 2020.

8.22.650 - General remedies.

A. Violations of the TPO. Violations of section 8.22.640 may be enforced by civil remedies as set forth in this section or as otherwise specifically set out in this O.M.C article.

B. Notice requirement for Tenants. Before a Tenant may file ~~an~~ a civil suit alleging a violation of subsection 8.22.640.A.1., 2., 3., 10., 11., 12., or 13., the affected Tenant must first notify the Owner or his or her designated agent regarding the

problem. If the allegation is a violation of subsections 8.22.640.A.1., 2., 3.,11., or 12., the Tenant must allow fifteen (15) days for the Owner to correct the problem, unless the Owner notifies the Tenant that the repairs will take more than fifteen (15) days and provides for a reasonable time period for completion. If the repair takes more than fifteen (15) days, the Tenant may file the civil suit if the Owner does not take reasonable steps to commence addressing the problem or the Owner does not follow through to complete the repairs with reasonable diligence. However, no fifteen (15) day waiting period shall apply if the Owner's conduct is intentional and demonstrates a willful disregard for the comfort, safety or wellbeing of the Tenant(s).

C. In addition to the remedies provided in the TPO, a violator is liable for such costs, expenses, and disbursements paid or incurred by the City in abatement and prosecution of the violation.

D. The remedies available in the TPO are not exclusive and may be used cumulatively with any other remedies in this chapter or at law.

8.22.660 - Reserved.

8.22.670 - Civil remedies.

A. General Civil Remedies.

1. Enforcement by Aggrieved-Tenant. An aggrieved Tenant may bring a civil action for any combination of ~~injunctive~~ equitable relief, actual or statutory ~~or~~ damages, ~~or both~~ and restitution~~,~~ for any violation of 8.22.~~540~~640.

2. Enforcement by City Attorney. The City Attorney may enforce the TPO through civil action for ~~injunctive~~ equitable relief, restitution, and/or ~~damages~~ penalties~~, or both, for~~ when the party against whom enforcement is sought has a pattern and practice of violating the TPO. A court may award civil penalties of up to one thousand dollars ($1,000.00) per day for each violation of subsection 8.22.640A., B., E., G., or H. A court may award punitive damages in a proper case as set out in Civil Code Section 3294 and pursuant to the standards set forth in that Code Section or any successor thereto. The City Attorney may also request that an administrative citation or civil penalty be issued by the City. The City Attorney has the sole discretion to determine the cases appropriate for enforcement by the City Attorney's Office.

B. ~~Treble and Exemplary~~ Special Damages.

1. Tenant Enforcement.

a. Any person who violates, aids, or incites another person to violate subsection 8.22.640.A., ~~or~~ E., G., or H. is liable in a court action for each and every such offense for money damages of not less than three times actual damages suffered by an aggrieved Tenant (including damages for mental or emotional distress), or for minimum damages in the sum of one thousand dollars ($1,000.00),

whichever is greater, and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the Owner acted in knowing violation of or in reckless disregard of the TPO.

b. Any person who violates, aids, or incites another person to violate subsection 8.22.640A., E., G., or H. with respect to Elderly or Disabled Tenants is liable in a court action for each and every such offense for money damages of no less than three times the actual damages suffered by the aggrieved Tenant(s) (including damages for mental or emotional distress), or for minimum damages of two thousand dollars ($2,000.00), whichever is greater.

c. Any person who violates, aids, or incites another person to violate subsection 8.22.640A., E., G., or H. with respect to Catastrophically Ill Tenants is liable in a court action for each and every such offense for money damages of no less than three times the actual damages suffered by the aggrieved Tenant(s) (including damages for mental or emotional distress), or for minimum damages of two thousand five hundred dollars ($2,500.00), whichever is greater.

d. A Tenant may only receive one form of heightened penalties as between Elderly, Disabled, and Catastrophically Ill.

e. Any violation of subsection 8.22.640A.6 for threatening to report a Tenant or other person known to the Owner to be associated with a Tenant on the basis of their perceived or actual immigration status is liable in a court action for each and every such offense for money damages of no less than three times the actual damages suffered by the aggrieved Tenant(s) (including damages for mental or emotional distress), or for minimum damages of two thousand dollars ($2,000.00), whichever is greater.

~~2~~f. A court may award punitive damages in a proper case as set out in Civil Code Section 3294 and pursuant to the standards set forth in that Code Section or any successor thereto, but may not award both punitive damages and treble damages.

C. ~~Injunctive~~ Equitable Relief.

Any person who commits an act, proposes to commit an act, or engages in any pattern and practice which violates the TPO may be enjoined therefrom by any court of competent jurisdiction. A court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which violates this ordinance or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired through practices that violate this ordinance. An action for ~~injunction~~ equitable relief under this subsection may be brought by any aggrieved Tenant, by the City Attorney (for a pattern and

practice only), or by an aggrieved Tenant who will fairly and adequately represent the interest of the protected class.

