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AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Maraskeshia Smith
Assistant City Administrator

SUBJECT: Rent Adjustment Program/AB 1482
Enforcement and Implementation
Report

DATE: December 23, 2019

City Administrator Approval

Date:

12/30/19

RECOMMENDATION

Staff Recommends That The City Council Receive An Informational Report On Local Enforcement And Implementation Of Assembly Bill (AB) 1482, The Tenant Protection Act Of 2019, Recently Chaptered Into State Law, On Oakland Renters And Landlords Including, But No Limited To, Which Categories Of Units In Oakland Are Newly Covered By This State Law, What The City Of Oakland Is Doing To Inform Newly Impacted Landlords And Tenants About This New Law, What Oakland's Rent Adjustment Program Can Do To Enforce Its Provisions, And Recommendations, If Any, To The City Council On What The Council Should Do To Enable Such Enforcement.

EXECUTIVE SUMMARY

The Tenant Protection Act of 2019 (Assembly Bill 1482) limits rent increases and provides "just cause" eviction protection and relocation benefits to residential tenants in rental units throughout the state. Assembly Bill (AB) 1482 does not replace Oakland's rent control or the Just Cause for Eviction Ordinance. Most units in Oakland are covered by Oakland's rent control and are not affected by the state law. Rental units subject to Oakland's Rent Adjustment Program and Just Cause for Eviction Ordinance will continue to be regulated by Oakland's local ordinances, which are more protective than state law. However, many units that are exempt from local ordinances, including some single-family homes and condominiums, and certain newly constructed units will become subject to state rent caps and eviction protections when AB 1482 becomes effective January 1, 2020.

AB 1482 is silent regarding local enforcement and there is a lack of consensus amongst rent control jurisdictions regarding whether a city may lawfully enforce this new state law. The City's Rent Program is working to coordinate with rent programs of other cities to consider various local enforcement options, including potentially requesting an Opinion from the State Attorney General.

Item: _____
CED Committee
January 14, 2020

BACKGROUND / LEGISLATIVE HISTORY

In 1980, the Oakland City Council passed its first rent control ordinance which established the Housing, Residential Rent Arbitration and Relocation Board and the Rent Adjustment Program. (Ordinance No. 9980 C.M.S.) Since then, the Ordinance has been amended many times. The current Ordinance (O.M.C. Section 8.22.010 et seq.) regulates most residential rent increases in Oakland. Additionally, in 2002, the Oakland voters passed the Just Cause for Eviction Ordinance, requiring owners of covered rental units to prove one of the eleven just causes before they can evict a tenant (O.M.C. Section 8.22.300 et seq.). Together these laws were intended to maintain affordable housing, preserve community diversity, prevent illegal rent increases and evictions, and encourage investment in rental property in Oakland.

In 1995, the California legislature passed the Costa Hawkins Rental Housing Act, which limits the types of properties that can be subject to local rent control and also prohibits vacancy control (limiting the amount of rent an owner can charge a new tenant). Because of the Costa-Hawkins Act, the City cannot extend rent control to units built after January 1, 1983 or impose rent control on single family homes or condominiums.

In September 2019, the California State Assembly passed the Tenant Protection Act (AB 1482), which limits rent increases and provides eviction protection to many residential rental units not otherwise covered under local law. Governor Gavin Newsom signed the bill on October 8, 2019. While AB 1482 goes into effect January 1, 2020, the law is retroactive to March 15, 2019. As such, if rent was increased by more than 8.5 percent between March 15, 2019 and December 31, 2019, the rent will revert to the amount charged on March 15, 2019, plus the allowable 8.5 percent.

AB 1482 does not replace Oakland's rent control ordinance or the Just Cause for Eviction Ordinance. Rental units subject to Oakland's Rent Adjustment Program and Just Cause for Eviction Ordinance will continue to be regulated by Oakland's local ordinances, which in most instances are more protective than state law.

ANALYSIS AND POLICY ALTERNATIVES

AB 1482 - RENT CONTROL PROVISIONS

A. State Rent Increase Limitations

Pursuant to AB 1482, state rent caps apply broadly to all residential real property in California except the following, which are exempt from state rent control:

- Affordable housing restricted by deed or regulatory agreement, including Section 8;
- Dormitories;
- Newly constructed rental units (certificate of occupancy within the last 15 years);
- Single family homes and condominiums provided they are not owned by a corporation, real estate investment trust, or limited liability company (LLC) with corporate members¹;

¹ This exemption only applies if the tenant has been provided written notice of the exemption pursuant to Civil Code 1947.12(d)(5)B.

