

INTRODUCED BY MAYOR LIBBY SCHAFF, COUNCILMEMBER
DAN KALB, AND PRESIDENT PRO TEMPORE SHENG THAO

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

**AN ORDINANCE TO AMEND THE RENT ADJUSTMENT ORDINANCE
(OAKLAND MUNICIPAL CODE CHAPTER 8.22) TO ADD VEHICULAR
RESIDENTIAL FACILITIES AS COVERED UNITS**

WHEREAS, Oakland has a housing affordability crisis. According to the Bay Area Equity Atlas, since 2011, apartment rents in the city have increased 72 percent while median incomes have remained relatively unchanged; and

WHEREAS, the housing affordability crisis is contributing to residential displacement in Oakland; and

WHEREAS, the Oakland City Council regards tenant displacement as one of the most significant challenges facing the City and is dedicated to pursuing policies that promote housing security for inhabitants of all income levels and preserve the integrity and character of the Oakland community; and

WHEREAS, the existing Rent Adjustment Ordinance, codified as Oakland Municipal Code (OMC) Chapter 8.22, provides relief to residential tenants in Oakland by limiting rent increases for existing tenants; and

WHEREAS, concurrently with this Ordinance, the City Council is considering amendments to the Oakland Planning Code creating a new facility type, Vehicular Residential Facility, that would allow recreational vehicles to be used for permanent residential occupancy in all zones where residential uses are permitted; and

WHEREAS, tenants living in Vehicular Residential Facilities could be subjected to large rent increases due to market fluctuations; and

WHEREAS, tenants living in Vehicular Residential Facilities would benefit from being covered by the Rent Adjustment Ordinance because rent increases would be limited thereby promoting housing security for inhabitants; and

WHEREAS, the Costa-Hawkins Rental Housing Act (California Civil Code Section 1954.50 et seq.) does not apply to Vehicular Residential Facilities because Vehicular Residential

Facilities are vehicles, not buildings, and are not issued a certificate of occupancy, and the Costa-Hawkins Rental Housing Act does not apply to similar structures such as mobile homes; and

WHEREAS, on October 26, 2021, the Community and Economic Development Committee of the City Council conducted a duly noticed public meeting and voted to recommend approval of this OMC amendment, along with the proposed amendments to the Oakland Planning Code considered concurrently with this Ordinance; and

WHEREAS, on [date of hearing], the City Council conducted a duly noticed public hearing to consider the proposed OMC amendment, and all interested parties were provided ample opportunity to participate in said hearing and express their views;

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

SECTION 1. Amendment of Oakland Municipal Code Section 8.22.020. OMC Section 8.22.020 is hereby amended to read as follows (additions are shown as double underline and deletions are shown as a ~~striketrough~~):

8.22.020 Definitions.

As used in this Chapter, Article I:

"1946 Notice" means any notice of termination of tenancy served pursuant to California Civil Code Section 1946. This notice is commonly referred to as a thirty (30) or sixty (60) day notice of termination of tenancy, but the notice period may actually be for a longer or shorter period, depending on the circumstances.

"1946 Termination of Tenancy" means any termination of tenancy pursuant to California Civil Code § 1946.

"Additional occupant" means an occupant whose addition to the unit has increased the total number of occupants above the base occupancy level. The owner may petition to increase the rent by an amount up to five percent (5%) for each additional occupant above the base occupancy level. A rent increase shall not be based on an additional occupant who is the spouse, registered domestic partner, parent, grandparent, child, adopted child, foster child, or grandchild of an existing tenant, or the legal guardian of an existing tenant's child or grandchild who resides in the unit, or a caretaker/attendant as required for a reasonable accommodation for an occupant with a disability. A rent increase granted under this Section shall be reversed if the number of occupants decreases.

"Anniversary Date" is the date falling one (1) year after the day the tenant was provided with possession of the covered unit or one (1) year after the day the most recent rent adjustment took effect, whichever is later. Following certain vacancies, a subsequent tenant will assume the anniversary date of the previous tenant (Section 8.22.080).

"Appeal Panel" means a three-member panel of Board members authorized to hear appeals of Hearing Officer decisions. Appeal panels must be comprised of one (1) residential rental property owner, one (1) tenant, and one (1) person who is neither a tenant nor a residential rental

property owner. Appeal panels may be made up of all regular Board members, all alternates, or a combination of regular Board members and alternates.

"Banking" means any CPI Rent Adjustment (or any rent adjustment formerly known as the Annual Permissible Rent Increase) the owner chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in the regulations.

"Base occupancy level" means the number of tenants occupying the covered unit as principal residence as of June 16, 2020, with the owner's knowledge, or allowed by the lease or rental agreement effective as of June 16, 2020, whichever is greater, except that, for units that had an initial rent established on or after June 17, 2020, "base occupancy level" means the number of tenants allowed by the lease or rental agreement entered into at the beginning of the current tenancy.

"Board" and "Residential Rent Adjustment Board" means the Housing, Residential Rent and Relocation Board.