D. Attorney's Fees and Costs

1. Action by City Attorney. In any administrative, civil, or special proceeding brought pursuant to the TPO, the City may, at the initiation of the proceeding, seek an award of attorney's fees. If the City seeks an award of attorney's fees, the award shall be made to the prevailing party. Provided however, that no award may be made to a prevailing party that exceeds the amount of reasonable attorney's fees incurred by the City in the action or proceeding. Court costs may be awarded to a prevailing party pursuant to state law.

2. Action by Tenant. In any civil action brought pursuant to the TPO, the prevailing Tenant is entitled to recover the Tenant's reasonable attorney's fees. A defendant Owner may recover reasonable attorney's fees if the complaint brought by the Tenant was devoid of merit and brought in bad faith. Court costs may be awarded to a prevailing party pursuant to state law.

3. Costs of Investigation. In the event the City Attorney brings an administrative, civil, or special proceeding pursuant to the TPO, the City Attorney may recover its costs of investigation.

E. Statute of Limitations. The statute of limitations for an action shall be three years, and all remedies under the Ordinance are available for the entire statutory period.

8.22.680 - Miscellaneous.

A. Regulations and Forms. The Rent Board has the authority to make such regulations to implement this O.M.C. Chapter 8.22 Article V as are not inconsistent with the TPO, provided, however, that if the Rent Board has not issued initial regulations within such time as the City Council may proscribe, the City Administrator is authorized to make interim regulations.

Within ninety (90) days of the effective date of the TPO, the City Administrator shall develop forms to implement subsection 8.22.640.E. Any changes to the initial forms shall be effective thirty (30) days after they are made available to the public at the Rent Adjustment Program offices, unless the City Administrator makes a finding that an earlier or later date is necessary. All Forms required by the TPO are vital communication documents and shall be translated and distributed in accordance with the Equal Access to Services Ordinance, O.M.C Chapter 2.30.

B. Non-waiverability. Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of the TPO is waived or modified, is against public policy, ~~and~~ void, and unenforceable.

ATTACHMENT B
Residential Rent Adjustment Program

8.22.020 - Definitions.

As used in this chapter, Article I:

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

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

"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 5% 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 year after the day the tenant was provided with possession of the covered unit or one year after the day the most recent rent adjustment took effect, whichever is later. Following certain vacancies, a subsequent tenant will assume the anniversary date of the previous tenant (Section 8.22.080).

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

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

"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 percent (70%) of actual costs, plus imputed financing. Capital improvement costs shall be amortized over the useful life of the improvement as set forth in an amortization schedule developed by the Rent Board. Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements (“gold-plating” “over-improving”) excluding: improvements approved in writing by the tenant, improvements that bring the unit up to current building or housing codes, or the cost of a substantially equivalent replacement; or costs for which a landlord is reimbursed (e.g., insurance, court awarded damages, subsidies, tax credits, and grants.).

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

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

“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.

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.

2. In no event may rent for any covered unit increase ~~by more than ten percent~~ in any 12-month period by more than 10 percent, 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. 8.22.070B (CPI Rent Adjustment), and any justifications pursuant to O.M.C. 8.22.070C.2 (Rent Increases In Excess of CPI Rent Adjustment) except ~~for the following:~~ if required for the owner to obtain a fair return pursuant to O.M.C. 8.22.070C.1.d.

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

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

3. No series of rent increases in any five-year period can exceed 30 percent for any rent increases based on the CPI Rent Adjustment, as set out in, O.M.C. 8.22.070B (CPI Rent Adjustment) and any justifications pursuant to O.M.C. 8.22.070C.2 (Rent Increases In Excess of CPI Rent Adjustment) except for the following:

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

   b. Exceeding the 30 percent limitation is required for the owner to obtain a fair return pursuant to O.M.C. 8.22.070C.1.d~~2.f~~.

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

B. CPI and Banking Rent Adjustments.

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

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

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

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

   c. The owner decreased housing services;

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

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

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

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

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

3. Calculation of the CPI Rent Adjustment. Beginning in 2002, the CPI Rent Adjustment is the average of the percentage increase in the CPI—All items and the CPI—Less shelter for the twelve (12) month period starting on March

1 of each calendar year and ending on the last day of February of the following calendar year calculated to the nearest one tenth of one percent.

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

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

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

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

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

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

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

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

1. 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.

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.

   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.

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.

8.22.090 - Petition and response to filing procedures.

A. Tenant Petitions.

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

a. A rent increase was 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 ~~of more than the ten (10) percent~~ that exceeds the annual limit as provided in Section 8.22.070A2 or that exceeds the rent increase limit of thirty (30) percent in five 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.

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.

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:

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

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

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

3. For a petition claiming decreased housing services:

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

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

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

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

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

a. A completed tenant petition or response on a form prescribed by the rent adjustment program;

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

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

d. A copy of the applicable citation, if the tenant claims the rent increase need not be paid because the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Section 8.22.070D.6.

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

B. Owner Petitions and Owner Responses to Tenant Petitions.

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

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

   b. Evidence of payment of the rent adjustment program service fee;

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

   d. A completed response or petition on a form prescribed by the rent adjustment program; and

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

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

8.22.110 - Hearing procedures.

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

B. Hearings.

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

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

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

D. Time of Hearing and Decision.

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

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

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

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

F. Administrative Decisions.

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

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

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

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

d. 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.

