



CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING CHAPTER 8.22 OF THE OAKLAND MUNICIPAL CODE TO (1) AMEND THE RENT ADJUSTMENT PROGRAM ORDINANCE TO (A) REMOVE THE REQUIREMENT THAT A TENANT BE CURRENT ON RENT IN ORDER TO FILE OR RESPOND TO A PETITION WITH THE RENT ADJUSTMENT PROGRAM; (B) INCREASE RESTITUTION PERIOD FOR DECREASED HOUSING SERVICE PETITIONS; (C) CLARIFY CERTIFICATES OF EXEMPTION FOLLOWING CHANGE IN LAW OR CIRCUMSTANCES; AND (D) MAKE OTHER CLARIFYING CHANGES; AND (2) AMEND THE ELLIS ACT ORDINANCE TO BE CONSISTENT WITH STATE LAW

WHEREAS, the City seeks to ensure that all covered Oakland tenants and property owners have access to the protections and relief provided by the Rent Ordinance; and

WHEREAS, currently, tenants must show they are current on rent or lawfully withholding rent in order to file a petition or respond to a petition; and

WHEREAS, no other rent control jurisdiction requires tenants be current on rent to file a petition; and

WHEREAS, as lawful rent amount is determined through the adjudication process, so tenants' payment of rent should not be used as a requirement to access adjudication on matters that are regulated by the Rent Ordinance; and

WHEREAS, on September 22, 2022, the Oakland Rent Board recommended that the Council remove the current on rent requirement for tenants to access the Rent Adjustment Program's petition process; and

WHEREAS, increasing the restitution period for decreased housing service petitions would make the time period for restitution in these cases consistent with Rent Board decisions for overpayments after unlawful rent increases; and

WHEREAS, providing for challenge and review of a certificate of exemption based on a change in law and circumstance would correctly provide for a loss of exempt status when such status is no longer justified under the law; and

WHEREAS, the City Council wishes to clarify time frames in the Ellis Act Ordinance and conform the Ellis Act Ordinance with state law;

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

SECTION 1. Modification of Section 8.22.030 of the Oakland Municipal Code. Section 8.22.030 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

8.22.030 Exemptions.

- A. Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this Chapter, Article I only (the Just Cause for Eviction Ordinance (Chapter 8.22, Article II) and the Ellis Act Ordinance (Chapter 8.22, Article II)) have different exemptions):
1. Dwelling units whose rents are controlled, regulated (other than by this Chapter), or subsidized by any governmental unit, agency or authority.
 2. Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses, provided that such accommodations are not occupied by the same tenant for thirty (30) or more continuous days.
 3. Housing accommodations in any hospital, convent, monastery, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by an educational institution.
 4. Dwelling units in a nonprofit cooperative, owned, occupied, and controlled by a majority of the residents.
 5. Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. This exemption does not apply to a vehicular residential facility, or any newly constructed dwelling units that replace covered units withdrawn from the rental market in accordance with O.M.C. 8.22.400, et seq. (Ellis Act Ordinance). To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential.
 6. Substantially Rehabilitated Buildings. This exemption shall apply only to buildings where the rental property owner submitted an application for a certification of

exemption to the Rent Adjustment Program prior to October 20, 2017, and which have been issued a certificate of exemption from the Rent Adjustment Program.

7. Dwelling units exempt pursuant to Costa-Hawkins (California Civil Code § 1954.52).

B. Exemption Procedures.

1. Certificate of Exemption:

- a. A certificate of exemption is a determination by the Rent Adjustment Program that a dwelling unit or units qualify for an exemption and, therefore, are not covered units. For units exempt as new construction, or by state law, an owner may obtain a certificate of exemption by claiming and proving an exemption in response to a tenant petition or by petitioning the Rent Adjustment Program for such exemption. ~~For units exempt based on substantial rehabilitation, an owner must obtain a certificate of exemption by petitioning the Rent Adjustment Program for such an exemption.~~ A certificate of exemption may be granted only for dwelling units that are permanently exempt from the Rent Adjustment Ordinance as new construction, ~~substantial rehabilitation,~~ or by state law (Costa Hawkins).
- b. For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner. A certificate of exemption is a final determination of exemption absent fraud, ~~or~~ mistake, or a change in law or circumstances.
- c. Timely submission of a certificate of exemption previously granted in response to a petition shall result in dismissal of the petition absent proof of fraud or mistake regarding the granting of the certificate. The burden of proving such fraud, ~~or~~ mistake, or change in law or circumstances is on the tenant.

