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TO: Oakland City Council and Members of the Public
FROM: City Councilmember Dan Kalb
SUBJECT: Amendments to the Rent Adjustment and Just Cause for Eviction Ordinances
DATE: October 10, 2024

RECOMMENDATION

Adopt an ORDINANCE (1) AMENDING THE RENT ADJUSTMENT ORDINANCE TO (A) LIMIT BANKING OF CPI RENT INCREASES TO EXPIRE AFTER FOUR YEARS AND AFTER TRANSFER OF PROPERTY; (B) PROHIBIT RENT INCREASES FOR OWNERS DELINQUENT ON BUSINESS TAXES; (C) EXTEND TENANT PETITION DEADLINES FROM 90 DAYS TO 180 DAYS AND (2) AMENDING THE JUST CAUSE FOR EVICTION ORDINANCE TO PROHIBIT NO FAULT EVICTIONS FOR OWNERS DELINQUENT ON BUSINESS TAXES

EXECUTIVE SUMMARY

This ordinance modifies the number of years a property owner may bank from 10 years to 4 years and limits the transfer of banked rent to spouses and children or stepchildren only. In order to increase compliance with property owner payment of the business tax, this ordinance also prohibits no-fault evictions and rent increases of any kind if the owner is delinquent on this tax. In order to provide tenants more time to challenge unlawful rent increases, such as those associated with this legislation, this ordinance increases the tenant petition deadline from 90 days to 180 days. This legislation does not modify or increase the fines and fees associated with nonpayment of the business tax, however it does include a direction to the Administration to develop payment plan regulations in order to work with property owners experiencing financial hardship.

BACKGROUND/ LEGISLATIVE HISTORY

This ordinance makes a few changes to the Rent Adjustment Ordinance and one change to the Just Cause for Eviction Ordinance. The Rent Adjustment Ordinance can be found in section 8.22 of the Oakland Municipal Code (OMC). The major components of existing legislation are:

Rent Adjustment Ordinance OMC Chapter 8.22
Article 1: Residential Rent Adjustment Program. This section outlines the rules governing the RAP and the RAP petition process, and sets limits on

rental increases for covered units.

Article 2: Just Cause for Eviction. This section outlines the rules outlining when an owner can and cannot evict a tenant.

Article 3: Terminating Tenancy to Withdraw Residential Rental Units from the Rental Market. This section outlines the process for removing a rental unit from the market through the Ellis Act.

Article 4: Rent Program Service Fee. This section outlines the requirements for paying the RAP service fee.

Article 5: Tenant Protection Ordinance. Adopted in 2020, this section outlines the rules surrounding the Tenant Protect Ordinance (TPO). The TPO deters harassment by property owners and provides tenants legal recourse in the case harassment occurs. The TPO also provides civil remedies for violations.

The genesis for the ordinance before you today was the realization the a majority of delinquent business tax accounts were for residential rental property owners. Every year, the Finance Department brings to council a report detailing the accounts and dollar amount owed to the City that can lien. This year, \$2.6M in liens, penalties, interest and other administrative charges were owed the City. These liens appear on the property owner's County property tax assessment. Because of allowable extensions, the administrative hearing process, the time-intensive process of compiling delinquent accounts, and the time elapsed before the next property tax assessment, the City receives these funds sometimes a year and-a-half or two years later. This is unacceptable given the City's current financial state.

Timeline for Recovery of Delinquent Business Tax

- **December:** Courtesy notice mailed to property owners
- **January 2:** First day to pay business taxes
- **March 1:** Last day to pay Business tax / Deadline to request 45 day extension
- **April 15:** Deadline for those with extensions
- **May:** Administrative hearings are held
- **July:** Finance presents report of delinquent properties at City Council
- **November 1:** Taxpayers receive their property tax bill from Alameda County
- **December 1:** Deadline for payment of 1st installment
- **April 10:** Deadline for payment of 2nd installment
- **?** : City of Oakland receives payment from Alameda County.

ANALYSIS

Banking

One of the main goals of this ordinance is to reduce the financial hardship of rent increases—particularly larger, sudden increases—on tenants. Currently, landlords can bank ten years worth of rent increases. They can then impose a maximum of three times the current CPI adjustment, generally up to 10% in one year.¹ Property owners with 10 years of banked increases could impose a 9%-10% increase 3 years in a row. Consider the example below. For simplicity, we will assume an CPI Rent Adjustment of 3% across all years. Therefore, if a tenant was paying \$1500 for a rent-controlled one bedroom in 2023, with annual increases of 3%, they will be paying \$2016.92 in 2033.