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

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

ATTACHMENT C
(Just Cause for Eviction Ordinance)

Section 6 [8.22.360] - Good Cause Required for Eviction. A. No landlord shall endeavor to recover possession, issue a notice terminating tenancy, or recover possession of a rental unit in the city of Oakland unless the landlord is able to prove the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under provisions of state or local law, and said failure has continued after service on the tenant of a written notice correctly stating the amount of rent then due and requiring its payment within a period, stated in the notice, of not less than three days. However, this subsection shall not constitute grounds for eviction where tenant has withheld rent pursuant to applicable law.
2. The tenant has continued, after written notice to cease, to substantially violate a material term of the tenancy other than the obligation to surrender possession on proper notice as required by law~~, provided further that,~~

   a. ~~n~~Notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit as a result of subletting of the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet following a written request by the tenant, so long as the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord.

   b. Notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit based on the addition of occupants to the rental unit if the landlord has unreasonably refused a written request by the tenant to add such occupant(s) to the unit, so long as the maximum number of occupants does not exceed the lesser of the amounts allowed by Subsection (i) or (ii) of this Section 8.22.360A.2.b. If the landlord fails to respond in writing with a description of the reasons for the denial of the request within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord. However, for units restricted as affordable housing as defined by O.M.C. Section 15.72.030, a written resident request to add an occupant shall be deemed incomplete and inadequate until such resident has provided all documentation required for qualification of such additional occupant and the household after the addition of such occupant under the rules restricting the housing. A landlord's reasonable refusal of the tenant's written request may not be based on either of the following: (1) the proposed additional occupant's lack of creditworthiness, if that person will not be legally obligated to pay some or all of the rent to the landlord, or (2) the number of occupants allowed by the rental agreement or

lease. With the exception of the restrictions stated in the preceding sentence, a landlord's reasonable refusal of the tenant's written request may be based on, but is not limited to, the ground that the landlord resides in the same unit as the tenant or the ground that the total number of occupants in a unit exceeds (or with the proposed additional occupant(s) would exceed) the lesser of (i) or (ii):

(i) Two persons in a studio unit, three persons in a one-bedroom unit, four persons in a two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four-bedroom unit; or,

(ii) The maximum number permitted in the unit under state law and/or other local codes such as the Building, Fire, Housing and Planning Codes.

This Subsection 8.22.360A.2.b is not intended by itself to establish a direct landlord-tenant relationship between the additional occupant and the landlord or to limit a landlord's rights under the Costa-Hawkins Rental Housing Act, California Civil Code Section 1954.50 et seq. (as it may be amended from time to time). Nothing in this subsection authorizes an occupancy that would result in either transient habitation commercial activity as defined by O.M.C. Section 17.10.440 or semi-transient commercial activity as defined by O.M.C. Section 17.10.120.

c. Before endeavoring to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with a minimum of fourteen (14) days opportunity to cure the violation. The tenant may cure the violation by making a written request to add occupants referenced in Subsection a or b of Section 8.22.360A.2 or by using other reasonable means to cure the violation, including, without limitation, the removal of any additional or unapproved occupant. Nothing in this Section 8.22.360A.2.c is intended to limit any other rights or remedies that the law otherwise provides to landlords.

3. The tenant, who had an oral or written agreement with the landlord which has terminated, has refused after written request or demand by the landlord to execute a written extension or renewal thereof for a further term of like duration and under such terms which are materially the same as in the previous agreement; provided, that such terms do not conflict with any of the provisions of this chapter. [O.M.C. Chapter 8.22, Article II].

4. The tenant has willfully caused substantial damage to the premises beyond normal wear and tear and, after written notice, has refused to cease damaging the premises, or has refused to either make satisfactory correction or to pay the reasonable costs of repairing such damage over a reasonable period of time.

5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants at the property.

6. The tenant has used the rental unit or the common areas of the premises for an illegal purpose including the manufacture, sale, or use of illegal drugs.

7. The tenant has, after written notice to cease, continued to deny landlord access to the unit as required by state law.

8. The owner of record seeks in good faith, without ulterior reasons and with honest intent, to recover possession of the rental unit for his or her occupancy as a principal residence where he or she has previously occupied the rental unit as his or her principal residence and has the right to recover possession for his or her occupancy as a principal residence under a written rental agreement with the current tenants.

9. The owner of record seeks in good faith, without ulterior reasons and with honest intent, to recover possession for his or her own use and occupancy as his or her principal residence, or for the use and occupancy as a principal residence by the owner of record's spouse, domestic partner, child, parent, or grandparent.

   a. Here the owner of record recovers possession under this Subsection (9) [Paragraph 8.22.360 A.9], and where continuous occupancy for the purpose of recovery is less than thirty-six (36) months, such recovery of the residential unit shall be a presumed violation of this chapter.

   b. The owner of record may not recover possession pursuant to this subsection more than once in any thirty-six (36) month period,

   c. The owner must move in to unit within three (3) months of the tenant's vacation of the premises.

   d. Reserved.

