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OAKLAND

19 JAN 17 PM 3: 88

# AGENDA REPORT

**TO:** City Council and members of the Public

**FROM:** Dan Kalb & Noel Gallo, City Councilmembers

**SUBJECT:** Elimination of Owner-Occupied Duplex and Triplex Exemption for Rent Ordinance and TPO

**DATE:** January 17, 2019

## RECOMMENDATION

**ADOPT AN ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (O.M.C. 8.22.020 ET SEQ) AND TENANT PROTECTION ORDINANCE (O.M.C. 8.22.600 ET SEQ) TO ELIMINATE EXEMPTIONS FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES**

## SUMMARY

This legislation would remove the exemptions from the Rent Adjustment Ordinance and Tenant Protection Ordinance (TPO) for owner-occupied parcels with two or three units, consistent with the Just Cause for Eviction Amendment (Measure Y) recently adopted by the voters.

## BACKGROUND/LEGISLATIVE HISTORY

On November 6, 2018, Oakland voters passed the Just Cause for Eviction Amendment (Measure Y). Measure Y eliminated the exemption from Just Cause for owner-occupied parcels with two or three units. In the July 5, 2018 agenda report for the Just Cause Amendment Measure, Councilmembers Gallo and Kalb noted their intention to subsequently introduce a parallel ordinance dealing with removing the Rent Stabilization exemption for buildings with three or fewer units, one of which is owner-occupied.

## ANALYSIS

For years, the City of Oakland has been experiencing a severe housing affordability and displacement crisis that requires action by the City government. There is a significant demand for rental housing in Oakland leading to rising market rents, caused in part by the spillover of increasingly expensive housing costs in San Francisco

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Community & Economic Development Committee  
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The increased housing pressures for residents across a range of lower and middle income levels warrants expanded rent stabilization and tenant protection policies. Displacement through evictions has a direct impact on the health, safety and/or welfare of Oakland's citizens by uprooting children from their schools and friends, disrupting longstanding community networks that are integral to residents' welfare, forcing lower 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.

Over 60 percent of occupied housing units in Oakland are occupied by renters, many of whom would not be able to locate affordable housing within Oakland if displaced (U.S. Census Bureau, ACS 2016). In June 2018, the median rental price for a one-bedroom unit in Oakland was \$2,100 per month and the median rental price for a two-bedroom unit was \$2,480 per month (Zumper National Rent Report: July 2018). Mean (averaged) rents for Oakland are even higher, \$2,997 per month as of June 2018 ([www.rentjungle.com](http://www.rentjungle.com)). Oakland's rental housing costs were recently noted as the seventh highest in the nation (Zumper National Rent Report: July 2018).

In 2016, the estimated annual median household income for households that rented in Oakland was \$40,321, (U.S. Census Bureau, Census Reporter Table B25119). Since affordable rent for a family is generally understood as paying no more than thirty percent of income, affordable rent for a family earning \$40,321 is approximately \$1,008 per month. As of the end of the 2015, 22.5% of Oakland's households were "housing insecure," defined as facing high housing costs, poor housing quality, unstable neighborhoods, overcrowding, or homelessness (March 2016 Oakland at Home report, p. 17). Oakland's minimum wage is \$13.23 per hour and a full-time hourly worker must earn an hourly wage of \$35.67 to afford a one bedroom apartment in Oakland (Out of Reach 2018, National Low income Housing Coalition). 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).

"Oakland At Home: Recommendations for implementing *A Roadmap Towards Equity*," a report from the Oakland Housing Cabinet convened by Oakland Mayor Libby Schaaf published in 2016, included amongst its recommendations for strengthening renters' protections that Just Cause be extended to cover all renters in all building types—including owner-occupied duplexes and triplexes. Furthermore, numerous press stories have highlighted concerns about the potential for eviction and/or rent increase when owners move in to duplexes and triplexes, including an October 24, 2017 East Bay Express article (*Oakland Tenant's Victory in Phony Owner-Occupancy Eviction Case May Bring Only Temporary Relief*).

Tenants in owner-occupied duplexes and triplexes do not receive the same Rent Adjustment and Tenant Protection safeguards in Oakland as tenants in both buildings of four or more

units and duplexes and triplexes that are not owner-occupied. Some other cities with rent ordinances and tenant protection ordinances do not exempt owner-occupied duplexes and triplexes. Tenants in duplexes and triplexes would be at significantly reduced risk of displacement, such as through increased rent, if duplexes and triplexes received Rent Adjustment and Tenant protections.

The passage of Measure Y creates a situation where tenants in owner-occupied duplexes receive Just Cause protection but do not receive the Rent Adjustment and Tenant Protection Ordinance safeguards. Creating more consistency between the applicability of these laws is important to ensure that loopholes are not created.

### **FISCAL IMPACT**

This legislation would result in Rent Adjustment and TPO requirements being extended to owner-occupied duplexes and triplexes, which could potentially result in some minimal cost increases to the City. On the other hand, ending the Rent Adjustment Ordinance and TPO exemptions for such duplexes and triplexes will result in fewer regulatory requirements related to documenting owner move-ins, as the removal of the exemption will likely lead to a reduced incentive to do new owner move-ins for such units.