- Owner occupied duplexes; and
- Units subject to local rent control that is more protective than state law;

The State's rent cap prohibits owners of residential rental property from increasing the rental rate for a covered unit more than 5 percent plus Consumer Price Index (CPI)², or 10 percent, whichever is lower, over the course of any 12-month period. This restriction applies to all rent increases occurring on or after March 15, 2019³. In addition, AB 1482 prohibits increasing the rent more than twice in a 12-month period, once the tenant has occupied the rental unit for at least 12 months.

B. Local Effect of State Law

Rental units exempt from Oakland's Rent Ordinance that will now be covered by state rent caps, are:

- Units with a certificate of occupancy issued after January 1, 1983, but not within the last 15 years;
- Single family homes and condominiums if owned by a corporation, real estate investment trust, or LLC with a least one corporate member;
- Units exempt from Oakland's rent program pursuant to a certificate of exemption based on substantial rehabilitation; and
- Rental units in a non-profit cooperative owned, operated, and controlled by a majority of the residents.

In addition, tenants may be able to invoke the protection of state law in certain cases where state rent caps are more stringent than local law. For example, Oakland's ordinance allows for a rent increase of up to 10 percent when the landlord has not taken all permissible increases in prior years (banking), where capital expenses have been incurred or where necessary to establish a fair return. In years when the maximum increase under state law is less than 10 percent (CPI + 5 percent), an argument can be made that state law prohibits the 10 percent increase. However, City staff are still evaluating this theory.

AB 1482 – EVICTION PROVISIONS

A. State Just Cause

State just cause for eviction protections apply to all residential real property, when the tenant has continuously and lawfully occupied the property for 12 months, except the following, which are exempt from state just cause:

- Housing accommodations in nonprofit hospitals, religious facilities, residential care facilities, and dormitories;
- Owner-occupied duplexes, owner-occupied single-family homes with up to two

² The regional Consumer Price Index (CPI) for the region where the property is located, as published by the United States Bureau of Labor Statistics.

³ If an owner raises rent more than the state limit between March 15, 2019 and January 1, 2020, AB 1482 sets the January 1, 2020 rent as the rental rate in effect on March 15, 2019 plus the maximum possible increase under the state limit.

accessory dwelling units, and owner-occupied units where the tenant shares bathroom or kitchen facilities with the owner;

- Single family homes and condominiums provided they are not owned by a corporation, real estate investment trust, or LLC with corporate members and the tenants have been provided written notice of the exemption;
- Newly constructed rental units (certificate of occupancy within last 15 years);
- Affordable housing restricted by deed or regulatory agreement, including Section 8;
- Properties covered by local just cause protections as of September 1, 2019.
- Properties covered by local just cause protections enacted after September 1, 2019, provided the local ordinance is more protective than state law.

AB 1482's just cause provisions prohibit owners of residential real property from terminating tenancies without just cause after a tenant has continuously and lawfully occupied the property for 12 months⁴. Lawful grounds for eviction are similar, but not identical, to those under Oakland's ordinance and fall into two categories: "at-fault" and "no-fault".

At-fault just cause evictions under state law include: nonpayment of rent; breach of a material term of the lease; nuisance; waste; criminal activity or use of the premises for an illegal purpose; assignment or subletting in violation of the rental agreement; refusal to execute a renewal or extension of a written lease; refusal to allow the landlord access to the premises as authorized by law; failure of an employee or licensee to vacate after termination of employment or license; failure of a tenant to vacate after the tenant has given notice that they are terminating their tenancy.

No-fault just cause evictions under state law include: owner move-in; withdrawal from the rental market (Ellis Act); government compulsion; and intent to demolish or substantially remodel.

Like Oakland's Just Cause for Eviction Ordinance, the state law imposes certain notice requirements on owners. In addition, it requires relocation payments equal to one month's rent or a waiver of the last month's rent for all no-fault evictions⁵. Failure to provide required relocation assistance renders a termination notice void.

B. Local Effect of State Just Cause

Oakland's Just Cause for Eviction Ordinance exempts properties with a certificate of occupancy issued after January 1, 1995. Thus, properties with certificates of occupancy issued after January 1, 1995, but not within the last 15 years, will now be subject to state just cause (unless subject to another local exemption).

⁴ If any adult tenants are added to the lease before an existing tenant has continuously and lawfully occupied the property for 24 months, just cause applies only if all the tenants have continuously and lawfully occupied the property for 12 months or more or at least one tenant has continuously and lawfully occupied the property for 24 months or more.