2. Reserved.

C. Controlled, Regulated, or Subsidized Units. The owner of a dwelling unit that is exempt because it is controlled, regulated (other than by this Chapter), or subsidized by a governmental agency (Section 8.22.030A.1) must file a notice with the Rent Adjustment Program within thirty (30) days after such dwelling unit is no longer otherwise controlled, regulated, or subsidized by the governmental agency. Once the dwelling unit is no longer controlled, regulated, or subsidized, the dwelling unit ceases to be exempt and becomes a covered unit subject to this Chapter, Article I. Such notice must be on a form prescribed by the Rent Adjustment Program.

SECTION 2. Modification of Section 8.22.090 of the Oakland Municipal Code.
Section 8.22.090 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

8.22.090 Petition and response to filing procedures.

- A. Tenant Petitions and Responses.
1. Tenant may file a petition regarding any of the following:
 - a. A rent increase 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 that exceeds the annual limit as provided in Section 8.22.070 A.2. or that exceeds the rent increase limit of thirty percent (30%) in five (5) years.
 - i. The petition is permitted by the Just Cause for Eviction Ordinance (Measure EE) O.M.C. 8.22.300 or its regulations.
 - j. The petition is permitted by the Ellis Act Ordinance, O.M.C. 8.22.400, or its regulations.
 - k. The tenant contests an exemption from this O.M.C. 8.22, Article I or Article II.
 - l. The tenant claims the owner has received reimbursements for any portion of cost or financing of capital improvements after a capital improvement rent increase has been approved, and has not prorated and refunded such reimbursement, or has other undeclared capital improvement benefits.
 - m. After a rent increase imposed for an additional occupant as defined by Section 8.22.020, the owner fails to reduce the rent following a decrease in occupancy.

- n. A primary tenant overcharges a subtenant in violation of the regulations. Only a subtenant may file a petition for this reason.
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~~ three (3) years before the petition is filed and to the period of time when the owner knew or should have known about the decreased housing service.
 4. In order to file a petition or respond to petition, a tenant, including a subtenant contesting overcharges by a primary tenant, must provide the following at the time of filing the petition or response:
 - a. A completed tenant petition or response on a form prescribed by the ~~rent adjustment program~~ Rent Adjustment Program;
 - b. ~~Evidence that the tenant's rent is current or that the tenant is lawfully withholding rent~~ Reserved;
 - c. A statement of the services that have been reduced or eliminated, if the tenant claims a decrease in housing services;
 - d. A copy of the applicable citation, if the tenant claims the rent increase need not be paid because the covered unit has been cited in an inspection report by the

appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Section 8.22.070D.6; and

- e. Proof of service by first-class mail or in person of the tenant petition or response and any supporting documents on the opposing party (owner, subtenant, or primary tenant).
5. A tenant must file a response to an owner's or subtenant's petition within thirty (30) days of service of the petition.

B. Owner Petitions and Owner Responses to Tenant Petitions.

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

SECTION 3. Modification of Section 8.22.430 of the Oakland Municipal Code.
Section 8.22.430 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

8.22.430 When withdrawal is effective (except for eligible elderly or disabled tenants).

- A. For units not occupied by a tenant who has resided in the unit for at least one year and is either elderly (62 years or older) or disabled, the withdrawal of the rental units is effective not less than one hundred twenty (120) days from the delivery in person or by first-class mail to the Rent Adjustment Program all of the following (referred to together as the "Withdrawal Notices"):
1. Written notice to the Rent Adjustment Program of the intent to withdraw the Rental Units. The notice must be signed under penalty of perjury and must include the following:
 - a. Address and legal description of the subject property;
 - b. Number of rental units being removed;
 - c. The names of all tenants residing in the units being withdrawn; and
 - d. The lawful rent applicable to each such unit paid on the date of the notice.
 2. A fee in an amount set by the City Council in the Master Fee Schedule to reimburse the city for the estimated direct and actual costs administering the withdrawal of the rental units.
 3. A conformed copy of a written summary of the notice of intent (Paragraph 8.22.430 A.1) recorded with the Alameda County Recorder and in a form prepared by the Rent Adjustment Program. The summary must contain such information as is prescribed by the Rent Adjustment Program to summarize the owner's notice of intent. This summary must not contain any of the information deemed confidential pursuant to Subsection 8.22.430 ~~EB~~.
 4. A certification under penalty of perjury that terminations of all tenancies for the units to be withdrawn have commenced in accordance with applicable law. Such notices may be served in any manner authorized for the service of a notice terminating tenancy under California Civil Code Section 1946~~.1~~. The notices terminating tenancy must contain the following information:
 - a. That the owner is terminating the tenancy pursuant to this O.M.C. Article 8.22.400 and will provide the Rent Adjustment Program with the withdrawal notices required in Paragraph 8.22.430A.
 - b. A summary of the specific information to be provided to the Rent Adjustment Program in that notice regarding the particular tenant's unit;
 - c. That within thirty (30) days of ~~receipt of notice to terminate~~evacuating the unit, the tenant may notify the owner in writing that the tenant would be interested in re-

renting the unit if it is re-offered for rent at a future time and advising the tenant to notify the owner of future address changes;

