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OAKLAND

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# AGENDA REPORT

**TO:** Oakland City Council

**FROM:** Dan Kalb and Rebecca Kaplan, Councilmembers

**SUBJECT:** Moratorium Extension on Substantial Rehabilitation Exemption

**DATE:** February 27, 2018

## RECOMMENDATION

Adopt An Ordinance Extending By 180-Days Ordinance No. 13465 C.M.S. That Imposed A 180-Day Moratorium On Substantial Rehabilitation Exemptions Of Chapter 8.22, Article 1, "Residential Rent Adjustment Program" (O.M.C. Section 8.22.030.B.2.)

## SUMMARY

This legislation would extend for 180 days the moratorium adopted this past November on new petitions for the substantial rehabilitation exemption under the City of Oakland's Residential Rent Adjustment Ordinance.

## BACKGROUND / LEGISLATIVE HISTORY

The City of Oakland has been experiencing a severe housing affordability crisis for years that has been exacerbated in recent years due to the Bay Area wide housing crisis. The City of Oakland published a Housing Equity Roadmap and a Housing Cabinet report titled *Oakland At Home* that called for increased protection for renters at risk of displacement.

The substantial rehabilitation exemption from the City of Oakland's Residential Rent Adjustment Ordinance allows a property to become exempt from rent adjustment regulation. Before an exemption is granted, significant portions of the current regulations require an owner to spend a minimum of fifty (50) percent of the average basic cost for new construction and perform substantial work in each of the units in the building.

The purpose of the exemption is to encourage private investment in deteriorated residential units in Oakland. However, numerous residents have recently complained to the Oakland City Council and Housing, Residential Rent and Relocation Board that their rents will increase to unaffordable levels if recent petitions filed for the substantial rehabilitation exemption are granted and that this will lead to displacement.

Of the nine major cities in California with Rent Stabilization Ordinances, only Oakland and San Francisco currently have a substantial rehabilitation exemption. San Francisco's substantial rehabilitation exemption is considerably more restrictive than Oakland's and a September 13, 2017 article in the *East Bay Express* regarding the substantial rehabilitation noted that San

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Francisco has granted only 19 substantial rehabilitation exemptions in the past 20 years. Los Angeles ended its substantial renovation program exemption in 1989 because a survey of the program concluded that it resulted in displacement of tenants unable to afford the higher rents that owners charged after the units were removed from the rent control program and because it led to gentrification.

An October 5, 2017 report from the City of Oakland's Rent Adjustment Program Manager to the Housing, Residential Rent and Relocation Board stated that 35 exemptions for substantial rehabilitation have been granted in the past six years and that a significant number of petitions for this exemption were filed in response to a September 20, 2016 Rent Ordinance amendment to this exemption that required owners with certificates of occupancy issued before September 20, 2016 to file any substantial rehabilitation exemption petition by June 30, 2017 or face losing such exemption.

According to data supplied by the Rent Adjustment Program, seven 2016 petitions for substantial rehabilitation, impacting 42 units, have been granted and three 2017 petitions, impacting 11 units, have been granted. In addition, approximately 40 petitions filed in 2017, impacting an unknown number of units, remain pending.

On October 12, 2017, the Housing, Residential Rent and Relocation Board of the City of Oakland unanimously voted to recommend a temporary moratorium on the granting of substantial rehabilitation exemptions. On October 28, 2017, the City Council approved Ordinance No. 13465 C.M.S., establishing a temporary moratorium on the granting of such exemptions and directing the City Administrator to report back to Council on options and recommendations for modifying or eliminating the substantial rehabilitation exemption. The moratorium expires April 24, 2018.

### **ANALYSIS**

Market rents have dramatically increased since the substantial rehabilitation exemption was included in the Oakland's Rent Ordinance in the 1980's, permitting property owners to recover more rent revenue through vacancy decontrol and thereby reducing the need for an exemption from rent control to incentivize improvement and rehabilitation of existing rental units. A moratorium on new substantial rehabilitation petitions and exemptions is intended to give staff and the City Council the opportunity to consider modifying or eliminating the substantial rehabilitation exemption. Since the City Administrator has not reported back to Council as of the date of this report and the moratorium will expire in less than two months, additional time is needed both to receive the City Administrator's report and consider options.