   e. A landlord may not recover possession of a unit from a tenant under Subsection 6(A)(9) [8.22.360 A.9], if the landlord has or receives notice, any time before recovery of possession, that any tenant in the rental unit:

      i. Has been residing in the unit for five (5) years or more; and

      (a) Is sixty (60) years of age or older; or

      (b) Is a disabled tenant as defined in the California Fair Employment and Housing Act (California Government Code § 12926); or

      ii. Has been residing in the unit for five (5) years or more, and is a catastrophically ill tenant, defined as a person who is disabled as defined by Subsection (e)(i)(b) [8.22.360 A.9.e.i.b]]and who suffers from a life threatening illness as certified by his or her primary care physician.

   f. The provisions of Subsection (e) [8.22.360 A.9.e] above shall not apply where the landlord's qualified relative who will move into the unit is 60 years of age or older, disabled or catastrophically ill as defined by Subsection (e) [8.22.360 A.9.e], and where every rental unit owned by the landlord is

occupied by a tenant otherwise protected from eviction by Subsection (e) [8.22.360 A.9.e].

g. A tenant who claims to be a member of one of the classes protected by Subsection 6(A)(9)(e) [8.22.360 A.9.e] must submit a statement, with supporting evidence, to the landlord. A landlord may challenge a tenant's claim of protected status by requesting a hearing with the Rent Board. In the Rent Board hearing, the tenant shall have the burden of proof to show protected status. No civil or criminal liability shall be imposed upon a landlord for challenging a tenant's claim of protected status. The Rent Board shall adopt rules and regulations to implement the hearing procedure.

h. Once a landlord has successfully recovered possession of a rental unit pursuant to Subsection 6(A)(9) [8.22.360 A.9], no other current landlords may recover possession of any other rental unit in the building under Subsection 6(A)(9) [8.22.360 A.9]. Only one specific unit per building may undergo a Subsection 6(A)(9) [8.22.360 A.9] eviction. Any future evictions taking place in the same building under Subsection 6(A)(9) [8.22.360 A.9] must be of that same unit, provided that a landlord may file a petition with the Rent Board or, at the landlord's option, commence eviction proceedings, claiming that disability or other similar hardship prevents him or her from occupying a unit which was previously the subject of a Subsection 6(A)(9) [8.22.360 A.9] eviction. The Rent Board shall adopt rules and regulations to implement the application procedure.

i. A notice terminating tenancy under this Subsection must contain, in addition to the provisions required under Subsection 6(B)(5) [8.22.360 B.5]:

i. A listing of all property owned by the intended future occupant(s).

ii. The address of the real property, if any, on which the intended future occupant(s) claims a homeowner's property tax exemption.

10. The owner of record, after having obtained all necessary permits from the City of Oakland on or before the date upon which notice to vacate is given, seeks in good faith to undertake substantial repairs that cannot be completed while the unit is occupied, and that are necessary either to bring the property into compliance with applicable codes and laws affecting health and safety of tenants of the building, or under an outstanding notice of code violations affecting the health and safety of tenants of the building.

a. Upon recovery of possession of the rental unit, owner of record shall proceed without unreasonable delay to effect the needed repairs. The tenant shall not be required to vacate pursuant to this section, for a period in excess of three months; provided, however, that such time period may be extended by the Rent Board upon application by the landlord. The Rent Board shall adopt rules and regulations to implement the application procedure.

b. Upon completion of the needed repairs, owner of record shall offer tenant the first right to return to the premises at the same rent and pursuant to a rental agreement of substantially the same terms, subject to the owner of record's right to obtain rent increase for capital improvements consistent with the terms of the Oakland Residential Rent Arbitration Ordinance or any successor ordinance.

c. A notice terminating tenancy under this Subsection 6(A)(10) [8.22.360 A.10] must include the following information:

i. A statement informing tenants as to their right to payment under the Oakland Relocation Ordinance.

ii. A statement that "When the needed repairs are completed on your unit, the landlord must offer you the opportunity to return to your unit with a rental agreement containing the same terms as your original one and with the same rent (although landlord may be able to obtain a rent increase under the Oakland Residential Rent Arbitration Ordinance [O.M.C. Chapter 8.22, Article I)."

iii. Reserved.

iv. An estimate of the time required to complete the repairs and the date upon which it is expected that the unit will be ready for habitation.

11. The owner of record seeks remove the property from the rental market in accordance with the terms of the Ellis Act (California Government Code Section 7060 et seq.).

B. The following additional provisions shall apply to a landlord who seeks to recover a rental unit pursuant to Subsection 6(A) [8.22.360 A]:

1. The burden of proof shall be on the landlord in any eviction action to which this order is applicable to prove compliance with Section 6 [8.22.360].

2. A landlord shall not endeavor to recover possession of a rental unit unless at least one of the grounds enumerated in Subsection 6(A) [8.22.360 A] above is stated in the notice and that ground is the landlord's dominant motive for recovering possession and the landlord acts in good faith in seeking to recover possession.

