

INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY

ORDINANCE NO. 12399 C.M.S.

AN ORDINANCE AMENDING AND RESTATING CHAPTER 8.22 OF THE OAKLAND MUNICIPAL CODE, RESIDENTIAL RENT ARBITRATION PROGRAM, TO PROVIDE FOR ANNUAL RENT ADJUSTMENTS TIED TO THE CONSUMER PRICE INDEX, A PROGRAM SERVICE FEE, VOLUNTARY MEDIATION OF DISPUTES BETWEEN RENTAL PROPERTY OWNERS AND TENANTS, AND PROVIDE FOR MORE SUFFICIENT NOTICES AND ENFORCEMENT MECHANISMS AFTER CERTAIN TERMINATIONS OF TENANCIES AND TO SIMPLIFY THE LANGUAGE AND IMPROVE THE ORGANIZATION OF THE ORDINANCE

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Whereas, the City Council desires that annual rent adjustments reflect changes in the cost of living, rather than being a fixed percentage set by the City Council;

Whereas, a separate source of funding dedicated solely to the Rent Adjustment Program is required in order to provide adequate staffing and other needs;

Whereas, the City Council wishes to provide for voluntary mediation of rent and eviction disputes between rental property owners and tenants;

Whereas, the City Council wishes to provide disincentives against terminations of tenancies for the purpose of obtaining a rent increase not permitted under Oakland Municipal Code Chapter 8.22 while still preserving rental property owners' ability to terminate tenancies without specifying a cause;

Whereas, the City Council desires to simplify the language and improve the organization of Chapter 8.22, Residential Rent Adjustment Program, by amending and restating the entire Chapter 8.22;

Whereas, the City Council desires a report on the implementation of this amended Chapter 8.22 after one year;

Whereas, the City Council desires to sunset the fee provided for in Chapter 8.22 as a funding source for the program established under Chapter 8.22 on June 30, 2003, unless the City Council acts to extend the fee.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN THAT CHAPTER 8.22 OF THE OAKLAND MUNICIPAL CODE IS HEREBY AMENDED IN ITS ENTIRIETY AS FOLLOWS:

RESIDENTIAL RENT ADJUSTMENT PROGRAM

Sections:

- 8.22.010 Findings and purpose.**
- 8.22.020 Definitions.**
- 8.22.030 Exemptions.**
- 8.22.040 Composition and Functions of the Board.**
- 8.22.050 Summary of Notices Required by This Chapter.**
- 8.22.060 Notice of the Existence of the Chapter 8.22 Required at Commencement of Tenancy.**
- 8.22.070 Rent Adjustments for Occupied Covered Units.**
- 8.22.080 Rent Increases Following Vacancies.**
- 8.22.090 Petition and Response Filing Procedures.**
- 8.22.100 Mediation of Rent Disputes.**
- 8.22.110 Hearing Procedures.**
- 8.22.120 Appeal Procedure.**
- 8.22.130 Notice Requirements for a Civil Code Section 1946 Termination of Tenancy.**
- 8.22.140 Unlawful Terminations of Tenancies.**
- 8.22.150 Retaliatory Evictions.**
- 8.22.160 Voluntary Mediation of Evictions.**
- 8.22.170 General Remedies.**
- 8.22.180 Rent Program Service Fee.**
- 8.22.190 Computation of Time.**
- 8.22.200 Severability.**
- 8.22.210 Nonwaiverability.**
- 8.22.220 Applicability—Effective date of Chapter.**

8.22.010 Findings and purpose.

A. The City Council finds that a shortage of decent, safe, affordable and sanitary residential rental housing continues to exist in Oakland. This shortage is evidenced by a low vacancy rate among such units throughout the city and a continually increasing demand for such housing. Many residents of Oakland pay a substantial amount of their monthly income for rent. The present shortage of rental housing units and the prevailing rent levels have a detrimental effect on the health, safety, and welfare of a substantial number of Oakland residents, particularly senior citizens, persons in low and moderate income households, and persons on fixed incomes. Stability in their housing situation is important for individuals and families in rental housing. In particular, tenants desire to be free from the fear of eviction

motivated by a rental property owner's desire to increase rents. Rental property owners desire the ability to expeditiously terminate the tenancies of problem tenants.

