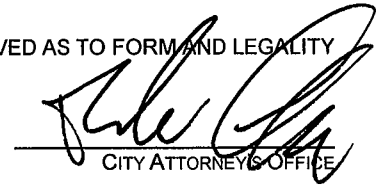


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INTRODUCED BY COUNCIL MEMBERS KANG, GIBSON MCELHANEY, AND GUILLEN

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CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING CHAPTER 8.22, ARTICLE I (RENT ADJUSTMENT) OF THE OAKLAND MUNICIPAL CODE TO: (1) MODIFY EXEMPTIONS FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES AND SUBSTANTIALLY REHABILITATED PROPERTIES; (2) REQUIRE THAT OWNERS FILE PETITIONS FOR RENT INCREASES IN EXCESS OF THE ANNUAL CONSUMER PRICE INDEX INCREASE (3) CHANGE THE AMORTIZATION PERIOD FOR CAPITAL IMPROVEMENTS TO THAT OF THE USEFUL LIFE OF THE IMPROVEMENT; (4) CLARIFY THAT CERTAIN TYPES OF WORK ARE NOT CAPITAL IMPROVEMENTS; (5) AMEND TIMELINES FOR FILING PETITIONS; (6) REQUIRE OWNERS TO PAY INTEREST ON SECURITY DEPOSITS; AND (7) AMENDING CHAPTER 8.22, ARTICLE IV TO PERMIT TENANTS TO CHOOSE TO PAY THEIR PORTION OF THE PROGRAM FEE EITHER IN A LUMP SUM OR IN SIX MONTHLY INSTALLMENTS

WHEREAS, Oakland has a Rent Adjustment Program that presently permits landlords to petition for rent increases, but in most cases requires tenants to petition to contest rent increases over an annual rent increase allowance;

WHEREAS, on November 5, 2002, Oakland voters passed the Just Cause for Eviction Ordinance (Measure EE), codified as Article II of Title 8 of the Oakland Municipal Code; and

WHEREAS, the City of Oakland is experiencing a severe housing affordability crisis; and

WHEREAS, the housing affordability crisis threatens the public health, safety and/or welfare of our citizenry; and

WHEREAS, 60 percent of Oakland residents are renters, who would not be able to locate affordable housing within the city if displaced (U.S. Census Bureau, ACS 2014 Table S1101); and

WHEREAS, in February 2016 the median rental price for a one-bedroom unit in Oakland was \$2,250 per month (\$27,000 per year), a 13.6 percent increase in costs over February 2015, and the median rental price for a two-bedroom unit in February 2016 was \$2,700 per month (\$32,400 per year), an 18.9 percent increase over costs in February 2015 (Zumper National Rent Report: March 2016); and

WHEREAS, Oakland's rental housing costs are the fourth highest in the nation, behind San Francisco, New York, and Boston (Zumper National Rent Report: March 2016); and

WHEREAS, in 2014 the estimated annual median household income for households that rented in Oakland was \$36,657, which would result in a household earning the annual median household income paying 74 percent of household income for a one-bedroom unit or 85 percent of household income for a two-bedroom unit (U.S. Census Bureau, ACS 2014, Table S2503); and

WHEREAS, the affordable rent for a family earning \$36,657 is defined as only paying thirty percent of income on housing, which is approximately \$916 per month; and

WHEREAS, the median rent for all apartments rented in February of 2016 reached an all-time high of just over \$3,000 per month according to research from Trulia; and

WHEREAS, 22.5% of Oakland's households are "housing insecure," defined as facing high housing costs, poor housing quality, unstable neighborhoods, overcrowding, or homelessness; and

WHEREAS, over 26,000 Oakland households are severely rent burdened, which is defined as spending 50 percent or more of monthly household income on rent (Oakland Consolidated Housing Needs Assessment 2015 Analysis of HUD Data, as reported in the City's March 2016 Oakland at Home report, pp. 10-11); and

WHEREAS, displacement through unauthorized rent increases has a direct impact on the health, safety and/or welfare of Oakland's citizens by uprooting children from their schools, disrupting longstanding community networks that are integral to citizens' welfare, forcing low-income residents to pay unaffordable relocation costs, segregating low-income residents into less healthy, less safe and more overcrowded housing that is often further removed from vital public services and leaving residents with unhealthy levels of stress and anxiety as they attempt to cope with the threat of homelessness; and

