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DAN KALB & Noel Gallo, Councilmembers CITY OF OAKLAND  
CITY HALL - ONE FRANK H. OGAWA PLAZA, 2<sup>ND</sup> FLOOR - OAKLAND - CALIFORNIA 94612



To: Oakland City Council & the Public

From: Council President Pro Tempore Dan Kalb & Councilmember Noel Gallo

Date: January 31, 2019

Subject: **THE PROBLEM OF CHANGING BASE RENT DATE FROM NOVEMBER 6, 2018 TO THE EFFECTIVE DATE OF THE ORDINANCE - 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**

Colleagues on the City Council and Members of the Public:

We have submitted this supplemental memorandum to bring your attention to the problem of changing the base rent date in the ordinance from November 6, 2018 to the effective date of the ordinance. In the version of this legislation we submitted, Section 5 stated:

**“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.”

At the January 29<sup>th</sup> Community & Economic Development Committee meeting, the Committee forwarded the legislation to the full Council but with the recommendation of changing the **November 6<sup>th</sup>** date in Section 5 to be the **effective date**<sup>1</sup> of the ordinance. Section 4 of the legislation provides:

**“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.”

Since the legislation will be before the City Council on February 5<sup>th</sup> and will likely be adopted on second reading at the subsequent Council meeting of February 26<sup>th</sup>, the effective date of the ordinance will thus likely be either February 26, 2019, if adopted with six more votes, or March 5, 2019, if adopted with five or fewer votes. The effective date will be even later if the City Council deliberates the legislation past the February Council meetings.

Pushing up the base rent date from November 6, 2018 to February 26, 2019 or March 5, 2019 will significantly widen the window for large rent increases and lead to displacement. Without a Nov. 6<sup>th</sup>

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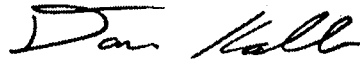
<sup>1</sup> While the Clerk’s motion capture indicates the proposed base rent date was the date of final passage (which was originally proposed at committee), Councilmember Taylor’s office confirmed that the final proposal was actually the effective date of the ordinance and this was also clarified by the City Attorney and Councilmember Taylor during the CED committee (Video time: approximately 1:30:48).

date, unlimited rent increases that were made following the passage of the Measure Y Just Cause amendment in November would not be curbed. **We specifically chose election day (November 6, 2018) in order to prevent a rush on rent increases which could lead to constructive evictions and undermine the intent of Measure Y.** Moreover, the November 6<sup>th</sup> date was itself a compromise. We could have pushed the date back to July when the Council voted to place Measure Y on the ballot, in order to restrict rent increases that were put forth immediately following that Council action.

As Councilmembers Kalb and Bas mentioned at the January 29<sup>th</sup> CED Committee meeting, local jurisdictions commonly make rent ordinances retroactive to prevent a rush on rent increases and ensuing displacement following the public introduction of the rent ordinance, and such retroactivity has already been validated in court. We are in the process of collecting information from tenant groups about the specific impacts of making the base rent date the effective date of the ordinance, but the committee already heard directly from one elderly tenant, for example, who will be effectively evicted if the base rent date is moved up into 2019.

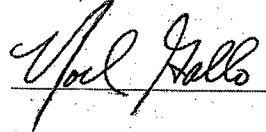
When it comes to weighing (i) allowing landlords to hike rents above the rates they already set versus (ii) preventing the displacement of our residents, the Council's moral imperative is clear. Accordingly, we recommend the Council adopt this legislation with the original November 6, 2018 base rent date that was introduced.

Respectfully submitted,



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Dan Kalb, Council President Pro Tempore



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Noel Gallo, Councilmember

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

**DRAFT**

INTRODUCED BY COUNCILMEMBER KALB AND GALLO 19 JAN 31 PM 3:08

CITY ATTORNEY'S OFFICE

REVISED IN COMMITTEE

**OAKLAND CITY COUNCIL**  
**ORDINANCE NO. \_\_\_\_\_ C.M.S.**

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**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**, California law affords landlords the right to a fair return on their investment, which may be petitioned for through the City of Oakland's Rent Adjustment Program; 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~~the effective date of this ordinance. If no rent was in effect for the newly covered unit on ~~November 6, 2018~~the effective date of this ordinance, 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.