"Capital Improvements" means those improvements to a covered unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the tenant rather than the owner. Capital improvement costs that may be passed through to tenants include seventy (70) percent of actual costs, plus imputed financing. Capital improvement costs shall be amortized over the useful life of the improvement as set forth in an amortization schedule developed by the Rent Board. Capital improvements do not include the following as set forth in current and future regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; improvements that are greater in character or quality than existing improvements ("gold-plating," "over-improving"), excluding: improvements approved in writing by the tenant, improvements that bring the unit up to current building or housing codes, or the cost of a substantially equivalent replacement; or costs for which a landlord is reimbursed (e.g., insurance, court awarded damages, subsidies, tax credits, and grants).

"Costa-Hawkins" means the California state law known as the Costa-Hawkins Rental Hawkins Act codified at California Civil Code § 1954.50, et seq. (Appendix A to this Chapter contains the text of Costa-Hawkins).

"Covered Unit" means any dwelling unit, including joint living and work quarters, and all housing services located in Oakland and used or occupied in consideration of payment of rent with the exception of those units designated in Section 8.22.030 A. as exempt. "Covered Unit" includes a Vehicular Residential Facility, as defined in Oakland Planning Code Section 17.10.700, rented or offered for rent for living or dwelling purposes, whether rent is paid for the recreational vehicle and the lot upon which it is located, or rent is paid for the lot alone.

"CPI—All Items" means the Consumer Price Index—All items for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics for the twelve (12) month period ending on the last day of February of each year.

"CPI—Less Shelter" means the Consumer Price Index—All items less shelter for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics for the twelve (12) month period ending on the last day of February of each year.

"CPI Rent Adjustment" means the maximum rent adjustment (calculated annually according to a formula pursuant to Section 8.22.070 B.3) that an owner may impose within a twelve (12) month period without the tenant being allowed to contest the rent increase, except as provided in Section 8.22.070 B.2. (failure of the owner to give proper notices, decreased housing services, and uncured code violations).

"Ellis Act Ordinance" means the ordinance codified at O.M.C. 8.22.400 (Chapter 8.22, Article III) setting out requirements for withdrawal of residential rental units from the market pursuant to California Government Code § 7060, et seq. (the Ellis Act).

"Fee" means the rent program service fee as set out in O.M.C. 8.22.500 (Chapter 8.22, Article IV).

"Housing services" means all services provided by the owner related to the use or occupancy of a covered unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, employee services, and any other benefits or privileges permitted the tenant by agreement, whether express or implied, including the right to have a specific number of occupants and the right to one-for-one replacement of roommates, regardless of any prohibition against subletting and/or assignment.

"Just Cause for Eviction Ordinance" means the ordinance adopted by the voters on November 5, 2002 (also known as Measure EE) and codified at O.M.C. 8.22.300 (O.M.C. Chapter 8.22, Article II).

"Mandatory Seismic Capital Improvement" means capital improvements that consist of mandatory seismic retrofitting as required in O.M.C. Chapter 15.27. Allowable adjustments of rents for work required by O.M.C. Chapter 15.27 shall be governed by Article 1, Chapter 8.22.

"Owner" means any owner, lessor or landlord, as defined by state law, of a covered unit that is leased or rented to another, and the representative, agent, or successor of such owner, lessor or landlord.

"Owner of Record" means a natural person, who is an owner of record holding an interest equal to or greater than thirty-three (33) percent in the property, but not including any lessor, sublessor, or agent of the owner of record.

"Regulations" means the Regulations adopted by the Board and approved by the City Council for implementation of this Chapter, Article I (formerly known as "Rules and Procedures") (after regulations are approved, they will be attached to this Chapter as Appendix B).

"Rent" means the total consideration charged or received by an owner in exchange for the use or occupancy of a covered unit including all housing services provided to the tenant.

"Rent Adjustment Program" means the department in the City that administers this Chapter and also includes the Board.

"Security Deposit" means any payment, fee, deposit, or charge, including but not limited to, an advance payment of rent, used or to be used for any purpose, including but not limited to the compensation of an owner for a tenant's default in payment of rent, the repair of damages to the premises caused by the tenant, or the cleaning of the premises upon termination of the tenancy exclusive of normal wear and tear.

"Tenant" means a person entitled, by written or oral agreement to the use or occupancy of any covered unit.

"Uninsured Repairs" means that work done by an owner or tenant to a covered unit or to the common area of the property or structure containing a covered unit which is performed to secure compliance with any state or local law as to repair damage resulting from fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds.

"Voluntary Seismic Capital Improvement" means capital improvements that consist of "seismic strengthening" as defined in O.M.C. Section 15.30.100, but is not required for compliance under Chapter 15.27.

SECTION 2. 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 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.
 - 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. 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 3. This action is exempt from the California Environmental Quality Act (CEQA) under the following, each as a separate and independent basis, including but not limited to, the following: CEQA Guidelines Section 15378 (regulatory actions), Section 15061(b)(3) (no significant environmental impact), Section 15183 (actions consistent with a community plan, general plan, or zoning), Section 15301 (existing facilities), Section 15303 (new construction or conversion of small structures), Section 15304 (minor alterations of land), Section 15311 (accessory structures), and Section 15322 (in fill development projects).

SECTION 4. 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 5. 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.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO 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

**AN ORDINANCE TO AMEND THE RENT ADJUSTMENT ORDINANCE
(OAKLAND MUNICIPAL CODE CHAPTER 8.22) TO ADD VEHICULAR
RESIDENTIAL FACILITIES AS COVERED UNITS**

This Ordinance adds Vehicular Residential Facilities as Covered Units under the Rent Adjustment Ordinance.