WHEREAS, major capital improvements amortized over a short period of time are a significant cause of high rent increases and the costs of such improvements should be amortized over a period of time closer to their useful life, and tenants should not have to pay for improvements that upgrade amenities beyond what they already have without the tenants approval;

WHEREAS, security deposits placed by tenants are retained by landlords in trust for tenants, and, therefore, interest on such funds should be paid to the tenant and not retained by the landlord;

WHEREAS: 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), and Section 15183 (actions consistent with the general plan and zoning);

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

SECTION 1. Modification of Chapter 8.22 of the Oakland Municipal Code. Relevant sections of Title 8 of the Oakland Municipal Code are hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

Chapter 8.22 - RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS

Article I. - Residential Rent Adjustment Program

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.
 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. 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.
- 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. For any property that has a certificate of occupancy issued on or before the date of enactment of this subparagraph O.M.C 8.22.30B.2.a. 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.
- d. The Owner seeking a certificate of exemption based on substantial rehabilitation must pay a fee to process the application as set out in the Master Fee Schedule.

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. ~~Three-One-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 three one 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 ~~one year after the effective date of this exemption or~~ three one 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 three years continuous occupancy. The Rent Program shall develop a form for this purpose.
4. ~~Effective date of this Exemption. This exemption for owner-occupied properties of three or fewer units takes effect one year after the adoption of this ordinance modifying this chapter, Article I.~~

8.22.060 - Notice of the existence of this chapter required at commencement of tenancy.

A. Notice at Commencement of Tenancy. The owner of any covered unit is required to comply with the following notice requirements at the commencement of any tenancy:

1. On or before the date of commencement of a tenancy, the owner must give the tenant a written notice in a form prescribed by the Rent Adjustment Program which must include the following information:
 - a. The existence and scope of this chapter; and
 - b. The tenant's rights to petition against certain rent increases.
2. The Owner must give the initial notice in four languages: English, Spanish, Mandarin, and Cantonese.

B. Evidence of Giving Notice. When filing an owner's response to a tenant petition or an owner's petition for a rent increase, the owner must submit evidence that the owner has given the notice required by this section to the affected tenants in the building under dispute in advance of the filing. When responding to a tenant petition, the owner may allege that the affected

dwelling units are exempt in lieu of providing evidence of complying with the notice requirement. If an owner fails to submit the evidence and the subject dwelling unit is not exempt, then the owner's petition or response to a tenant's petition must be dismissed. This evidence can be a statement of compliance given under oath, however, the tenant may controvert this statement at the hearing. An owner's filing the notice in advance of petition or response prevents the owner's petition or response from being dismissed, but the owner may still be subject to the rent increase forfeiture if the notice was not given at the commencement of the tenancy or within the cure period set out in Section 8.22.060(C).

- C. Failing to Give Notice. An owner who fails to give notice of the existence and scope of the Rent Adjustment Program at the commencement of a tenancy, but otherwise qualifies to petition or respond to a petition filed with the Rent Adjustment Program, will forfeit six months of the rent increase sought unless the owner cured the failure to give the notice. An owner may cure the failure to give the notice at the commencement of a tenancy required by this section and not be subject to a forfeiture of a rent increase if the owner gives the notice at least six months prior to serving the rent increase notice on the tenant or, in the case of an owner petition, at least six months prior to filing the petition.

8.22.070 - Rent adjustments for occupied covered units.

This section applies to all rent adjustments for continuously occupied covered units. (Rent increases following vacancies of covered units are governed by Section 8.22.080). Any rent increase for a continuously occupied covered unit must comply with this section.

A. One Rent Increase Each 12 Months and Limitations.

1. An owner may increase the rent on a covered unit occupied continuously by the same tenant only once in a 12-month period. Such rent increase cannot take effect earlier than the tenant's anniversary date.
2. No individual rent increase can exceed the existing rent by more than ten percent in any 12-month period for any and all rent increases based on the CPI Rent Adjustment, as set out in O.M.C. 8.22.070B (CPI Rent Adjustment), and any justifications pursuant to O.M.C. 8.22.070C.2 (Rent Increases In Excess of CPI Rent Adjustment) except for the following:
 - a. A rent increase based on the CPI Rent Adjustment for the current year that exceeds ten percent, provided however that such Rent increase may only include a CPI Rent Adjustment;
 - b. The rent increase is required for the owner to obtain a fair return pursuant to O.M.C. 8.22.070C.2.f.
3. No series of rent increases in any five-year period can exceed 30 percent for any rent increases based on the CPI Rent Adjustment, as set out in, O.M.C. 8.22.070B (CPI Rent Adjustment) and any justifications pursuant to O.M.C. 8.22.070C.2 (Rent Increases In Excess of CPI Rent Adjustment) except for the following:

