

**CITY OF OAKLAND**  
**AGENDA REPORT**

OFFICE OF THE CITY CLERK

2006 NOV -1 PM 4:05

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: November 14, 2006

**RE: An Ordinance Amending O.M.C. Chapter 8.22, Rent Adjustment Program, To Provide A Set Date For Implementing The Consumer Price Index (CPI) Based Rent Adjustment And New Procedures For Rental Property Owners To Obtain A Certificate Of Exemption; and,**

**A Resolution Approving Amendments To The Rent Adjustment Regulations To Clarify How Rental Property Owners May Take Banked Rent Increases And To Implement The Certificate Of Exemption Process**

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**SUMMARY**

Since mid 2004, the Housing Residential Rent and Relocation Board ("Rent Board") has undertaken a process to improve the application of the Rent Adjustment Ordinance. Two public hearings were held on proposed changes to the Ordinance and detailed sessions have been held during regular Board meetings focused on one or two sections of the Ordinance. The public participated in each of the sessions. Comments and proposals were submitted by landlords and tenants. These proposed changes came out of the discussions by the Rent Board as urgent and needing immediate attention.

The Rent Board proposes three technical changes to the Rent Adjustment Ordinance, 1) to allow landlords to file a petition for a certificate that their property is permanently exempt from Rent Adjustment; 2) to fix July 1 of each year as the effective date of the annual general increase to compensate for inflation (CPI increase); and 3) to clarify the conditions under which the current year CPI adjustment and deferred CPI increases, known as "Banking" may be taken in the same year. These changes were approved by the Board at their meeting on July 27, 2006. The proposals were supported by representatives of both the Rental Housing Association of Northern Alameda County and the Oakland Tenants' Union at the Rent Board meeting. No opposition to any of these proposed changes has been expressed to the Rent Board or Staff.

**FISCAL IMPACT**

The proposed changes would increase the number of petitions to be processed by staff by an undetermined number. The anticipated increase in petitions is expected to be initially absorbed by existing and planned staffing levels. There would be a negligible increase in operating costs associated with processing petitions, including postage and mailing.

Item: \_\_\_\_\_  
CED Committee  
November 14, 2006

## **BACKGROUND**

After the Rent Adjustment Ordinance (hereinafter “Ordinance”) and Regulations were revised by the City Council in 2002, certain operational problems came to light as the changes were implemented. Among the several issues taken up by the Rent Board, three operational issues that commonly recur are: 1) landlords and tenants requesting the program advise them whether their property is exempt; 2) questions about when the annual inflation adjustment to rents (CPI) becomes effective; and, 3) questions about how to implement deferred CPI increases (Banking). These proposed changes were discussed at the Rent Board meeting of July 27, 2006. After receiving public comment, the Rent Board approved them unanimously. Staff concurs with the Rent Board’s recommendations and is now forwarding them to the City Council for consideration.

## **KEY ISSUES AND IMPACTS**

### CERTIFICATE OF EXEMPTION

The Rent Adjustment Ordinance prohibits Staff from issuing a certificate of exemption to a property unless the certificate is issued in response to a tenant petition. This provision was originally adopted to address the concern that a landlord could choose to allege a property was exempt when a unit was vacant, or when there would otherwise be no opposition to a grant of the certificate. In operation however, this precaution has burdened both landlords and tenants alike. Landlords and tenants both need to know with certainty whether a unit is exempt or not before making business decisions, like purchasing a building or renting a unit.

This proposed change would allow landlords to file a petition for a certificate that a unit is exempt on limited grounds: single-family and condominium units exempted by State law (Costa-Hawkins); new construction; and, substantial rehabilitation. The definition of the exemptions is unchanged. The burden of proof of exemption remains with the landlord. Even without opposition, the landlord must still produce sufficient evidence to prove the exemption.