3. Where a landlord seeks to evict a tenant under a just cause ground specified in Subsections 6(A)(7, 8, 9, 10, 11) [8.22.360 A.7, 8, 9, 10, 11], she or he must do so according to the process established in CCC § 1946 (or successor provisions providing for 30 day notice period); where a landlord seeks to evict a tenant for the grounds specified in Subsections 6(A)(1, 2, 3, 4, 5, 6) [8.22.360 A.1, 2, 3, 4, 5, 6], she or he must do so according to the process established in CCP § 1161 (or successor provisions providing for 3 day notice period).

4. Any written notice as described in Subsection 6(A)(2, 3, 4, 5, 7) [8.22.360 A.2, 3, 4, 7] shall be served by the landlord prior to a notice to terminate tenancy and shall include a provision informing tenant that a failure to cure may result in the initiation of eviction proceedings.

5. Subsection 6(B)(3) [8.22.360 B.3] shall not be construed to obviate the need for a notice terminating tenancy to be stated in the alternative where so required under CCP § 1161.

6. A notice terminating tenancy must additionally include the following:

   a. A statement setting forth the basis for eviction, as described in Subsections 6(A)(1) [8.22.360 A.1] through 6(A)(11) [8.22.360 A.11];

   b. A statement that advice regarding the notice terminating tenancy is available from the Rent Board.

   c. Where an eviction is based on the ground specified in Subsection 6(A)(9) [8.22.360 A.9], the notice must additionally contain the provisions specified in Subsection 6(A)(9)(i) [8.22.360 A.9.i].

   d. Where an eviction is based on the ground specified in Subsection 6(A)(10) [8.22.360 A.10], the notice must additionally contain the provisions specified in Subsection 6(A)(10)(c) [8.22.360 A.10].

   e. Failure to include any of the required statements in the notice shall be a defense to any unlawful detainer action.

7. Within ten (10) days of service of a notice terminating tenancy upon a tenant, a copy of the same notice and any accompanying materials must be filed with the Rent Board. Each notice shall be indexed by property address and by the name of the landlord. Such notices shall constitute public records of the City of Oakland, and shall be maintained by the Rent Board and made available for inspection during normal business hours. Failure to file the notice within ten (10) days of service shall be a defense to any unlawful detainer action.

C. Reserved.

D. Substantive limitations on landlord's right to evict. <u>This subsection (D) [8.22.360 D] is intended as both a substantive and procedural limitation on a landlord's right to evict.</u>

1. In any action to recover possession of a rental unit pursuant to Section 6 [8.22.360], a landlord must allege and prove the following:

   a. the basis for eviction, as set forth in Subsection 6(A)(1) through 6(A)(11) [8.22.360 A.1 through 8.22.360 A.11] above, was set forth in the notice of termination of tenancy or notice to quit;

   b. that the landlord seeks to recover possession of the unit with good faith, honest intent and with no ulterior motive;

2. If landlord claims the unit is exempt from this ordinance, landlord must allege and prove that the unit is covered by one of the exceptions enumerated in Section 5 [8.22.350] of this chapter. Such allegations must appear both in the notice of termination of tenancy or notice to quit, and in the complaint to recover possession. Failure to make such allegations in the notice shall be a defense to any unlawful detainer action.

3. ~~This subsection (D) [8.22.360 D] is intended as both a substantive and procedural limitation on a landlord's right to evict.~~ A landlord's failure to comply with the obligations described in Subsections 7(D)(1) or (2) [*sic*] [8.22.360 D.1 or 8.22.360 D.2] shall be a defense to any action for possession of a rental unit.

4. In any action to recover possession of a rental unit filed under 8.22.360A1, it shall be a defense if the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party as long as either the landlord or the tenant provide written notice that no new tenancy is intended.

5. A Landlord's failure to fully comply with any applicable law requiring payment of relocation benefits to the tenant, such as those provided by Articles III, VII, and VIII of this Chapter and Chapter 15.60 of the Oakland Municipal Code, including but not limited to amount and timing, shall be a defense to any action for possession of a rental unit.

6. Notwithstanding any change in the terms of a tenancy pursuant to Civil Code Section 827, a tenant may not be evicted for a violation of a covenant or obligation that was not included in the tenant's written or oral rental agreement at the inception of the tenancy unless: (1) the change in the terms of the tenancy is authorized by the Rent Ordinance or California Civil Code Sections 1947.5 or 1947.12, or required by federal, state, or local law, or regulatory agreement with a government agency; or (2) the change in the terms of the tenancy was accepted in writing by the tenant after receipt of written notice from the landlord that the tenant need not accept such new term as part of the rental agreement and in exchange for valid consideration.

E. In the event that new state or federal legislation confers a right upon landlords to evict tenants for a reason not stated herein, evictions proceeding under such legislation shall conform to the specifications set out in this chapter [O.M.C. Chapter 8.22, Article II].

F. The City Council is authorized to modify the Just Cause for Eviction Ordinance (Measure EE [O.M.C., Chapter 8, Article II (8.22.300, *et seq*.)]) for the purpose of adding limitations on a landlord's right to evict, but the City Council may not modify any exemption from this Ordinance contained in Section 5 [O.M.C. Section 8.22.350].

ATTACHMENT D
(Terminating Tenancy to Withdraw Residential Rental Units from the Rental Market)

8.22.410 - Definitions.