### **PUBLIC OUTREACH / INTEREST**

The Council President Pro Tempore's office is conducting outreach about this legislation to several Oakland-based organizations representing tenants or landlords.

### **COORDINATION**

The City Attorney's office was extensively consulted on the legislation.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** The ordinance is intended to protect the economic vitality of Oakland by helping to keep existing renters in their homes, specifically maintaining the economic security of tenants who reside in two-and three-unit buildings and not subjecting them to displacement.

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

**Social Equity:** The ordinance is intended to promote social equity by protecting Oakland renters, who are less economically secure than Oakland homeowners and are somewhat more likely to be persons of color, and stabilize neighborhoods and communities by encouraging long term tenancies in rental housing.

**ACTION REQUESTED BY THE CITY COUNCIL**

Councilmembers Gallo and Kalb recommend the City Council:

Adopt an Ordinance Amending the Rent Adjustment Ordinance (O.M.C. 8.22.020 et seq) and Tenant Protection Ordinance (O.M.C. 8.22.600 et seq) to Eliminate Exemptions for Owner-Occupied Duplexes and Triplexes

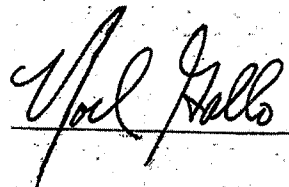
For questions regarding this report, please contact Oliver Luby, Chief of Staff, Office of Councilmember Dan Kalb, at 510-238-7013.

Respectfully submitted,



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Dan Kalb  
Council President Pro Tempore, District 1



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Noel Gallo  
Councilmember, District 5

Prepared by:  
Oliver Luby, Chief of Staff  
Office of Council President Pro Tempore Dan Kalb

19 JAN 17 PM 3: 00

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER GALLO AND KALB

  
CITY ATTORNEY'S OFFICE

# OAKLAND CITY COUNCIL

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

**ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (O.M.C. 8.22.020 ET SEQ) AND TENANT PROTECTION ORDINANCE (O.M.C. 8.22.600 ET SEQ) TO ELIMINATE EXEMPTIONS FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES**

**WHEREAS**, on November 6, 2018, Oakland voters passed Measure Y, which removed from the Just Cause for Eviction Ordinance exemption for owner-occupied two to three unit properties; and

**WHEREAS**, the Rent Adjustment Ordinance exempts from coverage owner-occupied two to three unit properties after the owner lived in the unit for more than two years; and

**WHEREAS**, the Tenant Protection Ordinance also exempts from coverage owner-occupied two to three unit properties after the owner lived in the unit for more than one year; and

**WHEREAS**, some tenants faced large rent increases as a result of the exemption; and

**WHEREAS**, tenants in exempt units under the Tenant Protection Ordinance also lack remedies to combat tenant harassment; and

**WHEREAS**, the City Council wishes to protect tenants in owner-occupied duplexes and triplexes under the Rent Adjustment Ordinance and the Tenant Protection Ordinance; and

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

**SECTION 1. Modification of Section 8.22.030 of the Oakland Municipal Code.** Section 8.22.030 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as strikethrough):

8.22.030 - Exemptions.

- A. Types of Dwelling Units Exempt from Rent Control. 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 III) 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 two (2) three (3) units, one of which is occupied by an owner of record as his or her principal residence. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the state of California.~~
- B. Exemption Procedures.
1. Certificate of Exemption:
    - a. A certificate of exemption is a determination by the Rent Adjustment Program that a dwelling unit or units qualify for an exemption and, therefore, are not covered units. For units exempt as new construction, or by state law, an owner may obtain a certificate of exemption by claiming and proving an exemption in response to a tenant petition or by petitioning the Rent Adjustment Program for such exemption. For units exempt based on substantial rehabilitation, an owner must obtain a certificate of exemption by petitioning the Rent Adjustment Program for such an exemption. A certificate of exemption may be granted only for dwelling units that are permanently exempt from the Rent Adjustment Ordinance as new construction, substantial rehabilitation, or by state law (Costa Hawkins).
    - b. For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner. A certificate of exemption is a final determination of exemption absent fraud or mistake.