Additional procedural safeguards are provided in the proposed change. They are:

- The case may not be decided by staff without a hearing; and,
- Staff may intervene in the case to present evidence to the Hearing Officer to insure that all of the facts are presented; and,
- In addition to the parties, the staff or the Hearing Officer may file an appeal to ask the Rent Board to review the decision.

In order to implement a process to petition for a Certificate of Exemption, both the Rent Adjustment Ordinance and the Regulations must be amended. The new language is underlined in the proposed legislation. In response to a suggestion by the Rental Housing Association, the certificate will be issued in a format that can be recorded with the Alameda County Recorder.

### FIX EFFECTIVE DATE OF CPI ADJUSTMENT

Currently, the Rent Adjustment Ordinance does not fix a date when a landlord can charge increased rent based on the annual CPI Rent Adjustment. The proposed amendment would fix the date as July 1 of the year in which the CPI Rent Adjustment applies as the first date on which a landlord could charge the new CPI Rent Adjustment for that year. The current Rent Adjustment Ordinance provides in §8.22.070.B:

...An owner may notice a CPI Rent Adjustment on the first day of the month following the Rent adjustment Program's announcement of the CPI Rent Adjustment for that year or sufficiently in advance of the Tenant's Anniversary Date to comply with state law (California Civil Code §827), whichever is later.

California Civil Code §827 provides that a rent increase of more than 10% must be noticed at least 60 days in advance, while an increase of 10% or less can be noticed only 30 days in advance. The variable notice time has created confusion among landlords and tenants, difficulties in calculating the limit on banked increases, and pressures on the Rent Adjustment Program to vary the date of the CPI announcement, all of which are resolved by establishing a fixed date for the CPI Adjustment. Staff and the Rent Board recommend that the effective date be consistent with the advent of the fiscal year, July 1. Landlords seeking to impose the new CPI Rent Adjustment on that date would have to notice the rent increase either 30 or 60 days, as appropriate, in advance of July 1.

### CLARIFY BANKING CALCULATION

“Banking” is the sum of deferred annual CPI Adjustments during the previous 10 years. When a landlord fails to give tenants the CPI increase in the year in which it accrues, it is automatically saved or “banked” for later implementation. Banked increases not charged to the tenants expire after 10 years. When a landlord chooses to implement these “banked” CPI increases Section 8.22.070.B. of the current Regulations provides, in pertinent part, that a landlord in any year may take either the banked increases plus any other increases specific to the property or current year’s general CPI Adjustment, but not both. Because the current CPI increase cannot be given together with banked CPI increases, the net effect is to deny the landlord the possibility of ever applying the latest CPI adjustment. The landlord will always be one year’s CPI increase behind. This proposal allows the landlord to include the current year CPI increase with banked increases when banking is the sole increase specific to the particular property used for the rent increase. The proposed changes correct this situation without increasing the annual limit on banking increases that may be imposed, which allows a maximum increase of three times the CPI Rent Adjustment in effect.

## **SUSTAINABLE OPPORTUNITIES**

Pursuant to City Council Resolution No. 74678, C.M.S. adopted on December 1, 1998, staff encourage property owners to operate sustainable projects. Rent adjustment stabilizes Oakland's existing residential tenancies, and thus will continue to stabilize existing neighborhoods. The proposed changes will make compliance with the Rent Adjustment Ordinance simpler and more efficient. The rental regulation programs, including Rent Adjustment address the "3 E's" of sustainability by:

### ***Economic:***

- Preserving the affordable housing inventory for families, seniors, and disabled people in Oakland.
- Mitigating the adverse economic pressure on surrounding neighborhoods caused by new housing development.

### ***Environmental:***

- Preventing social disruption of established neighborhoods with rental housing.
- Mitigating any adverse environmental impacts resulting from development of new and existing rental housing.