However, if the landlord banks their increases over the course of 10 years (does not increase rent for 10 years), and then imposes the maximum allowable increase over the course of 3 years, the tenant will go from paying \$1,500 per month one year to \$1,815 per month the next, to \$1,996.5 in the third year. At this point the property owner has raised rents almost to the same level they would have reached had they not banked their increases. The tenant on the other hand, may not have been fortunate enough to see their income increase by the same factor, and may now be struggling to pay these higher rents.

According to advocates for renters, large rent increases like these contribute significantly to the economic instability of long-term renters, especially those who are elderly and may be on fixed incomes.

Prohibiting or limiting banking is generally understood to make rental increases more predictable and tolerable by preventing property owners from imposing large increases (up to 10% in a year per state and local law) all at once or over just two or three years.

Comparisons with Nearby Cities		
	<i>Annual General Adjustment (AGA)</i>	<i>Banking</i>
Oakland (currently)	60% CPI or 3%, whichever is lower	10 years
Oakland (proposed)	Unchanged, same as above	4 years
Alameda	70% CPI	<ol style="list-style-type: none">1. No increase may exceed AGA plus 3% or max allowable rent, whichever is smaller2. Cannot bank more than 8% of rent3. Cannot apply banked rents more than 3x during a tenancy²
Berkeley	65% CPI	Up to rent ceiling

¹ State law sets the maximum allowed rent increase at 5% plus the local consumer price index— or 10%, whichever is lower.

² <https://www.alamedarentprogram.org/FAQs/Moratorium-FAQ#:~:text=Tenants%20also%20have%20an%20opportunity,not%20bank%20more%20than%208.0%25>.

San Jose	5% of rent, not based on CPI ³	NO banking
Richmond	100% CPI	Not to exceed Maximum Allowable Rent

Transfers of Property

In Oakland property owners may currently transfer banked rents to new owners. In order to keep properties as affordable as possible, this ordinance limits this transfer to spouses and children/stepchildren only. The City of Alameda is more restrictive than this proposed ordinance, disallowing the transfer of banked increases to any new owner.

Comparisons with Nearby Cities	
	<i>Does banked rent transfer to new owner?</i>
Oakland (currently)	Yes
Oakland (proposed)	Only for spouses and children/stepchildren
Alameda	No
San Jose	N/A (see above table, no rent banking)
Richmond	Yes

Business Tax Delinquency, Rental Increases, and Prohibition No-Fault Evictions

Anyone operating or doing business in the City of Oakland must pay business tax. Federal and state of California tax exempt nonprofit organizations as well as family daycare homes (licensed by the State) and caring for fewer than 14 children, are exempted. Rental property owners must pay \$13.95 per \$1000 of gross income, or ~1.4%. This means that rental property owners who have not collected rent do not owe any business tax besides a one-time \$100 registration fee and a one-time \$5 recordation fee.⁴ Should property owners not pay, they are subject to hefty fines and penalties. Registrations 31 – 60 days late add 10%, while 61 days late and over add an additional 25% (10% + 25% = 35%). Additionally, interest that accrues at 1% per calendar month is added on top of the registration fee, tax and penalties. Because of these fines and penalties, it is in every property owner’s best interest to pay promptly and in full; yet many do not pay. ***For this reason, this ordinance directs the City Administrator to work with staff to create clearly defined protocols for working with rental property business owners on payment plans, should they find themselves in financial hardship.***

In order to further incentivize payment of the business tax, this ordinance will prohibit any rent increase (CPI or otherwise) until the tax is paid and the business license certificate is issued. Additionally, property owners who are delinquent on this tax shall not be allowed to effect no-fault evictions (e.g. owner move-in, substantial renovations) until the taxes are paid to the city. Evictions for cause will still be permitted as these represent undeniable reasons or “just causes” for eviction. Rates of eviction, including no-fault evictions, are on the rise. In 2023,

³ <https://siliconvalleyathome.org/resources/rent-stabilization-2/#:~:text=In%20Santa%20Clara%20County%2C%20the,are%20governed%20by%20State%20law.>

⁴ <https://cao-94612.s3.us-west-2.amazonaws.com/documents/Fiscal-Year-2024-25-Adopted-MFS.pdf>

ten of California’s largest counties have seen more evictions filed per month than in 2019.⁵ According to Tenants Together, half a million Californians face eviction every year.⁶

Petitions

Most municipalities that have a rent control stabilization program do not set a limit on when tenants can bring a petition against their landlord due to an unlawful rent increase. This is because an unlawful increase remains an unlawful increase regardless of when a tenant brings a petition. However, in Oakland, we do set a short limit on when tenants can file a petition—90 days. This ordinance increases that time frame to 180 days in order to give tenants more time to learn about their rights and seek expert help if needed. Future legislation may want to consider whether a time limit is merited at all.