"Disabled" means a person with a disability, as defined in Section 12955.3 of the Government Code.

"Elderly" means a person sixty-two (62) years old or older.

"Lower-income tenant household" means tenant households whose income is not more than that permitted for lower income households, as defined by California Health and Safety Code Section 50079.5.

"Minor child(ren)" means a person(s) who is eighteen (18) years or younger at the time the notice of withdrawal of accommodations is served on the program.

"Owner" means an owner of record of the real property on which the rent units to be withdrawn are located.

"Rent Adjustment Program" means the Rent Adjustment Program as that term is defined in O.M.C. 8.22.020.

"Tenant" means a tenant as that term is defined in O.M.C. 8.22.340~~020 and also includes a lessee~~.

"Unit or Rental Unit" means a Rental Unit as that term is defined in O.M.C. 8.22.340 with the exception of those units designated in Section 8.22.350 as exempt.

"Withdrawal Notices" means those documents an owner is required to be filed with the Rent Adjustment Program pursuant to Paragraph 8.22.430A.

"Withdrawn Unit" means a rental unit that has been withdrawn from the rental market in accordance with this O.M.C. 8.22.400 et seq.

8.22.450 - Relocation payments.

A. Tenant Households who are required to move as a result of the Owner's withdrawal of the accommodation from rent or lease shall be entitled to a relocation payment from the Owner equal to Relocation Payment amounts set forth in O.M.C. 8.22.820 A. The payment shall be divided equally among all Tenants occupying the Rental Unit at the time of service on the Tenants of the notice of intent to withdraw the unit from rent or lease. Once notice of withdrawal of the accommodation from rent or lease has been given to the Tenant, the Owner is obligated to make the relocation payments.

B. Tenant Households in Rental Units withdrawn from the residential market that include lower income, elderly or disabled Tenants, and/or minor children shall be entitled to a single additional relocation payment equal to the additional Relocation Payment amounts set forth in O.M.C. 8.22.820 B. If a household qualifies for this additional payment, the payment shall be divided equally among eligible (lower-income, elderly, disabled, parents/guardians of minor children) Tenants.

C. A tenant whose household qualifies for the additional payment may request it from the owner, provided the tenant gives written notice of his or her entitlement to such payments to the owner within sixty (60) days of the date of delivery to the Rent Adjustment Program of the Withdrawal Documents.

D. An owner who, reasonably and in good faith, believes that a tenant does not qualify for the additional payment may request documentation from the tenant demonstrating the tenant's income qualification. Such documentation may not include any document that is protected as private or confidential under any state, local, or federal law. The owner's request must be made within fifteen (15) days after receipt of the tenant's notification of eligibility for the additional payment. The tenant has thirty (30) days following receipt of the owner's request for documentation to submit documentation. The owner must keep the documents submitted by the tenant confidential unless there is litigation or administrative proceedings regarding the tenant's eligibility for relocation payments or the documents must be produced in response to a subpoena or court order, in which case the tenant may seek an order from the court or administrative body to keep the documents confidential. Examples of the types of evidence that may be used to present a claim that a household is entitled to an extra payment based on a tenant's disability status include evidence that a tenant has a qualifying disability may be in the form of a statement from a treating physician or other appropriate health care provider authorized to provide treatment, such as a psychologist. A tenant may also submit evidence of a medical determination from another forum, such as Social Security or worker's compensation, so long as it includes the fact that the tenant has a disability and its probable duration.

E. Time for payment.

1. The owner must pay the tenant half of the relocation payment provided for in Section 8.22.450(A) when the termination notice is given to the household and the remaining half when the tenant vacates the unit ~~provided that the tenant agrees, in writing, not to contest an unlawful detainer based on the notice to terminate tenancy for the withdrawal of the tenant's rental unit. If the tenant does not so agree, then the entirety of the relocation payment is not due unless the owner prevails in the unlawful detainer. If the owner prevails in the unlawful detainer, the relocation payment must be paid to the tenant prior to the owner seeking a writ of possession for the tenant to vacate the withdrawn unit~~.

2. The owner must pay the tenant the additional payment provided for in Section 8.22.450(B) within fifteen (15) days of the tenant's notice of eligibility or the tenant supplying documentation of the tenant's eligibility.

3. An owner who pays relocation expenses in conjunction with a notice to quit as required by this section need not pay the same relocation expenses with any further notices to quit based O.M.C. Section 8.22.360 A.11 for the same unit that are served within 180 days of the notice that included the required relocation payment. Nothing in this paragraph relieves the owner from portions of relocation expenses not yet paid by the owner or received by the tenant, including the remaining half due when the tenant vacates the unit.

F. ~~Failure to make the relocation payments in the manner and within such times as prescribed in this Section 8.22.450 is not a defense to an unlawful detainer action. However, if~~ If an owner fails to make the relocation payment as prescribed, the tenant may file an action against the owner and, if the tenant is found eligible for the relocation payments, the tenant will be entitled to recover the amount of the relocation payments plus an equal amount as damages and the tenant's attorney's fees. Should the owner's failure to make the payments as prescribed be found to be in bad faith, the tenant shall be entitled to the relocation payments plus an additional amount of three times the amount of the relocation payments and the tenant's attorney's fees.