- a. A series of rent increases composed solely of CPI Adjustments may exceed the 30 percent limitation;
 - b. Exceeding the 30 percent limitation is required for the owner to obtain a fair return pursuant to O.M.C. 8.22.070C.2.f.
4. If an owner is entitled to a rent increase or increases that cannot be taken because of the Rent increase limitations pursuant to Subsections 2. or 3. above, the owner may defer the start date of the increase to a future period, provided that in the rent increase notice that limits the owner's ability to take the increases, the owner must identify the justification and the amount or percentage of the deferred increase that may be applied in the future.

B. CPI Rent Adjustments.

1. **Effective Date of this Section.** An owner may first impose CPI Rent Adjustments pursuant to this section that take effect on or after July 1, 2002.
2. **CPI Rent Adjustment Not Subject to Petition.** The tenant may not petition to contest a rent increase in an amount up to and including the CPI Rent Adjustment unless the tenant alleges one or more of the following:
 - a. The owner failed to provide the notice required at the commencement of tenancy and did not cure such failure (Section 8.22.060);
 - b. The owner failed to provide the notice required with a rent increase (Section 8.22.070 H);
 - c. The owner decreased housing services;
 - d. The covered unit has uncured health, safety, fire, or building code violations pursuant to Section 8.22.070 D.7).
3. **Calculation of the CPI Rent Adjustment.** Beginning in 2002, the CPI Rent Adjustment is the average of the percentage increase in the CPI—All items and the CPI—Less shelter for the twelve (12) month period starting on March 1 of each calendar year and ending on the last day of February of the following calendar year calculated to the nearest one tenth of one percent.
4. **Effective Date of CPI Rent Adjustments.** An owner may notice a rent increase for a CPI Rent Adjustment 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 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.
5. **Banking.** In accordance with rules set out in the regulations, an owner may bank CPI rent adjustments and annual permissible rent adjustments previously authorized by this chapter.
6. **Schedule of Prior Annual Permissible Rent Adjustments.** Former annual permissible rent adjustments available under the prior versions of this chapter:
 - a. May 6, 1980 through October 31, 1983, the annual rate was ten percent.
 - b. November 1, 1983 through September 30, 1986, the annual rate was eight percent.

- c. October 1, 1986 through February 28, 1995, the annual rate was six percent.
- d. March 1, 1995 through June 30, 2002, the annual rate was three percent.

C. Rent Increases in Excess of the CPI Rent Adjustment.

1. In order to increase Rent in excess of the CPI Rent Adjustment, a landlord must first file a petition with the Rent Adjustment Program. Any Rent increase in excess of the CPI Rent Adjustment that is not first approved by the Rent Adjustment Program is void and unenforceable.

a. For properties divided into five units or more, this requirement takes effect for all Rent increases noticed on or after July 1, 2017.

b. For properties divided into four units or fewer, this requirement takes effect for all Rent increases noticed on or after July 1, 2018.

24. A tenant may file a petition in accordance with the requirements of Section 8.22.110 contesting any rent increase which exceeds the CPI Rent Adjustment.

32. If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond by either claiming an exemption and/or justifying the rent increase in excess of the CPI Rent Adjustment on one or more of the following grounds:

a. Banking;

b. Capital improvement costs.

i. Capital improvement costs, including financing of capital improvement costs, shall be amortized over the useful life of the improvement pursuant to the appropriate Internal Revenue Service depreciation schedule. Staff is authorized to determine the appropriate amortization schedule and to augment it to set out where specific types capital improvements fall within that schedule.

ii. Capital improvements do not include the following, as set forth in the regulations:

i(a). correction of priority 1 or 2 condition not created by the tenant;

(b)ii. deferred maintenance; or

(c)iii. improvements that are greater in character or quality than existing improvements ("gold plating" or "over improvement"). Such improvements do not include:

(1) any improvements approved in writing by the Tenant;

(2) any improvements that bring the unit up to current building or housing codes, or

(4)(3) the cost for an equivalent replacement.

c. Uninsured repair costs;

d. Increased housing service costs;

e. The rent increase is necessary to meet constitutional or fair return requirements.

