



AGENDA REPORT



TO: Honorable Mayor & City Council

FROM: Nikki Fortunato Bas
Council President, District 2

SUBJECT: Amendment to Just Cause for Eviction
Ordinance and Rent Program Service Fee
Ordinance

DATE: June 13, 2024

RECOMMENDATION

I respectfully recommend that The City Council Adopt The Following Legislation:

An Ordinance Amending The Just Cause For Eviction Ordinance and Rent Program Service Fee Ordinance To (1) Require Property Owners To State Compliance With Rent Registry And Rent Program Service Fee Obligations In Notices Terminating Tenancy And (2) Add Nonpayment Of Rent Program Service Fee As A Defense To Eviction.

EXECUTIVE SUMMARY

The proposed legislation consists of amendments to the Oakland Municipal Code. Specifically, the amendments to Chapter 8.22 of the Oakland Municipal Code would (1) require property owners to state compliance with Rent Registry and Rent Program Service Fee obligations in notices terminating tenancy and (2) add nonpayment of Rent Program Service Fee as a defense to eviction.

The proposed legislation would promote the long-term sustainability of the Rental Adjustment Program (RAP) fund, necessary for the continued provision of high-quality services for tenants and property owners, by incentivizing delinquent owners to pay the fee. It would do this by ensuring that property owners cannot avail themselves of the right to terminate a tenancy if they are delinquent with the RAP fee. Specifically, a notice of tenancy termination would need to expressly state whether the property owner is current with the fee payment, and tenants could use a property owner's delinquent fee status as a defense in an eviction lawsuit. Importantly, the incentive these amendments would provide for property owners to comply with their responsibility to pay the fee would increase collection of the RAP fee from delinquent property owners without the City having to pursue costly court collection actions.

The proposed legislation would also require owners to state compliance with the annual rent registration obligation in any notice terminating tenancy. Under existing law, an owner's failure to register is a defense to eviction. Requiring a compliance statement in the notice would help make tenants aware of the requirement and the eviction defense for the failure to register. Furthermore, increased compliance with the rent registration requirement would result in richer data to inform future public policy.

BACKGROUND/LEGISLATIVE HISTORY

Oakland Municipal Code (“OMC”) section 8.22.500.A establishes the Rent Program Service Fee (the “fee”) and provides that, “[t]he fee and any penalties or costs for late or nonpayment of the fee are dedicated solely to the payment or services and costs of the rent adjustment program and may be used only for the administration, outreach, legal needs, enforcement of Chapter 8.22 (including the rent adjustment program and the Just Cause for Eviction Ordinance), collection of this fee, and other costs of the rent adjustment program and cannot be used for any other purpose...” Also, section 8.22.500.H states that, “[a] rental property owner who has not paid the fee and any charges related to a delinquency in payment of the fee cannot: 1. Respond to a petition brought by a tenant; or 2. Petition for a rent increase.”

OMC section 8.22.300 codifies the Just Cause for Eviction Ordinance enacted by the electorate of the city of Oakland prohibiting a landlord from terminating a tenancy without good or just cause. (Ord. 12537 § 1 (part), 2003)

OMC section 8.22.360.F states that, “[t]he 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 the ordinance from which this section is derived contained in Section 8.22.350.”

The proposed legislation would require property owners to state compliance with rent registry and rent program service fee obligations in notices terminating tenancy and would add nonpayment of the rent program service fee as a defense to eviction.

ANALYSIS AND POLICY ALTERNATIVES

I recommend amending the Oakland Municipal Code, Chapter 8.22 to (1) require property owners to state compliance with Rent Registry and Rent Program Service Fee obligations in notices terminating tenancy and (2) add nonpayment of Rent Program Service Fee as a defense to eviction. Such amendments would help to achieve increased compliance with the RAP fee payment requirement.