B. Further, the welfare of all persons who live, work, or own residential rental property in the City depends in part on attracting persons who are willing to invest in residential rental property in the city. It is, therefore, necessary that the City Council take actions that encourage investment in residential housing while also protecting the welfare of residential tenants.

C. Among the purposes of Chapter 8.22 are providing relief to residential tenants in Oakland by limiting rent increases for existing tenants; encouraging rehabilitation of rental units, encouraging investment in new residential rental property in the City; reducing the financial incentives to rental property owners who terminate tenancies under California Civil Code Section 1946 ("Section 1946") or where rental units are vacated on other grounds under state law Civil Code Sec. 1954.50, *et seq.* ("Costa-Hawkins") that permit the City to regulate initial rents to new tenants, and allowing efficient rental property owners the opportunity for both a fair return on their property and rental income sufficient to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities, and other costs of operation.

D. The City Council also wishes to foster better relations between rental property owners and tenants and to reduce the cost and adversarial nature of rent adjustment proceedings under Chapter 8.22. For these reasons, Chapter 8.22 includes options for rental property owners and tenants to mediate rent disputes that would otherwise be subject to a hearing process, and to mediate some evictions.

E. The City Council also desires to better assure the stability of tenancies while preserving residential rental property owners' flexibility to remove problem tenants. For these reasons, Chapter 8.22 restricts rental property owners' ability to increase rents to new tenants after specified terminations of tenancies. Under state law, cities have the authority to limit rental property owners' ability to evict tenants to certain specified grounds and pursuant to Costa-Hawkins rental property owners have the right to set the initial rent to a new tenant without restriction following certain vacancies. Under Chapter 8.22, rental property owners are permitted to terminate tenancies by giving notice pursuant to California Civil Code Section 1946. However, one purpose of Chapter 8.22 is to prevent unjustified rent increases that follow Civil Code Section 1946 terminations of tenancy and to better assure tenancies following such vacancies are not created to evade this purpose. Consistent with these objectives, Chapter 8.22 regulates rent increases in excess of the annual Consumer Price Index formula set out in Chapter 8.22 that follow vacancies pursuant to Section 1946 and other circumstances in which the City may regulate the initial rent to a new tenant. Further, Chapter 8.22 regulates terminations of tenancies pursuant to Civil Code Section 1946 by requiring additional information in the notices and providing that the failure to provide proper notice pursuant to this Chapter 8.22 is a defense to the eviction.

F. The City Council desires to provide efficient and effective program services to rental property owners and tenants. The City Council recognizes there must be an adequate funding source in order to accomplish this objective. To provide adequate funding for the program and services provided to rental property owners and tenants under Chapter 8.22, an annual fee has been established, as set out in the Master Fee Schedule. The funds provided from this fee shall be dedicated to the administrative, public outreach, enforcement, and legal needs of the programs and services set out in Chapter 8.22 and not for any other purposes. This fee is to be paid by the rental property owner not as the owner

of real property, but instead as the operator of the business of renting residential units, with a reimbursement of 50 percent of the fee from the tenant as provided in Chapter 8.22. The fee will sunset after two years unless the City Council acts to extend it.

G. The City Council desires that before the amendments to Chapter 8.22 fully take effect, the regulations to implement Chapter 8.22, new forms, and informational and outreach materials should first be developed. To allow rental property owners and tenants to become aware of the changes to Chapter 8.22 before they fully take effect and to allow for the enactment of new regulations to implement this amended and restated Chapter 8.22, the amendments to Chapter 8.22 will take effect on July 1, 2002 except for the fee and as otherwise stated in Chapter 8.22. The fee set forth in Chapter 8.22 may be billed to rental property owners to meet the time frames for payment and delinquency set forth in Chapter 8.22.