3. The amount of rent increase allowable for the grounds listed in Section 8.22.070 C.2 are subject to the limitations set forth in the regulations.

4. An owner must provide a summary of the justification for a rent increase upon written request of the tenant.
- D. Operative Date of Rent Adjustment when Petition Filed.
1. While a tenant petition is pending, a tenant must pay when due, pursuant to the rent increase notice, the amount of the rent increase that is equal to the CPI Rent Adjustment unless:
 - a. The tenant's petition claims decreased housing services; or
 - b. The owner failed to separately state in the rent increase that equals the CPI Rent Adjustment pursuant to Section 8.22.070 H.
 2. The amount of any noticed rent adjustment above the CPI Rent Adjustment that is the subject of a petition is not operative until the decision of the hearing officer has been made and the time to appeal has passed.
 3. When a party appeals the decision of a hearing officer, the tenant must continue to pay the amount of the rent adjustment due during the period prior to the issuance of the decision and the remaining amount of the noticed rent increase is not operative until the board has issued its written decision.
 4. Following a final decision, a rent adjustment takes effect on the following dates:
 - a. In the case of a rent increase, the date the increase would have been effective pursuant to a valid rent increase notice given to the tenant, unless a six month forfeiture applies for an uncured failure to give the required notice at the commencement of tenancy;
 - b. In the case of a decrease in housing services, on the effective date for a noticed decrease in housing services or, if no notice was given, the date the decrease in housing services occurred and the owner knew or should have known of the decreased service.
 5. A tenant who files a petition following a thirty (30) day rent increase notice and who does not file a petition before the increased rent becomes due, must pay the increased rent when due until the tenant files the petition. Once the tenant files the petition, the portion of rent increase above the CPI Rent Adjustment need not be paid until the decision on the petition is final.
 6. A rent increase following an owner's petition is operative on the date the decision is final and following a valid rent increase notice based on the final decision.
 7. No part of any noticed rent increase is operative during the period after the tenant has filed a petition and the applicable covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations as defined by Section 17920.3 of the California Health and Safety Code, excluding any, violation caused by a disaster or where the owner proves the violation was solely caused by the willful conduct of the tenant. In order for such rent increase to be operative the owner must provide proof that the cited violation has been abated. The owner must then issue a new rent increase notice pursuant to California Civil Code Section 827. The rent increase will be operative in accordance with Section 827.

- E. An owner cannot increase the rent for a covered unit except by following the procedures set out in this chapter (including the Just Cause for Eviction Ordinance (O.M.C. Chapter 8.22, Article II) and the Ellis Act Ordinance (O.M.C. Chapter 8.22, Article III)) or where Costa-Hawkins allows an owner to set the initial rent for a new tenant without restriction.
- F. Decreased housing services. A decrease in housing services is considered an increase in rent. A tenant may petition for an adjustment in rent based on a decrease in housing services under standards in the regulations. The tenant's petition must specify the housing services decreased. Where a rent or a rent increase has been reduced for decreased housing services, the rent or rent increase may be restored in accordance with procedures set out in the regulations when the housing services are reinstated.
- G. Pass-through of Fee. An owner may pass-through one half of the fee to a tenant in accordance with Section 8.22.500G. The allowed fee pass-through shall not be added to the rent to calculate the CPI Rent Adjustment or any other rent adjustment and shall not be considered a rent increase.
- H. Notice Required to Increase Rent or Change Other Terms of Tenancy.
 - 1. As part of any notice to increase rent or change any terms of tenancy, an owner must include:
 - a. Notice of the existence of this chapter;
 - b. The tenant's right to petition against any rent increase in excess of the CPI Rent Adjustment;
 - c. For all rent increases other than one solely based on capital improvements when an owner notices a rent increase in excess of the CPI Rent Adjustment, the notice must include a statement that the owner must provide the tenant with a summary of the justification for the amount of the rent increase in excess of the CPI Rent Adjustment if the tenant makes a written request for such summary. Requirements for rent increase notices for capital improvements are set out in subparagraph d. below.
 - i. If a tenant requests a summary of the amount of the rent increase in excess of the CPI Rent Adjustment, the tenant must do so within 30 days of service of the rent increase notice;
 - ii. The owner must respond to the request with a written summary within 15 days after service of the request by the tenant.
 - d. Additional Notice Required for Capital Improvement Rent Increase.
 - i. In addition to any other information or notices required by this chapter or its regulations, or by state law a notice for a rent increase based on a capital improvement(s) (other than after an owner's petition) must include the following:
 - (a) The type of capital improvement(s);
 - (b) The total cost of the capital improvement(s);
 - (c) The completion date of the capital improvement(s);
 - (d) The amount of the rent increase from the capital improvement(s);