G. A tenant who is eligible for relocation payments under state or federal law, is not also entitled to relocation under this section. A tenant who is also eligible for relocation under the City of Oakland's code enforcement relocation program (O.M.C. Chapter 15.60), must elect for either relocation payments under this section or O.M.C. Chapter 15.60, and may not collect relocation payments under both.

H. The regulations may provide procedures for escrowing disputed relocation funds.

ATTACHMENT E
(Uniform Residential Tenant Relocation Ordinance)

8.22.810 - Definitions.

"Disabled" means a person with a disability, as defined in Section 12955.3 of the Government Code.

"Elderly" means a person sixty-two (62) years old or older.

"Lower-Income Tenant Household" means Tenant Households whose income is not more than that permitted for lower income households, as defined by California Health and Safety Code Section 50079.5.

"Minor Child(ren)" means a person(s) who is eighteen (18) years or younger at the time the notice is served.

"Owner" or "Property Owner" means a person, persons, corporation, partnership, limited liability company, or any other entity holding fee title to the subject real property. In the case of multiple ownership of the subject real property, "Owner" or "Property Owner" refers to each entity holding any portion of the fee interest in the property, and the property owner's obligations in this Chapter shall be joint and several as to each property owner.

"Qualifying Relocation Event" means any event or vacancy that triggers a Tenant's right to relocation payments under the Oakland Municipal Code.

"Rental Unit" means a dwelling space in the City containing a separate bathroom, kitchen, and living area, including a single-family dwelling or unit in a multifamily or multipurpose dwelling, or a unit in a condominium or cooperative housing project, or a unit in a structure that is being used for residential uses whether or not the residential use is a conforming use permitted under the Oakland Municipal Code or Oakland Planning Code, which is hired, rented, or leased to a household within the meaning of California Civil Code Section 1940. This definition applies to any dwelling space that is actually used for residential purposes, including live-work spaces, whether or not the residential use is legally permitted.

"Room" means an unsubdivided portion of the interior of a residential building in the City which is used for the purpose of sleeping, and is occupied by a Tenant Household for at least thirty (30) consecutive days. This includes, but is not limited to, a rooming unit or efficiency unit located in a residential hotel, as that term is defined in accordance with California Health and Safety Code Section 50519. This definition applies to any space that is actually used for residential purposes whether or not the residential use is legally permitted. For purposes of determining the amount of relocation payments, a room is the equivalent of a studio apartment.

"Tenant" means a Tenant as that term is defined in O.M.C. 8.22.340~~020 and also includes a lessee~~.

"Tenant Household" means one (1) or more individual Tenants who rent or lease a Rental Unit or Room as their primary residence and who share living accommodations. In the case where an individual Room is rented to multiple Tenants under separate agreements,

each individual Tenant of such Room shall constitute a "Tenant Household" for purposes of this article.

8.22.820 - Amount of relocation payments.

A. Unless otherwise specified in a Section of the Oakland Municipal Code requiring relocation payments, Tenant Households who are required to move as a result of a Qualifying Relocation Event shall be entitled to a relocation payment from the Owner in the sum of six thousand five hundred dollars ($6,500.00) per unit for studios and one-bedroom apartments; eight thousand dollars ($8,000.00) per unit for two-bedroom apartments; and nine thousand eight hundred seventy-five dollars ($9,875.00) per unit for units with three or more bedrooms. The payment shall be divided equally among all Tenants occupying the Rental Unit at the time of service on the Tenants of the notice of termination of tenancy.

B. Unless otherwise specified in a Section of the Oakland Municipal Code requiring relocation payments, Tenant Households in Rental Units that include lower income, elderly or disabled Tenants, and/or minor children shall be entitled to a single additional relocation payment of two thousand five hundred dollars ($2,500.00) per unit from the Owner. If a household qualifies for this additional payment, the payment shall be divided equally among eligible (lower-income, elderly, disabled, parents/guardians of minor children) Tenants.

C. In the case of temporary relocations under O.M.C. 15.60.110 B., the amounts in paragraphs A-B shall be a cap on relocation payments.

D. The relocation payments specified in subsection 8.22.820 A. shall increase annually on July 1 in accordance with the CPI Adjustment as calculated in OMC subsection 8.22.070 B.3<u>, and the increase shall apply to all eviction notices served on or after July 1</u>. The first increase shall take place on July 1, 2017.

ATTACHMENT F

8.22.850 - Relocation Payments for Owner or Relative Move-Ins.

A. Applicability. An owner who evicts a tenant pursuant to O.M.C. Section 8.22.360 A.9. or where a tenant vacates following a notice or other communication stating the owner's intent to seek recovery of possession of the unit under this O.M.C. Section must provide relocation payment under this Section. Relocation payment procedures pursuant to code compliance or Ellis Act evictions will be governed by the Code Compliance Relocation Ordinance and the Ellis Act Ordinance.

B. The property owner shall be responsible for providing relocation payments, in the amounts specified in Section 8.22.820, to an eligible tenant household in the form and manner prescribed under this article and any rules and regulations adopted under this article.