8.22.020 Definitions.

As used in Chapter 8.22:

"1946 Notice" means any notice of termination of tenancy served pursuant to California Civil Code §1946. This notice is commonly referred to as a 30-day notice of termination of tenancy, but the notice period may actually be for a longer or shorter period, depending on the circumstances.

"1946 Termination of Tenancy" means any termination of tenancy pursuant to California Civil Code § 1946.

"Anniversary Date" is the date falling one year after the day the Tenant was provided with possession of the Covered Unit or one year after the day the most recent rent adjustment took effect, whichever is later. Following certain vacancies, a subsequent Tenant will assume the Anniversary Date of the previous Tenant (Section 8.22.080).

"Banking" means any CPI Rent Adjustment (or any rent adjustment formerly known as the Annual Permissible Rent Increase) the Owner chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in the Regulations.

"Board" and **"Residential Rent Adjustment Board"** means the Housing, Residential Rent and Relocation Board.

"Capital Improvements" means those improvements to a Covered Unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the Tenant rather than the Owner.

"CPI--All Items" means the Consumer Price Index – all items for all urban consumers for the San Francisco-Oakland-San Jose area as published by the U.S. Department of Labor Statistics for the 12 month period ending on the last day of February of each year.

"CPI--Less Shelter" means the Consumer Price Index- all items less shelter for all urban consumers for the San Francisco-Oakland-San Jose area as published by the U.S. Department of Labor Statistics for the 12 month period ending on the last day of February of each year.

"CPI Rent Adjustment" means the maximum Rent adjustment (calculated annually according to a formula pursuant to Section 8.22.070 B.3) that an Owner may impose within a twelve (12) month period without the Tenant being allowed to contest the Rent increase, except as provided in Section 8.22.070 B.2 (failure of the Owner to give proper notices, decreased Housing Services, and uncured code violations).

"Costa-Hawkins" means the California state law known as the Costa-Hawkins Rental Hawkins Act codified at California Civil Code § 1954.50, et seq. (Appendix A to this Chapter contains the text of Costa-Hawkins).

“Covered Unit” means any dwelling unit, including joint living and work quarters, and all housing services located in Oakland and used or occupied in consideration of payment of rent with the exception of those units designated in Section 8.22.030 A as exempt.

“Debt Service” means the monthly principal and interest payments on one or more promissory notes secured by deed(s) of trust on the the property on which the Covered Units are located.

“Housing Services” means all services provided by the Owner related to the use or occupancy of a Covered Unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.

“Owner” means any owner, lessor or landlord, as defined by state law, of a Covered Unit that is leased or rented to another, and the representative, agent, or successor of such owner, lessor or landlord.

“Rent” means the total consideration charged or received by an Owner in exchange for the use or occupancy of a Covered Unit including all Housing Services provided to the Tenant.

“Rent Adjustment Program” means the department in the City of Oakland that administers this Ordinance and also includes the Board.

“Regulations” means the regulations adopted by the Board and approved by the City Council for implementation of this Chapter (formerly known as “Rules and Procedures”) (After Regulations that conform with this Chapter are approved they will be attached to this Chapter as Appendix B).

“Security Deposit” means any payment, fee, deposit, or charge, including but not limited to, an advance payment of rent, used or to be used for any purpose, including but not limited to the compensation of an Owner for a Tenant’s default in payment of rent, the repair of damages to the premises caused by the Tenant, or the cleaning of the premises upon termination of the tenancy exclusive of normal wear and tear.

“Tenant” means a person entitled, by written or oral agreement to the use or occupancy of any Covered Unit.

“Uninsured Repairs” means that work done by an Owner or Tenant to a Covered Unit or to the common area of the property or structure containing a Covered Unit which is performed to secure compliance with any state or local law as to repair damage resulting from fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds.

8.22.030 Exemptions.

A. Types of Dwelling Units Exempt. The following dwelling units are not Covered Units for purposes of this Chapter:

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. 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).

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. An Owner may only obtain a Certificate of Exemption by claiming and proving an exemption in response to a Tenant petition.

b. The burden of proving that a dwelling unit is exempt 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.

