



CITY OF OAKLAND

AGENDA REPORT

TO: CED Committee
Chairperson Reid and Members of the
Committee

FROM: Barbara J. Parker
City Attorney
Nikki Fortunato Bas
Councilmember District 2
Dan Kalb
Council President Pro
Tempore District 1

SUBJECT: Tenant Protection, Just Cause, and
Rent Ordinance Amendments –
Supplemental Report

DATE: June 29, 2020

RECOMMENDATION

City Attorney Barbara J. Parker, Councilmember Nikki Fortunato Bas, and Council President Pro Tempore Dan Kalb Recommend that the City Council Adopt:

AN ORDINANCE AMENDING CHAPTER 8.22 OF THE OAKLAND MUNICIPAL CODE (RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS) TO (1) LIMIT THE MAXIMUM RENT INCREASE IN ANY ONE YEAR TO CONFORM TO STATE LAW, (2) MAKE FAILURE TO PAY REQUIRED RELOCATION BENEFITS AN AFFIRMATIVE DEFENSE TO EVICTION, (3) LIMIT LATE FEES, (4) PROHIBIT UNILATERALLY IMPOSED CHANGES TO TERMS OF TENANCY, (5) ADD ONE-FOR-ONE REPLACEMENT OF ROOMMATES TO THE DEFINITION OF HOUSING SERVICES, (6) PROHIBIT EVICTION BASED ON ADDITIONAL OCCUPANTS IF LANDLORD UNREASONABLY REFUSED TENANT'S WRITTEN REQUEST TO ADD OCCUPANT(S), AND (7) STRENGTHEN TENANTS' RIGHTS AND ENFORCEMENT OF TENANTS' RIGHTS UNDER THE TENANT PROTECTION ORDINANCE

REASON FOR SUPPLEMENTAL REPORT

This ordinance was presented to the City Council at its April 21, 2020, meeting. The Council referred the item to the Community & Economic Development ("CED") Committee for further discussion and to provide an opportunity for additional feedback from interested parties and groups about the legislation. After the Council referred the legislation to the CED Committee, the sponsors extensively consulted with interested parties and groups and the Department of Housing & Community Development to receive feedback about the legislation.

This report accompanies revised legislation that incorporates several suggestions that the co-sponsors received. The report (1) explains the major changes to the legislation since it was published for the Council’s April 21st meeting; (2) includes a supplemental Fiscal Impact section; and (3) provides a chart detailing the laws in California and other cities, upon which most of the provisions of the legislative proposal are based.

A copy of the December 23, 2019, informational report from the Rent Adjustment Program which recommended some of the amendments that are proposed in this legislation is attached.

CHANGES TO LEGISLATION

The major changes that have been made to the legislative proposal are listed below in the order they appear in the legislation:

A. Changes to **Attachment A** (Tenant Protection Ordinance)

- Page 13 (Section 8.22.640.A.15) – Exceptions to Prohibition against Unilateral Imposition of New Material Contract Terms:
 - An additional exception was added for changes authorized by a regulatory agreement with a government agency;
- Page 15 (Section 8.22.640.G) – Exceptions to Prohibition Against Severance of Certain Housing Amenities:
 - The “just cause” exceptions to the prohibition were renamed as “good cause” exceptions, to avoid confusion with the Just Cause for Eviction Ordinance;
 - The list of exceptions to the prohibition was expanded to include (1) severances that are necessary to allow the addition of Accessory Dwelling Units (ADUs) and affordable housing units and (2) the removal of damaged balconies in affordable housing buildings (a definition for “affordable housing provider” was added to Section 8.22.620);
 - Exceptions to the prohibition adopted by regulation were made subject to Rent Board Regulation Section 8.22.040.B.4.b, requiring a vote of 5 Board Members representing at least one member of each class of Members (owner, tenant, neither);
 - For clarity, the provision now notes permitted severances in units covered by the Rent Ordinance shall be offset by a corresponding reduction in rent,

as required by the Rent Ordinance, for which either the Owner or Tenant may petition the Rent Adjustment Program (RAP) to determine;

- Page 15 (Subsection 8.22.640.H) –Late fee Limit:
 - The 1% of monthly rent limit on late fees is changed to 5% up to a maximum of \$50.

B. Changes to Attachment B (Residential Rent Adjustment Program Ordinance)

- Page 19 (Section 8.22.020) – To correspond with the proposed Just Cause for Eviction protection for additional occupants, definitions for “Additional Occupant” and “Base Occupancy Level” were added to permit owners to petition for rent increases up to 5% per additional non-family occupant;
- Page 24 (Subsection 8.22.070.C.1) – The existing list of rent increases for which an owner may petition RAP is expanded to include the new increase for additional occupants;
- Page 28 (Subsection 8.22.090.A.1) – The existing list of grounds for which a tenant may petition the RAP was expanded to include reversal of a prior rent increase for additional occupancy following a decrease in occupancy;
- Page 31 (Subsection 8.22.110.F.1) – The listed circumstances under which a RAP Hearing Officer may issue a decision without a hearing was expanded to codify the practice of issuing administrative decisions to petition and response forms that raise no genuine dispute as to any material fact, where the petition may be decided as matter of law.

COMPARATIVE LAW

The following table details how most of the amendments to Oakland law proposed by this legislation are based on laws that already exist in other jurisdictions.