### ***Social Equity:***

- Improving the landscape and climate of Oakland's neighborhoods by encouraging longer-term tenancies in rental housing.
- Aiding low-income families to save money in order to become homeowners.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

The City's Rent Adjustment staff complies with legal requirements to provide access to all Rent Adjustment Program services for people with disabilities and to ensure that the units rented to people with disabilities comply with applicable codes. The Just Cause for Eviction Ordinance and the Ellis Act Ordinance provide special protections against evictions and relocation benefits for seniors and people with disabilities.

## **RECOMMENDATION(S) AND RATIONALE**

Staff recommends that the City Council adopt the proposed changes to the Rent Adjustment Ordinance and approve the resolution clarifying how rental property owners may charge banked rent increases to provide greater clarity and efficiency.

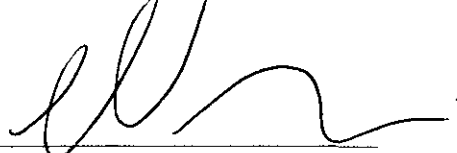
**ALTERNATIVE RECOMMENDATION(S)**

Staff proposes no alternative to correcting these technical problems to the Rent Adjustment ordinance.

**ACTION REQUESTED OF THE CITY COUNCIL**

It is requested that the City Council adopt the attached amendments to the Rent Adjustment Ordinance and Regulations.

Respectfully submitted,



DAN VANDERPRIEM  
Director of Redevelopment, Economic  
Development and Housing

Reviewed by:  
Sean Rogan  
Deputy Director  
Housing and Community Development


Prepared by:  
Rick Nemcik Cruz  
Rent Adjustment Program Manager

APPROVED AND FORWARDED TO  
THE COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE

  
DEBORAH EDGERLY  
OFFICE OF THE CITY ADMINISTRATOR

2006 NOV -1 PM 4: 05

APPROVED AS TO FORM AND LEGALITY

By:   
City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

**AN ORDINANCE AMENDING O.M.C. CHAPTER 8.22, RENT  
ADJUSTMENT PROGRAM, TO PROVIDE A SET DATE FOR  
IMPLEMENTING THE CONSUMER PRICE INDEX (CPI) BASED  
RENT ADJUSTMENT AND NEW PROCEDURES FOR RENTAL  
PROPERTY OWNERS TO OBTAIN A CERTIFICATE OF  
EXEMPTION**

**Whereas**, the Rent Adjustment Ordinance (O.M.C Chap. 8.22) does not have a fixed date for applying the annual general CPI based rent increase and this has created confusion among landlords and tenants alike as to when landlords can implement the annual rent increase; and

**Whereas**, landlords presently may not petition the Rent Adjustment Program for a determination of the status of their rental units as exempt or not and may only seek a determination as to the exempt status of their units in response to a tenant petition contesting a rent increase; and

**Whereas**, it is in the interests of both landlords and tenants alike to create an effective mechanism to ascertain the status of a unit to be rented as exempt or not exempt from application of rent controls so that both parties know whether the rental unit is covered when they enter into rental agreements; and

**Whereas**, the Housing Residential Rent and Relocation Board is charged with recommending changes to the Ordinance and Regulations; and

**Whereas**, the Rent Board received public input from both landlord and tenant organizations on proposed amendments to the Rent Adjustment Ordinance for setting a date to implement the annual CPI Adjustment and for certificates of exemption and the Rent Board unanimously recommended these changes; now, therefore,

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

**Section 1.** Chapter 8.22 of the Oakland Municipal Code (Rent Adjustment Ordinance) is hereby amended to read as follows:

8.22.030 Exemptions

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. 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. A Certificate of Exemption may be granted only for dwelling units that are permanently exempt from the Rent Adjustment Ordinance as new construction, substantial rehabilitation, or by state law (Costa Hawkins.)

b. For purposes of obtaining a Certificate of Exemption or responding to a Tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the Owner. A Certificate of Exemption is a final determination of exemption absent fraud or mistake.

c. Timely submission of a Certificate of Exemption previously granted in response to a petition shall result in dismissal of the petition, absent proof of fraud or mistake regarding the granting of the Certificate. The burden of proving such fraud or mistake is on the Tenant.