- (e) The start and end of the amortization period.
 - ii. Within ten working days of serving a rent increase notice on any tenant based in whole or in part on capital improvements, an owner must file the notice and all documents accompanying the notice with the Rent Adjustment Program. Failure to file the notice with this period invalidates the rent increase.
 - iii. The above noticing requirement for capital improvements is an alternative to an owner filing an owner's petition for a capital improvement rent increase and this noticing is not required after a capital improvement rent increase has been approved through an owner's petition.
 - e. If the increase exceeds the CPI Rent Adjustment, the notice must state the amount of the increase constituting the CPI Rent Adjustment. If the amount constituting the CPI Rent Adjustment is not separately stated the tenant is not required to pay the amount of the CPI Rent Adjustment while a petition challenging the rent increase is pending.
 - f. The Rent Adjustment Program may provide optional, "safe harbor" forms for required notices, unless the ordinance or regulations require use of a specified form.
- 2. A notice to increase rent must include the information required by Subsection 8.22.070H.1. using the language and in a form prescribed by the Rent Adjustment Program.
- 3. A rent increase is not permitted unless the notice required by this section is provided to the tenant. An owner's failure to provide the notice required by this section invalidates the rent increase or change of terms of tenancy. This remedy is not the exclusive remedy for a violation of this provision. If the owner fails to timely give the tenant a written summary of the basis for a rent increase in excess of the CPI Rent Adjustment, as required by Subsection 8.22.070H.1.c., the amount of the rent increase in excess of the CPI Rent Adjustment is invalid.
- I. An owner may terminate the tenancy for nonpayment of rent (California Code of Civil Procedure § 1161(2) (unlawful detainer)) of a tenant who fails to pay the portion of a rent increase that is equal to the CPI Rent Adjustment when the tenant is required to do so by this subsection. In addition to any other defenses to the termination of tenancy the tenant may have, a tenant may defend such termination of tenancy on the basis that:
 - 1. The owner did not comply with the notice requirements for a rent increase;
 - 2. The tenant's petition was based on decreased housing services; or
 - 3. That the owner failed to give the tenant a written summary of the basis for a rent increase in excess of the CPI Rent Adjustment as required by Section 8.22.070 H.1.c.

8.22.090 - Petition and response filing procedures.

A. Tenant Petitions.

1. Tenant may file a petition regarding any of the following:

- a. A rent increase exceeds the CPI Rent Adjustment, including, without limitation circumstances where:
 - i. The owner failed to timely give the tenant a written summary of the basis for a rent increase in excess of the CPI rent adjustment as required by Subsection 8.22.070H.1.c.; and
 - ii. The owner set an initial rent in excess of the amount permitted pursuant to Section 8.22.080 (Rent increases following vacancies);
 - iii. A rent increase notice fails to comply with the requirements of Subsection 8.22.070H;
 - iv. The owner failed to give the tenant a notice in compliance with Section 8.22.060;
 - v. The owner decreased housing services to the tenant;
 - vi. The tenant alleges the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Subsection 8.22.070 D.7;
 - vii. The owner fails to reduce rent on the month following the expiration of the amortization period for capital improvements, or to pay any interest due on any rent overcharges from the failure to reduce rent for a capital improvement.
 - viii. The owner noticed a rent increase of more than the ten percent annual limit or that exceeds the rent increase limit of 30 percent in five years.
- b. The tenant claims relocation restitution pursuant to Subsection 8.22.140 C.1.
- c. The petition is permitted by the Just Cause for Eviction Ordinance (Measure EE) O.M.C. 8.22.300.
- d. The petition is permitted by the Ellis Act Ordinance, O.M.C. 8.22.400.
- e. The tenant contests an exemption from this O.M.C. 8.22, Article I.