⁵ In contrast, Oakland's ordinances require relocation payments of at least \$6,500, with various increases based on size of the rental unit and the presence of low income, elderly or disabled tenants and minor children, and only for owner or relative move-ins, Ellis Act, and code enforcement evictions.

OPTIONS FOR IMPLEMENTATION AND ENFORCEMENT

The primary effect of AB 1482 in Oakland will be the application of state rent control and just cause protections to a number of properties not covered by local ordinances. Units built between 1983 and 2005 will make up a large portion of the newly protected units. Additional units will become subject to state protections each year as they age into coverage under state law.

The law is silent regarding local enforcement and there is a lack of consensus amongst rent control jurisdictions regarding whether a city may lawfully enforce AB 1482. The Rent Program can only hear rent disputes for properties covered under the local rent control and eviction laws and Just Cause for Eviction Ordinance and is not authorized to enforce AB 1482 as it explicitly applies to units that fall outside the Rent Program's jurisdiction. However, while the Rent Program may not enforce AB 1482, it may serve as a substantial resource for outreach and information.

The City Council however does have the ability to enact various regulatory amendments. With a goal to minimize incongruities between state and local law and optimizing the impact of AB 1482 the following options are available:

1. Amend Oakland's 10 percent annual rent cap for covered units to conform to state law;
2. Add failure to pay required relocation benefits as a defense to eviction in Oakland's Just Cause Ordinance to mirror state law;
3. Coordinate with rent programs of other cities to consider local enforcement options for AB 1482, including potentially requesting an Opinion from the Attorney General.

PROGRESS OF OUTREACH

The status of property owner and tenant education is as follows:

- The Rent Program has created an information sheet and "frequently asked questions" (FAQ) page which is posted on the program website and available in the Housing Resource Center. The information sheet and FAQ are available for public distribution at community events, workshops, and emailed to community partners, as well as individual property owners and tenants who have signed-up to receive constant contact and communication from the Rent Program.
- The Rent Program designed an informational postcard that will be mailed to all residential rental units in Oakland per business tax accounting data in January 2020.
- Effective February 2020, in an effort to meet the increased demand for assistance in understanding Oakland's complex landlord/tenant landscape, the Rent Program will increase its drop-in hours from 24 to 31 hours per week and add additional evening hours on Tuesday nights.
- In February 2020, the Rent Program will conduct a special workshop for Tenants on Rent Control and Eviction Protection in Oakland which will include information on AB 1482 as well as applicable local laws and regulations. Additionally, in 2020 the Rent Program will conduct ten (10) additional workshops for property owners and tenants (including special workshops for Spanish and Chinese speaking communities) all of which will include information on AB 1482.

FISCAL IMPACT

There is no fiscal impact or cost related to this informational report.

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for this report beyond the standard City Council agenda noticing procedures.

COORDINATION

Staff produced this report in coordination with the City Attorney's Office.

SUSTAINABLE OPPORTUNITIES

Economic: The goals of RAP are to preserve the affordable housing inventory for families, seniors, and disabled people in the City of Oakland and to protect tenants from displacement while encouraging owners to invest in the housing stock of the City.

Environmental: Through the implementation of the RAP ordinance, the Housing and Community Development Department seeks to mitigate adverse environmental impacts resulting from existing rental housing. This work also seeks to encourage cohesion and vested interest of owners and tenants in established neighborhoods.

Race and Equity: RAP seeks to improve the landscape and climate of Oakland's neighborhoods by encouraging long-term tenancies in rental housing, assisting low- and moderate-income families to save money to become homeowners, and preventing displacement of existing low-income Oakland tenants that result from illegal owner move-in evictions.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Receive An Informational Report On Local Enforcement And Implementation Of Assembly Bill (AB) 1482, The Tenant Protection Act Of 2019, Recently Chaptered Into State Law, On Oakland Renters And Landlords Including, But No Limited To, Which Categories Of Units In Oakland Are Newly Covered By This State Law, What The City Of Oakland Is Doing To Inform Newly Impacted Landlords And Tenants About This New Law, What Oakland's Rent Adjustment Program Can Do To Enforce Its Provisions, And Recommendations, If Any, To The City Council On What The Council Should Do To Enable Such Enforcement.

For questions regarding this report, please contact Chanee Franklin Minor, Manager, Rent Adjustment Program at (510) 238-3262.

Respectfully submitted,



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