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. 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 8.22.030 A.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 8.22. Such notice must be on a form prescribed by the Rent Adjustment Program.

8.22.040 Composition and Functions of the Board.

A. Composition .

1. **Members.** The Board shall consist of seven members appointed pursuant to Section 601 of the Charter. The Board shall be comprised of two residential rental property owners, two tenants, and three persons who are neither tenants nor residential rental property owners.

2. **Appointment.** A Board member is deemed appointed after confirmation by the City Council and upon taking the oath of office.

3. Board members serve without compensation.

B. Vacancies and Removal.

1. A vacancy on the Board exists whenever a Board member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the City Council within two City Council meetings of nomination by the Mayor.

2. Removal for Cause. A Board member may be removed pursuant to Section 601 of the City Charter. Among other things, conviction of a felony, misconduct, incompetency, inattention to or inability to perform duties, or absence from three consecutive regular meetings except on account of illness or when absent from the City by permission of the Board, constitute cause for removal.

3. Report of Attendance. To assure participation of Board members, attendance by the members of the Board at all regularly scheduled and special meetings of the Board shall be recorded, and such record shall be provided semiannually to the Office of the Mayor.

C. Terms and Holdover.

1. Terms. Board members' terms shall be for a period of three years beginning on February 12 of each year and ending on February 11 three years later. Board members shall be appointed to staggered terms so that only one third of the Board will have terms expiring each year, with no more than one Board member who is neither a residential rental property owner nor a tenant, and no more than one rental property owner and no more than one tenant expiring each year. Terms will commence upon the date of appointment, except that an appointment to fill a vacancy shall be for the unexpired portion of the term only. No person may serve more than two consecutive terms.

2. Holdover. A Board member whose term has expired may remain as a Board member for up to one year following the expiration of his/her term or until a replacement is appointed whichever is earlier. The City Clerk shall notify the Mayor, the Rent Program, the Board, and affected Board member when a Board member's holdover status expires. Prior to notification by the City Clerk of the end of holdover status, a Board member may fully participate in all decisions in which such Board member participates while on holdover status and such decisions are not invalid because of the Board member's holdover status.

D. Duties and Functions.

1. Appeals. The Board hears appeals from decisions of hearing officers.

2. Regulations. The Board may develop or amend the Regulations, subject to City Council approval.

3. Reports. The Board shall make such reports to the City Council or Committees of the City Council as may be required by this Chapter, by the City Council or City Council Committee.

4. Recommendations. The Board may make recommendations to the City Council or appropriate City Council committee pertaining to this Chapter or City housing policy when requested to do so by the City Council or when the Board otherwise acts to do so.

8.22.050 Summary of Notices Required by This Chapter.

The following is a summary of notices required by this Chapter. Details of the requirements for each notice are found in the applicable Section. (After the notices to conform with this Chapter are developed, they shall be attached to this Chapter as Appendix C).

A. Notice at the Commencement of a Tenancy. Existence and Scope of this Chapter (Section 8.22.060).

B. Change in Terms of Tenancy or Rent Increase. Notice of Tenant's Right to Petition. (Section 8.22.070 H).

C. Notices and Filings Required With a 1946 Termination of Tenancy:

1. 1946 Notice (Section 8.22.130) which includes:
 - a. Amount of vacating Tenant's Rent and Anniversary Date; and
 - b. Vacating Tenant's rights following termination of tenancy;
2. Filing California Civil Code § 1946 Notice with Rent Adjustment Program. (Section 8.22.130 A.2).
3. Notice to New Tenant. (Section 8.22.130 B)
 - a. Amount of vacating Tenant's Rent and Anniversary Date; and
 - b. Right of Owner to pass along Rent increases not given former Tenant.
4. Report of new Tenant's Rent. (Section 8.22.130 C).
5. Report after twelve (12) months following vacancy. (Section 8.22.130 D).