2. For a petition contesting a rent increase, the petition must be filed within the following timelines ~~sixty (60) days of whichever of the following is later:~~

- a. If the owner provided written notice of the existence and scope of this chapter as required by Section 8.22.060 at the inception of tenancy:
 - i. the petition must be filed within ninety (90) days of the date the owner serves the rent increase notice if the owner provided the RAP notice with the rent increase; or
 - ii. the petition must be filed within one hundred and twenty (120) days of the date the owner serves the rent increase if the owner did not provide the RAP notice with the rent increase.
- b. If the owner did not provide written notice of the existence and scope of this chapter as required by Section 8.22.060 at the inception of tenancy, within ninety (90) days of ~~the date the tenant first receives written notice of the existence and scope of this chapter as required by Section 8.22.060.~~

3. For a petition claiming decreased housing:

- a. If the decreased housing is the result of a noticed or discrete change in services provided to the tenant (e.g., removal of parking place, requirement that tenant pay utilities previously paid by owner) the petition must be filed within ninety (90) days of whichever of the following is later:
 - i. The date the tenant is noticed or first becomes aware of the decreased housing service; or
 - ii. The date the tenant first receives written notice of the existence and scope of this chapter as required by Section 8.22.060.
- b. If the decreased housing is ongoing (e.g., a leaking roof), the tenant may file a petition at any point but is limited in restitution for ninety (90) days before the petition is filed and to the period of time when the owner knew or should have known about the decreased housing service.

4.3. In order to file a petition or respond to an owner petition, a tenant must provide the following at the time of filing the petition or response:

- a. A completed tenant petition or response on a form prescribed by the Rent Adjustment Program;
- b. Evidence that the tenant's rent is current or that the tenant is lawfully withholding rent; and
- c. A statement of the services that have been reduced or eliminated, if the tenant claims a decrease in housing services;
- d. A copy of the applicable citation, if the tenant claims the rent increase need not be paid because the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Section 8.22.070D.7.

5. 4. A tenant must file a response to an owner's petition within thirty (30) days of service of the notice by the Rent Adjustment Program that an owner petition was filed.

B. Owner Petitions and Owner Responses to Tenant Petitions.

1. In order for an owner to file a response to a tenant petition or to file a petition seeking a rent increase, the owner must provide the following:

- a. Evidence of possession of a current city business license;
- b. Evidence of payment of the Rent Adjustment Program Service Fee;
- c. Evidence of service of written notice of the existence and scope of the Rent Adjustment Program on the tenant in each affected covered unit in the building prior to the petition being filed;
- d. A completed response or petition on a form prescribed by the Rent Adjustment Program; and
- e. Documentation supporting the owner's claimed justification(s) for the rent increase or supporting any claim of exemption.

2. An owner must file a response to a tenant's petition within thirty (30) days of service of the notice by the Rent Adjustment Program that a tenant petition was filed.

8.22.145 – Payment of Interest on Security Deposits

- A. Landlords shall pay simple interest on all Security Deposits held for at least one year for his/her tenant.
- B. Interest shall begin accruing on whatever date the Security Deposit is received by the landlord and shall accrue until the tenancy terminates.
- C. The amount of interest due and payable by the landlord shall be the amount of the Security Deposit held by the landlord on the date the interest payment is due multiplied by the interest rate in effect on the date the tenant vacates the unit provided, however, that a landlord may retain any portion of the accrued interest where the Security Deposit alone is insufficient to remedy tenant default in the payment of rent, to repair damages to the premises caused by the tenant, exclusive of ordinary wear and tear, or to clean such premises, if necessary, upon termination of the tenancy.
- D. Upon termination of tenancy, a tenant whose Security Deposit has been held for one year or more shall be entitled to payment of any accrued interest no later than two weeks after the tenant has vacated the premises;
- E. Nothing in this chapter shall preclude a landlord from exercising his or her discretion in investing Security Deposits.
- F. The interest rate for interest payments required by this Chapter 22 shall be set at the annual average of the 90-Day AA Financial Commercial Paper Interest Rate (rounded to the nearest tenth) for the immediately preceding calendar year as published by the Federal Reserve.

8.22.185. Miscellaneous

- A. Translation services. Translation services for documents, procedure, and hearings in languages other than English pursuant to the Equal Access to Services Ordinance (O.M.C. Chapter 2.3) shall be made available to persons requesting such services subject to the City's ability to provide such services.