Section	Description	Comparative law upon which provision is based
<i>Tenant Protection Ordinance</i>		
8.22.630.B.1 – deletion	Deletion of blanket exemption for nonprofit owned housing	East Palo Alto & Santa Monica do not exempt such housing from their similar prohibitions against various forms of tenant harassment.
8.22.630.B.7 -	Deletion of new construction	East Palo Alto, Santa Monica, & West

Section	Description	Comparative law upon which provision is based
deletion	exemption	Hollywood do not exempt such housing from their similar prohibitions against various forms of tenant harassment.
8.22.640.A.6	Addition of prohibiting threats of immigration status reporting to induce vacating rental unit	California prohibits such threats.
8.22.640.A.15	Unilateral imposition of new material terms to tenancy or new tenancy	Berkeley strictly prohibits unilateral changes to the terms of tenancy.
8.22.640.A.17-21	Prohibiting illegal lock-outs, utility shut-offs, discrimination, elder financial abuse, fraud, and forcing an occupant to vacate and re-register for the purpose of preventing them from acquiring tenancy rights	California prohibits all of this conduct.
8.22.640.G	Unilateral severance of housing amenities	San Francisco & Berkeley strictly prohibit such severances.
8.22.640.H	Late fee limited to 5% or \$50, whichever is lower.	Other monthly late fee caps in California include West Hollywood (1%) and Hayward (5%) ¹ .
<i>Residential Rent Adjustment Program Ordinance</i>		
8.22.020 (“Additional Occupant” & “Base Occupancy”), 070.C.1.e, & 090.A.1.m	Allowing owners a rent increase for additional occupancy	Berkeley, Richmond, & Los Angeles allow such rent increases, with limitations. For example, Berkeley & Richmond do not allow the rent increases for family additions and Berkeley reverses allowed rent increases if occupancy decreases.
8.22.020 (“Housing Services”)	Inclusion of the right to one-to-one replacement of roommates under Housing Services	Various cities in California provide the right of one-to-one replacement of roommates.
8.22.070.A.2	Annual rent increase limit of 5% + CPI, as provided by California	California adopted a statewide annual rent increase limit last year ² .

¹ Some states limit late fees, usually to 5%. Maine limits late fees to 4%. Ontario, Canada, entirely bans late fees for residential rent payments.

Currently, late fees are prohibited in the City of Oakland pursuant to the Eviction Moratorium Emergency Ordinance adopted in response to the novel Coronavirus (COVID-19) pandemic.

² See p. 4 of the Agenda Report submitted for the April 21, 2020, City Council meeting.

Section	Description	Comparative law upon which provision is based
	Civil Code Section 1947.12	
<i>Just Cause for Eviction Ordinance</i>		
8.22.360.A.2.b	Prohibition against eviction for additional occupancy	San Francisco, Berkeley, Richmond, & Los Angeles protect against eviction for additional occupancy. The City of Alameda provides such protection for family additions.
8.22.360.D.5	Defense against eviction for failure to make required relocation payments	Various cities in California provide this defense. In addition, California’s Tenant Protection Act of 2019 provides that failure to make required relocation payments is a defense to eviction ³ .
8.22.360.D.6	Prohibition against eviction for violation of unilaterally imposed new terms of tenancy	San Francisco, Berkeley, & other cities prohibit evictions for violation of unilaterally imposed terms

FISCAL IMPACT - SUPPLEMENTAL

The ordinance presented to the City Council on April 21st was not expected to have any significant direct fiscal impact on City government. However, the new provision that would allow Landlords to petition for a rent increase for additional occupants will increase the workload of the Rent Adjustment Program, which anticipates that one additional Hearing Officer would be necessary to address the new requirement. The Finance Department has advised that the total annual cost for 1.0 FTE Hearing Officer is \$244,478.

ACTION REQUESTED BY THE CITY COUNCIL

City Attorney Parker, Councilmember Fortunato Bas and President Pro Tempore Kalb request that the Council adopt the following ordinance:

An Ordinance Amending Chapter 8.22 Of The Oakland Municipal Code (Residential Rent Adjustments And Evictions) To (1) Limit The Maximum Rent Increase In Any One Year To Conform To State Law, (2) Make Failure To Pay Required Relocation Benefits An Affirmative

³ See p. 4 of the Agenda Report submitted for the April 21, 2020, City Council meeting.

Defense To Eviction, (3) Limit Late Fees, (4) Prohibit Unilaterally Imposed Changes To Terms Of Tenancy, (5) Add One-for One Replacement Of Roommates To The Definition Of Housing Services, (6) Prohibit Eviction Based on Additional Occupants If Landlord Unreasonably Refused Tenant's Written Request to Add Occupant(s), and (7) Strengthen Tenants' Rights And Their Enforcement Under The Tenant Protection Ordinance.

For questions regarding this report, please contact Deputy City Attorney Oliver Luby at (510) 238-4924.

Respectfully Submitted,



Barbara J. Parker
City Attorney, Oakland



Nikki Fortunato Bas
Councilmember, District 2



Dan Kalb
Councilmember, District 1

Cc: City Council

Attachment: RAP Report, 12/23/2019



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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.

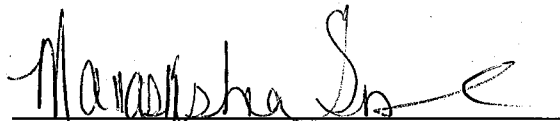
Race and Equity: RAP seeks to improve the landscape and climate of Oakland's neighborhoods by encouraging long-term tenancies in rental housing, assisting low- and moderate-income families to save money to become homeowners, and preventing displacement of existing low-income Oakland tenants that result 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 Chaneé Franklin Minor, Manager, Rent Adjustment Program at (510) 238-3262.

Respectfully submitted,



Marakeshia Smith
Assistant City Administrator

Prepared by:
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Manager
Housing and Community Development