2. Exemptions for Substantially Rehabilitated Buildings.

a. In order to obtain an exemption based on substantial rehabilitation, an Owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.

b. The average basic cost for new construction shall be determined using tables issued by the Chief Building Inspector applicable for the time period when the Substantial Rehabilitation was completed.

**Section 2.** Chapter 8.22.070(B)(4) of the Oakland Municipal Code (Rent Adjustment Ordinance), is hereby amended to read as follows:

4. Effective Date of CPI Rent Adjustments. An Owner may notice a Rent increase for a CPI Rent Adjustment on the first day of the month 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 for that year or sufficiently in advance of the Tenant's Anniversary Date to comply with state law (California Civil Code § 827), whichever is later, 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.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2006

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID,  
AND  
PRESIDENT DE LA FUENTE

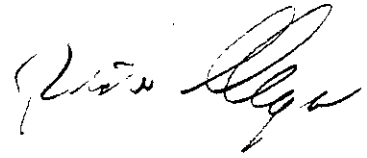
NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California



A handwritten signature in black ink, appearing to read "John R. Lee", is located in the upper right corner of the page.


## **NOTICE & DIGEST**

**AN ORDINANCE AMENDING O.M.C. CHAPTER 8.22, RENT ADJUSTMENT PROGRAM, TO PROVIDE A SET DATE FOR IMPLEMENTING THE CONSUMER PRICE INDEX (CPI) BASED RENT ADJUSTMENT AND NEW PROCEDURES FOR RENTAL PROPERTY OWNERS TO OBTAIN A CERTIFICATE OF EXEMPTION**

Adoption of this ordinance will amend Chapter 8.22 of the Oakland Municipal Code to provide a set date for owners to notice a rent increase for a Consumer Price Index (CPI) rent adjustment and amend procedures by which qualified owners may obtain a Certificate of Exemption from the Rent Adjustment Ordinance.

OFFICE OF THE CITY CLERK  
OAKLAND  
2006 NOV -1 PM 4:05

APPROVED AS TO FORM AND LEGALITY

By:   
City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCIL MEMBER \_\_\_\_\_

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**A RESOLUTION APPROVING AMENDMENTS TO THE RENT ADJUSTMENT REGULATIONS TO CLARIFY HOW RENTAL PROPERTY OWNERS MAY TAKE BANKED RENT INCREASES AND TO IMPLEMENT THE CERTIFICATE OF EXEMPTION PROCESS**

**WHEREAS**, amendments to the Housing Residential Rent and Relocation Board Regulations are necessary in order to permit landlords to completely implement deferred annual general rent increases and to improve coordination among the provisions of the Ordinance and Regulations; and

**WHEREAS**, the Rent Adjustment Ordinance was amended to permit landlords to file petitions seeking a determination as to whether their rental units are exempt from the Rent Adjustment Ordinance and regulations are needed to implement the certificate of exemption process; and

**WHEREAS**, the Housing Residential Rent and Relocation Board is charged with recommending changes to the Ordinance and Regulations; and

**WHEREAS**, public input in the process of making recommendations for the Rent Program Regulations was received by the Housing Residential Rent and Relocation Board; and after public input, the Board unanimously recommended these changes herein, now, therefore, be it

**RESOLVED:** That the Regulations for the Rent Adjustment Program previously amended in Resolution No. 77194 C.M.S. are hereby amended as set forth below;

**Section 1.**

**8.22.010 RENT ADJUSTMENTS FOR OCCUPIED COVERED UNITS.**

**A. Purpose.**

*This section sets forth the regulations for a Rent adjustment exceeding the CPI Rent Adjustment and that is not authorized as an allowable increase following certain vacancies.*

**B. Justifications for a Rent Increase in Excess of the CPI Rent Adjustment.**

1. The justifications for a Rent increase in excess of the CPI Rent Adjustment remain the same as under Resolution No. 71518 C.M.S. (Residential Rent Arbitration Board Rules and Procedures) Section 10.0 and the applicable definitions from Section 2.0 and pursuant to Ordinance No 12273 (Residential Rent Arbitration Ordinance) Section 8.22.060 C.2. Resolution No. 71518 C.M.S. Sections 2.0 and 10.0 are attached as Appendix A to these Regulations.

