

INTRODUCED BY COUNCIL MEMBER PHILIP M. CHANG PH 12: 03


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL
13528
ORDINANCE NO. _____ C.M.S.

**AN ORDINANCE TO REMOVE THE SUBSTANTIAL
REHABILITATION EXEMPTION FROM THE RENT ADJUSTMENT
ORDINANCE (O.M.C. 8.22.030.B.2)**

WHEREAS, the City of Oakland has been experiencing a severe housing affordability crisis for years that has been exacerbated in the last few years due to the Bay Area wide housing crisis; and

WHEREAS, the City Council, on November 28, 2017 (13465 C.M.S.) adopted a 180-day moratorium on substantial rehabilitation exemption pursuant to Chapter 8.22 of the Oakland Municipal Code through April 24, 2018; and on April 17, 2018 (13481 C.M.S.) extended the moratorium by another 180 days to October 21, 2018 to allow staff to provide City Council with options and recommendations for modifying or eliminating the substantial rehabilitation exemption;

WHEREAS, the City Council, on September 17, 2018, reviewed the City Administrator's recommendations and directed the City Administrator to prepare legislation to eliminate the substantial rehabilitation exemption; and

WHEREAS, on October 2, 2018 (13503 C.M.S.), the City Council extended the moratorium by an additional 180 days until April 19, 2019 to allow staff to prepare and Council to review legislation to eliminate the substantial rehabilitation exemption; and

WHEREAS, market rents have dramatically increased since the substantial rehabilitation exemption was included in the Oakland's Rent Adjustment Ordinance in the 1980's permitting property owners to recover more rent revenue through vacancy decontrol thereby reducing the need for an exemption from rent control to incentivize improvement and rehabilitation of existing rental units; and

WHEREAS, the City Council finds that a substantial rehabilitation exemption is not required for a rental property owner to receive a fair return on investment in the property; and

WHEREAS, the City Council finds that the elimination of the substantial rehabilitation exemption will cause the Rent Adjustment Ordinance to be aligned with

the practices of most other rent stabilization ordinances in California that do not contain such an exemption.

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

SECTION 1. Amendment of Oakland Municipal Code Section 8.22.030.

O.M.C. Section 8.22.030 is hereby amended to read as follows (additions are shown as double underline and deletions are shown as a ~~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 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).
8. A dwelling unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by an owner of record as his or her principal residence. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the state of California.

B. Exemption Procedures.

1. Certificate of Exemption:

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

2. ~~Exemptions for Substantially Rehabilitated Buildings.~~

- ~~a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project and performed substantial work on each of the units in the building.~~
- ~~b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.~~
- ~~c. An owner seeking to exempt a property on the basis of substantial rehabilitation must first obtain a certificate of exemption after completion of all work and obtaining a certificate of occupancy. If no certificate of occupancy was required to be issued for the property, in lieu of the certificate of occupancy an owner may provide the last finalized permit. For any property that has a certificate of occupancy issued on or before the date of enactment of this subparagraph O.M.C. 8.22.030B.2.c. for which an owner claims exemption as substantially rehabilitated, the owner must apply for such exemption not later than June 30, 2017 or such exemption will be deemed to be vacated.~~
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.

- D. Exemptions for Owner-Occupied Properties of Three or Fewer Units. Units in owner-occupied properties divided into three or fewer units will be exempt from this chapter, Article I under the following conditions:
1. Two-Year Minimum Owner Occupancy. A qualifying owner of record must first occupy one of the units continuously as his or her principal residence for at least two years. This requirement does not apply to any property in which the owner resides in the premises on or before August 1, 2016.
 2. Continuation of Exemption. The owner-occupancy exemption continues until a qualifying owner of record no longer continuously occupies the property.
 3. Rent Increases. The owner of record qualifying for this exemption may notice the first rent increase that is not regulated by this chapter, article I two years after the date the qualifying owner of record starts residing at the affected property as his or her principal place of residence.
 4. An owner claiming such exemption must provide information to the Rent Program on when the owner occupancy began and documentation showing the minimum of two years continuous occupancy. Staff shall develop a form for this purpose.

SECTION 2. Applicability. This ordinance will not apply to any building on which the rental property owner receives relief from the moratoria imposed by 13465 C.M.S., 13481 C.M.S., or 13503 C.M.S., and which is issued a final certificate of exemption from the Rent Adjustment Program.

- A. The Rent Adjustment Program shall only grant relief from the moratoria imposed by 13465 C.M.S., 13481 C.M.S, or 13503 C.M.S. if the rental property owner can prove each of the following:
- a. The certificate of occupancy for the property or finalized permit for the work at the property was issued after September 20, 2016; and
 - b. Permits were taken out for the substantial rehabilitation project and substantial work was performed and substantial monies paid or liabilities incurred before October 20, 2017; and
 - c. A petition seeking relief from the substantial rehabilitation moratorium was filed before the effective date of this ordinance.
- B. Any rental property owner who obtains relief from the moratoria imposed by 13465 C.M.S., 13481 C.M.S, or 13503 C.M.S. must file a petition with the Rent Adjustment Program for a substantial rehabilitation exemption certificate within one month of the date the petition for relief from the moratoria is granted. If a petition for a substantial rehabilitation exemption certificate has not been filed within one month of the date the petition for relief from the moratoria is granted, the substantial rehabilitation exemption for that property is deemed vacated.

SECTION 3. 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 4. 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 5. CEQA Exemption. This action is exempt from the requirements of 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 (actions consistent with the general plan and zoning).

IN COUNCIL, OAKLAND, CALIFORNIA,

MAR 2 1 2019

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON ~~MC ELHANNY~~ KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN - 7

NOES - 0

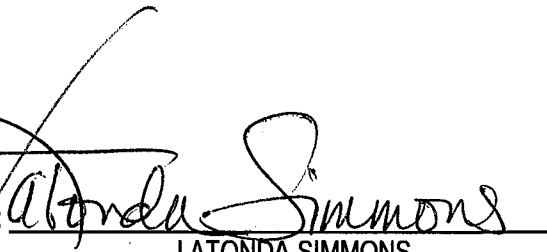
ABSENT - 0

ABSTENTION - 0

Excused - 1 McElhanny
Introduction Date

FEB 26 2019

ATTEST:



LATONDA SIMMONS

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

Date of Attestation:

3/29/2019

NOTICE AND DIGEST

AN ORDINANCE TO REMOVE THE SUBSTANTIAL REHABILITATION EXEMPTION FROM THE RENT ADJUSTMENT ORDINANCE (O.M.C. 8.22.030.B.2)

This Ordinance would amend the Rent Adjustment Ordinance (O.M.C. Chapter 8.22) to eliminate the substantial rehabilitation exemption.