RAP is the administrative agency charged with the implementation and enforcement of the City’s Municipal Code, Chapter 8.22 (Residential Rent Adjustments and Evictions). RAP provides essential services and is managed by Department of Housing and Community Development (HCD). RAP provides counseling, hearing, and community engagement services to tenants and property owners. RAP services include, but are not limited to: rent registration, tenant protections, processing and deciding rent adjustment petitions, holding hearing cases and mediations, processing appeals, and engaging in extensive public outreach. The RAP fund revenue is generated by annual fees paid by rental property owners who can pass half of the cost to tenants. The RAP fund balance was projected to become negative by FY ‘24-25 at its current deficit operation. To address this deficit for FY ‘24-25, the City is taking the following actions: reduce the number of non-HCD positions allocated to the RAP Fund; reduce HCD operation and maintenance costs; reduce HCD staffing costs by temporarily freezing two positions; and, in collaboration with the Business Tax Office, increase revenue by collection actions of unpaid RAP fees and penalties, which past efforts have shown result in significantly increased revenue.

These ordinance amendments are being proposed to help to address the budget issue related to RAP fee delinquency.

The following Business Tax Office’s RAP Collected and Outstanding Fees Table shows about \$1.6 million in uncollected fees and about \$933,000 in penalties since 2018 through 2023.

Year	RAP Fee Billed	Outstanding Fees	Delinquency Rate	Outstanding Penalties	Collected
2018	5,161,227	129,713	2.51%	92,262	5,031,514
2019	6,050,022	230,220	3.81%	146,303	5,819,802
2020	7,416,046	398,322	5.37%	240,893	7,017,724
2021	8,465,873	365,670	4.32%	208,346	8,100,203
2022	7,679,365	219,956	2.86%	132,040	7,459,409
2023	7,634,066	282,065	3.69%	113,782	7,352,001
Total	42,406,599	1,625,946	3.83%	933,625	40,780,653

An alternative to this proposal would be to increase the RAP fee and for the increase to take effect on March 1, 2025. However, for FY ‘24-25, I, as well as HCD, believe that it is important to exhaust all other measures that can be taken before imposing an increase that would impact all property owners and tenants (to whom half of the fee can be passed on). Furthermore, increased compliance with both RAP fee payment requirement and rent registration requirement would result in a larger base of revenue to sustain the provision of high-quality services to tenants and property owners and a larger dataset of rental data to inform future public policy, respectively.

FISCAL IMPACT

No negative fiscal impact caused by any of the recommended changes to the Municipal Code are anticipated. On the contrary, increased compliance with the RAP fee payment requirement and resulting increased revenue is expected.

PUBLIC OUTREACH / INTEREST

The Council President’s Office and HCD’s RAP staff have reached out to property owner and tenant advocates seeking their feedback and informing them about the intent of the proposed changes.

COORDINATION

The report was written in consultation with the HCD’s RAP staff, City Attorney’s Office and Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: Seeking and securing compliance with the RAP Service Fee Ordinance will help to ensure the stability of RAP which is charged with the implementation and enforcement of the rent registry and rent adjustment ordinances among others that the City has adopted to preserve the affordable housing inventory for families, seniors, and disabled residents in the City of Oakland.

Environmental: Adoption of these proposed pieces of legislation will help mitigate adverse environmental impacts of poor-quality rental housing through RAP’s continued ability to resolve petitions involving code violations and lack of maintenance, uncovering health and safety hazards in the process of

its execution, in turn encouraging cohesion and vested interest of owners and tenants for healthy neighborhoods.

Race and Equity: Securing RAP's financial stability by restricting property owners' ability to evict tenants if they are delinquent with RAP fee payments, and so incentivizing them to comply with the RAP Service Fee Ordinance, would allow RAP to properly implement and enforce the residential rent adjustment and eviction laws that the City has adopted to preserve vibrant and diverse neighborhoods and communities through stemming displacement and preventing homelessness, both of which disproportionately impact low-income people of color.

ACTION REQUESTED BY THE CITY COUNCIL

I recommend that the City Council adopt the following legislation:

An Ordinance Amending The Just Cause For Eviction Ordinance and Rent Program Fee Ordinance To (1) Require Property Owners To State Compliance With Rent Registry And Rent Program Service Fee Obligations In Notices Terminating Tenancy And (2) Add Nonpayment Of Rent Program Service Fee As A Defense To Eviction.

For questions regarding this report, please contact the Amaya Lin, Senior Policy Advisor, Office of Council President Nikki Fortunato Bas, at 510-238-7022, or Rent Adjustment Program Manager, Victor Ramirez, at 510-238-3220.

Respectfully submitted,



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