2. Ordinance No 12273 Section 8.22.060 C.2. provides as follows:  
"Standards for Rent Increases in Excess of the Annual Permissible Rent Increase [now "CPI Rent Adjustment"].

\* \* \*

2. The amount of rent increase allowable for the items listed in [OMC 8.22.070] (hereinafter the "standards"), shall be subject to the limitations set forth in the rules and procedures and shall be computed as follows. If the derived percentage allowable for the standards is in excess of the annual permissible rent increase [CPI Rent Adjustment], the higher percentage shall be used to compute the allowable rent increase. If the derived percentage allowable for the standards does not exceed the annual permissible rent increase, the annual permissible rent increase shall be used to compute the allowable rent increase. The derived percentage allowable for the standards shall not be added to the annual permissible rent increase."

2. Except for a Rent increase justified by banking, Rent may be increased by either  
a. the CPI Rent Adjustment, or  
b. the total amount justified under provisions of OMC Section 8.22.070.D.1), whichever is greater.

3. Section 8.22.070 B.2. does not apply to any Rent increase based on Banking pursuant to Appendix A, Section 10.5.

**Section 2.**

Exhibit A

10.5 Rental History/"Banking"

10.5.1 If a landlord chooses not to increase rents maximum amount permitted by the Ordinance since May 6, 1980, the remaining allowable percentage increase may be carried over to the succeeding twelve (12) month periods. However, any such carry over increase may not exceed three times the then current allowable annual rate in any given twelve month period and in no event, may any such

~~increase be carried forward for more than ten years. As used in this section, the term "carry over increase" shall be defined as any percentage increase in rent permitted under the Ordinance for prior years not yet passed on to the tenant and shall not include any percentage increase in rent permitted for the current year.~~

10.5.1 If a landlord chooses to increase rents less than the annual CPI Adjustment [ formerly Annual Permissible Increase] permitted by the Ordinance, any remaining portion of a CPI Rent Adjustment may be carried over to succeeding twelve (12) months periods ("Banked"). However, the total of CPI Adjustments imposed in any one Rent increase, including the current CPI Rent Adjustment, may not exceed three times the allowable CPI Rent Adjustment on the effective date of the Rent increase notice.

10.5.2 Banked CPI Rent Increases may be used with other Rent increase justifications. However, if banking is used with a Rent increase based on any of the other justifications, then the current CPI Rent Adjustment is not included in the calculation and is itself banked.

10.5.3 In no event may any banked CPI Rent Adjustment be implemented more than ten years after it accrues.

### **Section 3.**

8.22.030 EXEMPTIONS.

#### **C. Certificates of Exemption.**

1. Whenever an Owner seeks a Certificate of Exemption the following procedures apply:

a. The petition cannot be decided on a summary basis and may only be decided after a hearing on the merits;

b. Staff may intervene in the matter for the purpose of better ensuring that all facts relating to the exemption are presented to the Hearing Officer;

c. In addition to a party's right to appeal, Staff or the Hearing Officer may appeal the decision to the Rent Board; and,

d. A Certificate of Exemption shall be issued in the format specified by Government Code Section 27361.6 for purposes of recording with the County Recorder.

2. In the event that previously issued a Certificate of Exemption is found to have been issued based on fraud or mistake and thereby rescinded, the Staff shall record a rescission of the Certificate of Exemption against the affected real property with the County Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2006

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California