8.22.190 - Applicability—Effective date of chapter.

The ordinance codified in this chapter shall take effect as follows:

- A. ~~The CPI Rent Adjustment. The CPI Rent Adjustment is effective for rent increases taking effect on or after July 1, 2002 in accordance with Section 8.22.070(B)(1);~~
- B. ~~Exemption for Owner-occupied Properties of Three or Fewer Units. The exemption for owner-occupied properties of three or fewer units is effective one year after this ordinance amending this chapter, Article I to provide for this exemption is adopted by the City Council in accordance with Paragraph 8.22.030(D)(4).~~

- C. Unless otherwise specified in a specific provision of this Chapter~~Other Provisions~~. All ~~other provisions~~ of this chapter take effect pursuant to Section 216 of the Oakland City Charter. Whenever a new section takes effect on a date after this amended chapter takes effect pursuant to Section 216 of the Oakland City Charter, the provisions of the former Chapter 8.22 will apply until that new section takes effect.

8.22.500 - Rent program service fee.

- A. Establishment of the Fee. The rent program service fee (the "fee") is hereby established. The fee and any penalties or costs for late or non payment 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. The City Manager shall develop procedures for collection of the fee and ensuring that all funds generated by the fee will be used only for the rent adjustment program. The fee is to be charged against any residential rental unit that is subject to either the Rent Adjustment Ordinance, the Just Cause for Eviction Ordinance, or both.
- B. Definitions.
1. "Rental property owner" includes an owner as defined in the Rent Adjustment Ordinance (O.M.C. 8.22.020) or a landlord as defined in the Just Cause for Eviction Ordinance (Measure EE, Section 4A).
 2. "Tenant" has the same meaning as that term is defined in the Rent Adjustment Ordinance (O.M.C. 8.22.020).
- C. Amount of Fee. The amount of the fee shall be set by the City Council in the master fee schedule. For the city's fiscal years of 2001—2002, and 2002—2003 the fee is set at twenty-four dollars (\$24.00) per covered unit. Each fiscal year the City Manager shall report to the City Council on the costs of the rent adjustment program for the preceding fiscal year and the anticipated costs of the rent adjustment program for the coming year.
- D. Residential Rental Units Subject to the Fee. The fee is to be charged on a per unit basis against all residential rental units that are either covered units or are covered by the Just Cause for Eviction Ordinance, except such residential rental units that are owned or operated by a public entity, including, but not limited to, the City of Oakland, the Redevelopment Agency of the City of Oakland, and the Oakland Housing Authority. A rental property owner who does not timely pay the fee because the rental property owner claims the dwelling unit is not subject to the fee must pay all fees, delinquent charges, interest, and collection costs for any dwelling unit that is found by the city to be subject to the fee. Neither the fact that a rental property owner paid the fee nor that a rental property owner claimed dwelling units are not subject to the fee can be used as evidence in any determination of a petition with the rent adjustment program or in a court proceeding regarding whether the subject dwelling unit is covered by the Rent Adjustment Ordinance or the Just Cause for Eviction Ordinance.

- E. Fee Based on Business Operation. The fee is a fee associated with the operation of a residential rental property business and not a fee based on ownership of real property.
- F. Due Date for Fee. For the first fiscal year of 2001—2002, the fee will be due on March 1, 2002 and will be deemed delinquent if not paid by May 1, 2002. For all subsequent fiscal years, the fee will be due on January 1, and will be deemed delinquent if not paid by March 1.
- G. Passthrough of One-Half of Fee. For rental properties that are covered by the rent adjustment program, a rental property owner may pass through one-half of the fee to a tenant in the year in which it is due, unless the owner does not pay the fee before the date it is deemed late. If a rental property owner passes through one-half of the fee to a tenant, the tenant may choose to pay the amount to the property owner as either a lump sum or in six (6) monthly installments. A rental property owner may not pass through any penalties, delinquent charges, or interest to a tenant. Rental properties that subject to the fee, but are not covered by the rent adjustment program are not subject to the limitation in this Subsection 8.22.500(G).
- H. Delinquent Owner. 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.
- I. Delinquent Charges, Interest, and Collection Costs.
 - 1. An owner who does not pay the fee on or before the date it is considered late must pay a delinquency charge according to the following schedule:
 - a. Ten (10) percent of the fee due if paid in full within thirty (30) days of the date it is considered late;
 - b. Twenty-five (25) percent of the fee due if paid in full within sixty (60) days of the date it is considered late;
 - c. Fifty (50) percent if paid after sixty (60) days of the date it is considered late.
 - 2. In addition to the delinquent charges, a rental property owner who fails to remit the fee due by the date it is late shall pay simple interest at the rate of one percent per month or fraction thereof on the amount of the fee inclusive of delinquent charges from the date the fee is late.
 - 3. A rental property owner who has not paid the fee by the end of the fiscal year in which it is due may also be assessed the city's costs of collecting the fee, including the city's administrative costs of collection and any attorney's fees whether incurred by the City Attorney's Office or by outside counsel.
 - 4. The amount of any fee, delinquent charges, interest, and collection costs imposed by Chapter 8.22 shall be deemed a debt to the city and any rental property owner carrying on a residential rental business without paying the fee and/or any delinquent charges, interest or collection costs shall be liable in an action in the name of the city in any court of competent jurisdiction, for the amount of the fee