- d. A description of the following the includes the time frames for the tenant to provide notices to the owner:
 - i. The right of a tenant to re-rent the withdrawn unit should it be re-offered for rent;
 - ii. The right of tenants who are elderly or disabled to an extended withdrawal period; and
 - iii. The right of tenants to relocation payments.
- B. Confidential Information. The following information submitted to the Rent Adjustment Program in compliance with this O.M.C. Article 8.22.400 is deemed confidential for purposes of the California Information Practices Act of 1977 (California Civil Code Section 1798, et seq.)
 1. The name or names of the tenants;
 2. The rent applicable to any residential rental unit to be withdrawn; and
 3. The total number of rental units to be withdrawn.

SECTION 4. Modification of Section 8.22.460 of the Oakland Municipal Code.

Section 8.22.460 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strike through~~).

8.22.460 Re-offering withdrawn units for rent.

- A. Requirements for all re-offers of Withdrawn Units for rental pursuant to this subsection.
 1. The owner must provide written notice of the intention to re-offer a Withdrawn Unit to the Rent Adjustment Program not less than thirty (30) days prior to re-offering a Withdrawn Unit for rent;
 2. The owner must offer each Withdrawn Unit at an amount of rent not in excess of the same rent as of the date of withdrawal plus any CPI Rent Adjustments that could have applied had the Units not been withdrawn;
 3. Offer to former tenant.
 - a. The owner must first offer the Withdrawn Unit for rent or lease to the tenant displaced from that unit by the withdrawal pursuant to this section, if the tenant advised the owner in writing within thirty (30) days of the displacement of the tenant's desire to consider an offer to renew the tenancy and furnished the owner with an address to which that offer is to be directed. Such tenant must advise the owner at any time during the eligibility of any change of address to which an offer is to be directed.

- b. If the owner again offers a Withdrawn Unit for rent pursuant to this section and the tenant advised the owner pursuant to subsection 8.22.460 A.3.a of a desire to consider an offer to consider an offer to renew the tenancy, then the owner shall offer to reinstitute a rental agreement on terms permitted by law and this section to that displaced tenant. This offer shall be deposited in the United States mail, by registered or certified mail with postage prepaid, addressed to the displaced tenant or lessee at the address furnished to the owner as provided in this subparagraph, and shall describe the terms of the offer. The displaced tenant shall have thirty (30) days from the deposit of the offer in the mail to accept the offer by personal delivery of that acceptance or by deposit of the acceptance in the United States mail by registered or certified mail with postage prepaid.

8B. Re-Offering Withdrawn Units for Rent Within Two Years of Withdrawal. In the event that the Withdrawn Units are offered again for rent or lease for residential purposes by the owner within two years from date the rental units were withdrawn from rent or lease, the following provisions shall govern:

1. An owner who re-offers withdrawn rental units for residential rental within two years of the date of delivery of the ~~Withdrawal Notices to the Rent Adjustment Program~~ the accommodations were withdrawn from rent or lease shall be liable to any tenant who was displaced from the property by the withdrawal of the units for actual and punitive damages. Any action by a tenant pursuant to this subparagraph shall be brought within three years of the date of delivery of the ~~Withdrawal Notices to the Rent Adjustment Program~~ the accommodations were withdrawn from rent or lease. Nothing in this subparagraph precludes a tenant from pursuing any alternative remedy available under the law.
2. The City Attorney may institute a civil proceeding against any owner who has again offered Withdrawn Units for rent within two years the date of delivery of the ~~Withdrawal Notices to the Rent Adjustment Program~~ the accommodations were withdrawn from rent or lease, for exemplary damages for displacement of tenants. Any action brought by the City Attorney shall be brought within three years of the date the accommodations were withdrawn from rent or lease.