### **FISCAL IMPACT**

No known fiscal impact to the City of Oakland.

### **COORDINATION**

The City Attorney's office was extensively consulted in the development of the legislation. The authors of the legislation also obtained information relevant to the legislation from the Rent Adjustment Program.

**SUSTAINABLE OPPORTUNITIES**

**Economic:** Economic performance is improved by maintaining available housing that is affordable to low and moderate income residents.

**Environmental:** There are no environmental opportunities associated with this report.

**Social Equity:** The ordinance is intended to promote social equity by protecting Oakland renters from being displaced from their current rent regulated housing.

For questions regarding this report, please contact Oliver Luby, Policy Manager, at 510-238-7013.

Respectfully submitted,



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Dan Kalb  
Councilmember, District 1



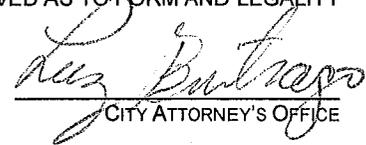
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Rebecca Kaplan  
Councilmember, At Large

Prepared by:  
Oliver Luby, Policy Manager  
Office of Councilmember Dan Kalb

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APPROVED AS TO FORM AND LEGALITY

  
CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBERS KALB AND KAPLAN

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**ADOPT AN ORDINANCE EXTENDING BY 180-DAYS  
ORDINANCE NO. 13465 C.M.S. THAT IMPOSED A 180-  
DAY MORATORIUM ON SUBSTANTIAL  
REHABILITATION EXEMPTIONS OF CHAPTER 8.22,  
ARTICLE 1, "RESIDENTIAL RENT ADJUSTMENT  
PROGRAM" (O.M.C. SECTION 8.22.030.B.2.)**

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

**WHEREAS**, the City of Oakland has published a Housing Equity Roadmap and a Housing Cabinet report titled *Oakland At Home*, that call for increased protection for renters at risk of displacement; and

**WHEREAS**, the purpose of the substantial rehabilitation exemption from the City of Oakland's Residential Rent Adjustment Ordinance is to encourage private investment in deteriorated residential units in Oakland; and

**WHEREAS**, of the nine major cities in California with Rent Stabilization Ordinances, only Oakland and San Francisco currently have a substantial rehabilitation exemption; and

**WHEREAS**, San Francisco's substantial rehabilitation exemption is considerably more restrictive than Oakland's and a September 13, 2017 article in the *East Bay Express* regarding the substantial rehabilitation noted that San Francisco has granted only 19 substantial rehabilitation exemptions in the past 20 years; and

**WHEREAS**, Los Angeles ended its substantial renovation program exemption in 1989 because a survey of the program concluded that it resulted in displacement of tenants unable to afford the higher rents that owners charged after the units were removed from the rent control program and because it led to gentrification; and

**WHEREAS**, an October 5, 2017 report from the City of Oakland's Rent Adjustment Program Manager to the Housing, Residential Rent and Relocation Board stated that 35 exemptions for substantial rehabilitation have been granted in the past six years and that a significant number of petitions for this exemption were filed in response to a September 20, 2016 Rent Ordinance amendment to this exemption that required owners with certificates of occupancy issued before September 20, 2016 to file any substantial rehabilitation exemption petition by June 30, 2017 or face losing such exemption; and

**WHEREAS**, numerous residents have recently complained to the Oakland City Council and Housing, Residential Rent and Relocation Board that their rents will increase to unaffordable levels if recent petitions filed for the substantial rehabilitation exemption are granted and that this will lead to displacement; and

**WHEREAS**, tenants appeared before the Rent Board and City Council to complain of possible displacement of tenant due to continuing the substantial rehabilitation exemption, conversely property owners appeared in order to caution that eliminating the exemption would remove an incentive to rehabilitate older properties; and

**WHEREAS**, on October 12, 2017, the Housing, Residential Rent and Relocation Board of the City of Oakland unanimously voted to recommend a temporary moratorium on the granting of substantial rehabilitation exemptions; and

**WHEREAS**, there are significant potential detrimental impacts to the housing market and the potential displacement of tenants from rent controlled units by removing units from rent control through the substantial rehabilitation exemption; and