and any tax and delinquent charges, interest or collection costs imposed. An action to collect the fee must be commenced within three years of the date the fee became due. An action to collect delinquent charges, interest or collection costs for nonpayment of the fee must be commenced within three years of the date such accrues.

- J. Severability. This O.M.C. Article 8.22.500 shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end the provisions of this chapter are declared to be severable and are intended to have independent validity.
- K. Nonwaiverability. Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this O.M.C. Chapter 8.22, Article IV (8.22.500) is waived or modified, is against public policy and void.
- L. Effective Date.
 - 1. The ordinance codified in this O.M.C. Chapter 8.22, Article IV (8.22.500) takes effect this section chapter take effect pursuant to Section 216 of the Oakland City Charter.
 - 2. For rental units covered only by the Just Cause for Eviction Ordinance (O.M.C. Chapter 8.22 Article II (8.22.300)) and not by the Rent Adjustment Ordinance (O.M.C. Chapter 8.22 Article I (8.22.100)), the fee shall be charged to such rental units in the fiscal year beginning July 1, 2003.

SECTION 2. 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 3. 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 4. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: section 15378 (regulatory actions), section 15061(b)(3) (no significant environmental impact), and section 15183 (consistent with general plan and zoning).

SECTION 5. The Rent Adjustment Board shall propose changes to the Rent Board regulations to conform the regulations to the changes hereby made to the Ordinance and propose such changes to the City Council within 120 days of the adoption of this ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES -BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND
PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING CHAPTER 8.22, ARTICLE I (RENT ADJUSTMENT) OF THE OAKLAND MUNICIPAL CODE TO: (1) MODIFY EXEMPTIONS FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES AND SUBSTANTIALLY REHABILITATED PROPERTIES; (2) REQUIRE THAT OWNERS FILE PETITIONS FOR RENT INCREASES IN EXCESS OF THE ANNUAL CONSUMER PRICE INDEX INCREASE; (3) CHANGE THE AMORTIZATION PERIOD FOR CAPITAL IMPROVEMENTS TO THAT OF THE USEFUL LIFE OF THE IMPROVEMENT; (4) CLARIFY THAT CERTAIN TYPES OF WORK ARE NOT CAPITAL IMPROVEMENTS; (5) AMEND TIMELINES FOR FILING PETITIONS; (6) REQUIRE OWNERS TO PAY INTEREST ON SECURITY DEPOSITS; AND (7) PERMIT TENANTS TO CHOOSE TO PAY THEIR PORTION OF THE PROGRAM FEE EITHER IN A LUMP SUM OR IN SIX MONTHLY INSTALLMENTS

The Ordinance would amend the Oakland Municipal Code Chapter 8.22. Article I (Rent Adjustment) to (1) modify the exemption for owner-occupied duplexes and triplexes to extend the occupancy time by the owner to three years before the units become exempt, (2) modify the substantial rehabilitation exemption to require a certificate of exemption; (3) to change the amortization period for capital improvements to Internal Revenue Service schedules, (4) clarify that certain expenditures are not capital improvements, (5) amend timelines for filing petitions, (6) require owners to pay interest on security deposits, and (7) amend Article IV to permit tenants to pay their portion of the rent program fee as a lump sum or in six monthly installments.