- c. Timely submission of a certificate of exemption previously granted in response to a petition shall result in dismissal of the petition absent proof of fraud or mistake regarding the granting of the certificate. The burden of proving such fraud or mistake is on the tenant.
2. Exemptions for Substantially Rehabilitated Buildings
- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project and performed substantial work on each of the units in the building.
  - b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.
  - c. An owner seeking to exempt a property on the basis of substantial rehabilitation must first obtain a certificate of exemption after completion of all work and obtaining a certificate of occupancy. If no certificate of occupancy was required to be issued for the property, in lieu of the certificate of occupancy an owner may provide the last finalized permit. For any property that has a certificate of occupancy issued on or before the date of enactment of this subparagraph O.M.C. 8.22.30B.2.c. for which an owner claims exemption as substantially rehabilitated, the owner must apply for such exemption not later than June 30, 2017 or such exemption will be deemed to be vacated.
- C. Controlled, Regulated, or Subsidized Units. The owner of a dwelling unit that is exempt because it is controlled, regulated (other than by this chapter), or subsidized by a governmental agency (Section 8.22.030A.1) must file a notice with the Rent Adjustment Program within thirty (30) days after such dwelling unit is no longer otherwise controlled, regulated, or subsidized by the governmental agency. Once the dwelling unit is no longer controlled, regulated, or subsidized, the dwelling unit ceases to be exempt and becomes a covered unit subject to this chapter, Article I. Such notice must be on a form prescribed by the Rent Adjustment Program.
- ~~D. Exemptions for Owner-Occupied Properties of Three or Fewer Units. Units in owner-occupied properties divided into three or fewer units will be exempt from this chapter, Article I under the following conditions:~~
- ~~1. Two-Year Minimum Owner Occupancy. A qualifying owner of record must first occupy one of the units continuously as his or her principal residence for at least two years. This requirement does not apply to any property in which the owner resides in the premises on or before August 1, 2016.~~
  - ~~2. Continuation of Exemption. The owner occupancy exemption continues until a qualifying owner of record no longer continuously occupies the property.~~
  - ~~3. Rent Increases. The owner of record qualifying for this exemption may notice the first rent increase that is not regulated by this chapter, article I two years after the date the qualifying owner of record starts residing at the affected property as his or her principal place of residence.~~
  - ~~4. An owner claiming such exemption must provide information to the Rent Program on when the owner occupancy began and documentation showing the minimum of two years continuous occupancy. Staff shall develop a form for this purpose.~~

**SECTION 2. Modification of Section 8.22.630 of the Oakland Municipal**

**Code.** Section 8.22.630 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as strikethrough):

8.22.630 - Applicability and exemptions.

- A. The TPO shall apply to all Rental Units where there is a Rental Agreement between an Owner and one or more Tenants, unless exempted herein. The application of the TPO includes units that may not be covered under the Rent Adjustment Ordinance (O.M.C. 8.22.100, et seq.) or the Just Cause for Eviction Ordinance (O.M.C. 8.22.300, et seq.)
- B. Exemptions.
1. Exemption for nonprofit owned rental housing. Any Rental Unit owned by (a) a corporation or organization exempt pursuant to United States Internal Revenue Code §501(c)(3) or any successor legislation exempting charitable organizations from federal income tax, (b) a limited partnership where the managing general partner is a corporation or organization exempt pursuant to United States Internal Revenue Code §501(c)(3) or any successor legislation exempting charitable organizations from federal income tax, or (c) a limited partnership where the managing general partner is a limited liability company whose sole members are corporations or organizations exempt pursuant to United States Internal Revenue Code §501(c)(3) or any successor legislation exempting charitable organizations from federal income tax shall have an exemption from the TPO's civil enforcement pursuant to this article.
  2. Rental Units in any Hospital, Skilled Nursing Facility, or Health Facility.
  3. Rental Units in a nonprofit facility that has the primary purpose of providing short term treatment, assistance, or therapy for alcohol, drug, or other substance abuse and the housing is provided incident to the recovery program, and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception and is licensed for such purpose where such license is required.
  4. Rental Units in a nonprofit facility which provides a structured living environment that has the primary purpose of helping homeless persons obtain the skills necessary for independent living in permanent housing and where occupancy is restricted to a limited and specific period of time of not more than twenty-four (24) months and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception and is licensed for such purpose where such license is required.
  5. Rental Units exempted from Part 4, Title 4, Chapter 2 of the California Civil Code (CCC) by CCC § 1940(b) (transient occupancy in hotels/motels).
  - ~~6. A rental unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by the owner of record as his or her principal residence for a period of no less than twelve (12) months. 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.~~ Reserved.
  7. A rental unit in a newly constructed residential property that has a certificate of occupancy issued after the effective date of O.M.C. 8.22.600, et seq. For the



purposes of this exemption, "newly constructed" means all units on the parcel were built from the ground up under the same certificate of occupancy and not converted from property previously used for non-residential purposes. In the event the property is not issued a certificate of occupancy, then the exemption starts on the date that the last building related permit is finalized, if after the effective date of O.M.C. 8.22.600, et seq. This exemption is a limited duration exemption and expires fifteen (15) years from the date the exemption commences.

**SECTION 3. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 4. Effective Date.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

**SECTION 5. Initial Base Rent for Newly Covered Units.** The initial base rent for all newly covered units shall be the rent that was in effect for the rental unit on November 6, 2018. If no rent was in effect for the newly covered unit on November 6, 2018, the initial base rent shall be the first rent in effect after that date.

**SECTION 6.** 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 - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

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 THE RENT ADJUSTMENT ORDINANCE (O.M.C. 8.22.020 ET SEQ) AND TENANT PROTECTION ORDINANCE (O.M.C. 8.22.600 ET SEQ) TO ELIMINATE EXEMPTIONS FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES**

This Ordinance eliminates the owner-occupied duplex and triplex exemptions from the Rent Adjustment Ordinance and the Tenant Protection Ordinance.