Comparisons with Nearby Cities		
	<i>Are tenant petitions time-limited?</i>	<i>How long after notice to file petition?</i>
Oakland (currently)	Yes	90 days
Oakland (proposed)	Yes	180 days
Alameda	Yes	3 years ⁷
San Francisco	No	N/A
Berkeley	No	N/A
San Jose	No	N/A
Richmond	No	N/A

FISCAL IMPACT

While we cannot know ahead of time the extent to which these amendments will affect behavior, it is our expectation that they will increase compliance with business license tax payment and deadlines. Given the City’s difficult financial circumstances, any additional funds this ordinance is able to bring in will be beneficial for the financial health of the City and our ability to provide critical services.

In order to implement the majority of this legislation, the administration need only make small, no-cost changes to what they already do. The first small change is to add language to the existing notice the Finance Department already sends to rental property business owners reminding them that the deadline is approaching. This notice will include language advising property owners that if they do not pay their business tax, they will be unable to increase rents

⁵ <https://calmatters.org/housing/homelessness/2023/11/california-evictions-post-pandemic/#:~:text=In%20San%20Diego%20County%2C%20eviction,%E2%88%924%25>

⁶ <https://www.tenants.together.org/tt-report-california-evictions-are-fast-frequent-and-underreported#:~:text=Tenants%20Together%2C%20in%20collaboration%20with,Californians%20face%20eviction%20every%20year.>

⁷ <https://www.alamedarentprogram.org/files/sharedassets/housingauth/v/3/forms/rp-100c-review-rent-increase-notice.pdf>

or effect no-fault evictions. The second small change is to include language on the RAP notice—the form explaining the existence of the RAP and tenants’ rights under the rent law—notifying tenants of these same changes. Under the Rent Adjustment Ordinance, property owners must give tenants a copy of the RAP notice (1) at the commencement of a new tenancy and are required to give it in three languages English, Spanish, and Chinese, AND (2) with every notice of a rent increase. While we cannot guarantee that property owners and tenants will read these forms, City staff as well as tenant and property owner groups will work to educate the public on these new provisions.

PUBLIC OUTREACH/INTEREST

Our office met with both tenant and property owner organizations. Please note that these groups do not comprise the entirety of tenant and property groups in Oakland.

Tenant Groups

- East Bay Rental Housing Organizations (EBHO)
- Alliance of Californians for Community Empowerment (ACCE)
- Centro Legal de la Raza
- Oakland Tenants Union
- East Bay Community Law Center (EBCLC)

Property Owner and Business Groups

- East Bay Rental Housing Association (EBRHA)
- Bridge Association of Realtors
- In It Together*
- Jobs and Housing Coalition*
- Oakland Metro Chamber of Commerce

*Organizations that did not yet respond as of the date of this report

Tenant groups cited unlawful rent increases as a common issue, which this legislation helps address by providing more time for tenants to bring petitions. Several groups also expressed concern with the practice of banking in general, and reported that 10% increases over the course of 3 years have been a financial burden for their clients. They also reported large numbers of evictions in Oakland and supported the new provision against no-fault evictions for nonpayment of business tax for this reason.

Property owner groups expressed concern with any reduction in banking. They believe that banking is an important way in which landlords can offer a temporary “break” to their tenants. These groups also expressed frustration with the COVID moratorium (which is no longer in effect), and reported that some property owners are still struggling financially because of lost rent. In order to address these concerns, this legislation asks the City Administrator to work with Finance staff to develop clear payment plan protocols for property owners experiencing financial hardship. While the goal of this legislation is to reduce multi-year increases of 10%, we do not wish overly distress property owners who may have been planning on using these increases. Therefore, this ordinance contains a phase-in. By including an implementation date of December 31, 2025 for the multi-year banking, property owners who may have the maximum number of years of banked rent (10 years) may utilize most—but not all—of their

banked rent if they so choose. For example, these owners may take the maximum increase this year and in 2025. Then, in 2026, when the legislation comes into effect, they will have the maximum number of years banked, or 4 years, losing at most 3 years of banked rent.

COORDINATION

Our office worked with the Oakland City Attorney's Office to create this legislation. For questions, please contact Keara O'Doherty, Chief of Staff to Dan Kalb, (510) 238-7014, kodoherty@oaklandca.gov.

Best,



Dan Kalb
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