**WHEREAS**, market rents have dramatically increased since the substantial rehabilitation exemption was included in the Oakland's Rent 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, on November 28, 2017 (13465 C.M.S.) adopted a 180-day moratorium on new exemptions through April 24, 2018; and

**WHEREAS**, additional time is required for staff to provide to City Council a report that City Council had directed staff to submit no later than February 23, 2018 regarding different options for City Council to consider as to whether the exemption should be modified, or eliminated;

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

**SECTION 1.** The City Council finds the foregoing recitals to be true and correct and hereby incorporates such findings into this ordinance.

**SECTION 2. Extension of Moratorium on Exemption From Rent Adjustment of New Substantially Rehabilitated Buildings.** The moratorium on new substantial rehabilitation that was adopted by the City Council on November 28, 2017, by Ordinance No.13465 C.M.S., the operative portions of the prior Ordinance are set out in full below, is extended by 180-days, and will continue to be in effect until October 21, 2018.

**SECTION 3.** Notwithstanding any provision of the Oakland Municipal Code to the contrary, a moratorium is imposed on new substantial rehabilitation exemptions pursuant to Oakland Municipal Code (O.M.C. -- "Residential Rent Adjustment Program") sections 8.22.030A.6. and 8.22.030B.2. Petitions for exemption based on substantial rehabilitation filed on or after October 20, 2017 shall be considered new exemption requests and not be accepted for filing, unless or until after the moratorium is lifted or expires, or the City Council authorizes new substantial rehabilitation petitions, and under such modifications to this exemption that the City Council should enact. Petitions for exemption based on substantial rehabilitation for projects for residential buildings (1) that have received certificates of occupancy or final permits for the work, (2) that meet all requirements of O.M.C section 8.22.030B.2. and Rent Adjustment Regulations section 8.22.030B.3, and (3) that are fully completed and filed before October 20, 2017 are not subject to this moratorium.

**SECTION 4. Additional Procedures.**

- A. Should any Owner believe that said Owner should be eligible to file a petition for a substantial rehabilitation exemption during the period of the moratorium, the Owner may file a petition seeking relief from the moratorium that includes the basis for such relief;
- B. Notwithstanding all of the above, an Owner may file a petition for capital improvements or other allowed rent increases pursuant to O.M.C. Chapter 8.22 Article I. If an Owner elects to file a petition for capital improvements or other permitted rent increase, such petition will be without prejudice to filing a petition for a substantial rehabilitation exemption should it be permitted in the future and under such modifications as the City Council may enact.

**SECTION 5. Report from Staff on Options on Substantial Rehabilitation Exemption.** The deadline provided by Section 5 of Ordinance No. 13465 C.M.S. is revised as follows. City Council directs the City Administrator to report to the City Council no later than April 17, 2018 on options and recommendations for modifying or eliminating the substantial rehabilitation exemption.

**SECTION 6. 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 7. Effective Date.** This ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall be effective upon the seventh day after final adoption.

**SECTION 9. CEQA Exemption.** This action is exempt from 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 (consistent with the general plan and zoning).

IN COUNCIL, OAKLAND, CALIFORNIA,  
PASSED BY THE FOLLOWING VOTE:

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

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 EXTENDING BY 180-DAYS A MORATORIUM ON SUBSTANTIAL REHABILITATION EXEMPTIONS OF CHAPTER 8.22 ARTICLE 1 OF "RESIDENTIAL RENT ADJUSTMENT PROGRAM", O.M.C. SECTION 8.22.030.B.2 ADOPTED ON NOVEMBER 28, 2017 BY ORDINANCE NO. 13465.**

The Ordinance extends by 90-days a 180-day moratorium on substantial rehabilitation exemptions of Article 1, Chapter 8.22 of the Residential Rent Adjustment Program, O.M.C. Section 8.22.030.B.2 that was adopted on November 28, 2017 by Ordinance Number 13465. The purpose of the extension of the moratorium is to allow City Council to consider options and recommendations for retaining, modifying, or eliminating the substantial rehabilitation exemption petitions. The moratorium shall be in effect until October 21, 2018.

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