C. Re-Offering Withdrawn Units for Rent Within Five Years of Withdrawal. For all tenancies commenced during the time periods described in subparagraphs below, the Withdrawn Units shall be offered and rented at an amount not in excess of the lawful rent in effect on the date the accommodations were withdrawn from rent or lease, plus any CPI Rent Adjustments available. The provisions of this paragraph apply to all tenancies commenced during either of the following time periods:

1. The five-year period after the date of delivery of the Withdrawal Notices to the Rent Adjustment Program, whether or not the withdrawal is rescinded or the withdrawal of the rental units is completed pursuant to Withdrawal Notices.

2. The five-year period after the units ~~the date of delivery of the Withdrawal Notices to the Rent Adjustment Program~~ are withdrawn.
- D. Re-Offering Withdrawn Units for Rent Within Ten Years of Withdrawal.
1. An owner who offers Withdrawn Units again for rent within a period not exceeding ten (10) years ~~the date of delivery of the Withdrawal Notices to the Rent Adjustment Program~~ from the date they are withdrawn shall first offer the unit to the tenant displaced from that unit by the withdrawal, if that tenant requests the offer in writing within thirty (30) days after vacating the unit. ~~the owner has notified the Rent Adjustment Program of an intention to offer the Withdrawn Units again for residential rent pursuant to Subsection 8.22.460 A.~~
 2. The owner of the Withdrawn Units shall be liable to any tenant who was displaced by that action for failure to comply with this subsection for punitive damages in an amount not to exceed the contract rent for six months.
- E. Demolition of Withdrawn Units and Construction of New Units. If the Withdrawn Units are demolished and new residential rental units are constructed on the same property, and are offered for rent within five years of the date the Withdrawn Units were withdrawn from rent, the newly constructed residential rental units shall be subject to controls pursuant to O.M.C. Chapter 8.22, Article I on the price at which they would be offered on the basis of a fair and reasonable return on the newly constructed residential rental units, notwithstanding any exemption in O.M.C. Chapter 8.22, Article I for newly constructed units.
- F. Application of Withdrawal Constraints to Subsequent Owner.
1. The constraints on offering Withdrawn Units again for rent or demolition of the Withdrawn Units and construction of new units apply to the owner of record when the withdrawal is initiated and any subsequent owner of the real property on which the Withdrawn Units are located.
 2. Ninety (90) days after filing a notice of intent to withdraw units pursuant to this section, the owner shall submit to the Rent Adjustment Program a notice that specifically describes the real property where the Withdrawn Units are located, the dates applicable to the constraints, and the name of the owner(s) of record of the real property. This notice must be signed under penalty of perjury. The Rent Adjustment Program shall record this notice with the Alameda County Recorder. The notice shall be indexed in the grantor grantee index.
 3. A person who acquires title to the real property subsequent to the date upon which the rental units thereon have been withdrawn from rent or lease, as a bona fide purchaser for value, shall not be a successor in interest for the purposes of this O.M.C. Article 8.22.400, if the notice prescribed by this section has not been recorded with the county recorder at least one day before the transfer of title.

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 6. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption. The Ordinance amendments provided in Section 5 shall not apply to any relocation payments required before August 1, 2024 or to any eviction notices issued before August 1, 2024.

SECTION 7. CEQA Compliance. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: § 15378 (regulatory actions), § 15061 (b)(3) (no significant environmental impact), and §15183 (consistent with the general plan and zoning).

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –
ABSENT –
ABSTENTION –

ATTEST: _____

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

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING CHAPTER 8.22 OF THE OAKLAND MUNICIPAL CODE TO (1) AMEND THE RENT ADJUSTMENT PROGRAM ORDINANCE TO (A) REMOVE THE REQUIREMENT THAT A TENANT BE CURRENT ON RENT IN ORDER TO FILE OR RESPOND TO A PETITION WITH THE RENT ADJUSTMENT PROGRAM; (B) INCREASE RESTITUTION PERIOD FOR DECREASED HOUSING SERVICE PETITIONS; (C) CLARIFY CERTIFICATES OF EXEMPTION FOLLOWING CHANGE IN LAW OR CIRCUMSTANCES; AND (D) MAKE OTHER CLARIFYING CHANGES; AND (2) AMEND THE ELLIS ACT ORDINANCE TO BE CONSISTENT WITH STATE LAW

This Ordinance amends Chapter 8.22 of the Oakland Municipal Code to (1) amend the Rent Adjustment Ordinance to (A) remove current on rent requirement for tenant petitions and responses; (B) increase restitution period for decreased housing service petitions; (C) clarify certificates of exemption following change in law or circumstances; and (D) make other clarifying changes; and (2) amends the Ellis Act Ordinance to be consistent with state law.