C. Tenant Eligibility for Payment. Tenants will be eligible for relocation payments according to the following schedule based on the effective date of ay notice to terminate:

1. Upon taking possession of the rental unit, the tenant will be eligible for one-third (⅓) of the total payment pursuant to subsection B., above.

2. After one (1) year of occupancy of the rental unit, the tenant will be eligible for two-thirds (⅔) of the total payment pursuant to subsection B., above.

3. After two (2) years of occupancy of the rental unit, the tenant will be eligible for the full amount of the total payment pursuant to subsection B., above.

D. Time for Payment.

1. The owner must pay the tenant half of the relocation payment provided for in Subsection 8.22.820 A. when the termination notice is given to the household and the remaining half when the tenant vacates the unit ~~provided that the tenant agrees, in writing, not to contest an unlawful detainer based on the notice to terminate tenancy for the owner or relative moving in to the tenant's rental unit. If the tenant does not so agree, then the entirety of the relocation payment is not due unless the owner prevails in the unlawful detainer. If the owner prevails in the unlawful detainer, the relocation payment must be paid to the tenant prior to the owner seeking a writ of possession for the tenant to vacate the unit~~.

2. The owner must pay the tenant the additional payment provided for in Section 8.22.820 B. within fifteen (15) days of the tenant's notice of eligibility or the tenant supplying documentation of the tenant's eligibility.

3. An owner who pays relocation expenses in conjunction with a notice to quit as required by this section need not pay the same relocation expenses with any further notices to quit based O.M.C. Section 8.22.360 A.9 for the same unit that are served within 180 days of the notice that included the required relocation payment. Nothing in this paragraph relieves the owner from portions of relocation expenses not yet paid by the owner or received by the tenant, including the remaining half due when the tenant vacates the unit.

E. ~~Failure to make the relocation payments in the manner and within such times as prescribed in this Section is not a defense to an unlawful detainer action.~~

~~However, if~~ If an owner fails to make the relocation payment as prescribed, the tenant may file an action against the owner and, if the tenant is found eligible for the relocation payments, the tenant will be entitled to recover the amount of the relocation payments plus an equal amount as damages and the tenant's attorney's fees. Should the owner's failure to make the payments as prescribed be found to be in bad faith, the tenant shall be entitled to the relocation payments plus an additional amount of three (3) times the amount of the relocation payments and the tenant's attorney's fees.

F. Owners may apply for a zero-interest loan from the City of Oakland for the purpose of satisfying their relocation payment obligation under this O.M.C Section if they meet the eligibility criteria set forth below. An owner qualifies for a relocation payment assistance loan if they meet the following two (2) conditions:

1. Ownership of fewer than five (5) units in the City of Oakland. In the case of a relative move-in, the relative must also not own any other real estate property and must be of low or moderate income as defined by California Health and Safety Code Section 50093.

2. The owner must be ineligible for a cash-out refinance loan based on the underwriting criteria for investment properties set forward by Fannie Mae regulations.

The owner must also meet at least one (1) of the following two (2) conditions to qualify:

1. The owner must not have more than six (6) months of liquid financial reserves as defined by Fannie Mae regulations.

2. The owner must qualify as low or moderate income as defined by California Health and Safety Code Section 50093.

The City Administrator may issue additional regulations or guidance to implement this subsection.

NOTICE AND DIGEST

AN ORDINANCE AMENDING CHAPTER 8.22 OF THE OAKLAND MUNICIPAL CODE (RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS) TO (1) LIMIT THE MAXIMUM RENT INCREASE IN ANY ONE YEAR TO CONFORM TO STATE LAW; (2) MAKE FAILURE TO PAY REQUIRED RELOCATION BENEFITS AN AFFIRMATIVE DEFENSE TO EVICTION; (3) LIMIT LATE FEES; (4) PROHIBIT UNILATERALLY IMPOSED CHANGES TO TERMS OF TENANCY; (5) ADD ONE-FOR-ONE REPLACEMENT OF ROOMMATES TO THE DEFINITION OF HOUSING SERVICES; (6) PROHIBIT EVICTION BASED ON ADDITIONAL OCCUPANTS IF LANDLORD UNREASONABLY REFUSED TENANT'S WRITTEN REQUEST TO ADD OCCUPANT(S); AND (7) STRENGTHEN TENANTS' RIGHTS AND ENFORCEMENT OF TENANT'S RIGHTS UNDER THE TENANT PROTECTION ORDINANCE

This ordinance amends the Tenant Protection Ordinance to strengthen tenants' rights and their enforcement. It amends the Just Cause for Eviction Ordinance to prohibit landlords from evicting tenants based on additional occupants if the landlord unreasonably refused the tenant's written request to add additional occupant. It limits late fees and prohibits unilateral changes to the terms of tenancy. It conforms local law to state law with regard to the maximum rent increase permissible in any one year and making failure to pay required relocation benefits an affirmative defense to an eviction action. Consistent with the latter change, the ordinance makes conforming amendments to the Terminating Tenancy to Withdraw Residential Rental Units from the Rental Market, Uniform Residential Tenant Relocation, and Relocation Payments for Owner or Relative Move-in Ordinances.