8.22.060 Notice of the Existence of the Chapter 8.22 Required at Commencement of Tenancy.

A. Notice at Commencement of Tenancy. The Owner of any Covered Unit is required to comply with the following notice requirements at the commencement of any tenancy:

1. On or before the date of commencement of a tenancy, the Owner must give the Tenant a written notice in a form prescribed by the Rent Adjustment Program which must include the following information:
 - a. The existence and scope of Chapter 8.22; and
 - b. The Tenant's rights to petition against certain Rent increases.

B. Evidence of Giving Notice. When filing an Owner's response to a Tenant petition or an Owner's petition for a Rent increase, the Owner must submit evidence that the Owner has given the notice required by this Section to the affected Tenants in the building under dispute in advance of the filing. When responding to a Tenant petition, the Owner may allege that the affected dwelling units are exempt in lieu of providing evidence of complying with the notice requirement. If an Owner fails to submit the evidence and the subject dwelling unit is not exempt, then the Owner's petition or response to a Tenant's petition must be dismissed. This evidence can be a statement of compliance given under oath, however, the Tenant may controvert this statement at the hearing. An Owner's filing the notice in advance of petition or response prevents the Owner's petition or response from being dismissed, but the Owner may still be subject to the Rent increase forfeiture if the notice was not given at the commencement of the tenancy or within the cure period set out in Section 8.22.060 C.

C. Failing to Give Notice. An Owner who fails to give notice of the existence and scope of the Rent Adjustment Program at the commencement of a tenancy, but otherwise qualifies to petition or respond to a petition filed with the Rent Adjustment Program, will forfeit six months of the Rent increase sought unless the Owner cured the failure to give the notice. An Owner may cure the failure to give the notice at the commencement of a tenancy required by this Section and not be subject to a forfeiture of a Rent increase if the Owner gives the notice at least six months prior to serving the Rent increase notice on the Tenant or, in the case of an Owner petition, at least six months prior to filing the petition.

8.22.070 Rent Adjustments for Occupied Covered Units.

This Section applies to all Rent adjustments for continuously occupied Covered Units. (Rent increases following vacancies of Covered Units are governed by Section 8.22.080). Any Rent increase for a continuously occupied Covered Unit must comply with this Section.

A. One Rent Increase Each Twelve Months. An Owner may increase the Rent on a Covered Unit occupied continuously by the same Tenant only once in a 12-month period. Such Rent increase cannot take effect earlier than the Tenant's Anniversary Date.

B. CPI Rent Adjustments.

1. **Effective Date of this Section.** An Owner may first impose CPI Rent Adjustments pursuant to this Section that take effect on or after July 1, 2002.

2. **CPI Rent Adjustment Not Subject to Petition.** The Tenant may not petition to contest a Rent increase in an amount up to and including the CPI Rent Adjustment unless the Tenant alleges one or more of the following:

- a. The Owner failed to provide the notice required at the commencement of tenancy and did not cure such failure (Section 8.22.060),
- b. The Owner failed to provide the notice required with a Rent increase (Section 8.22.070 H);
- c. The Owner decreased Housing Services;
- d. The Covered Unit has uncured health, safety, fire, or building code violations pursuant to Section 8.22.070 D.7.

3. **Calculation of the CPI Rent Adjustment.** Beginning in 2002, the CPI Rent Adjustment is the average of the percentage increase in the CPI—All Items and the CPI—Less Shelter for the twelve month period starting on March 1 of each calendar year and ending on the last day of February of the following calendar year calculated to the nearest one tenth of one percent.

4. **Effective Date of CPI Rent Adjustments.** An Owner may notice a CPI Rent Adjustment on the first day of the month following the Rent Adjustment Program's announcement of the CPI Rent Adjustment for that year or sufficiently in advance of the Tenant's Anniversary Date to comply with state law (California Civil Code § 827), whichever is later.

5. **Banking.** In accordance with rules set out in the Regulations, an Owner may Bank CPI Rent Adjustments and Annual Permissible Rent Adjustments previously authorized by this Chapter.

6. **Schedule of Prior Annual Permissible Rent Adjustments.** Former Annual Permissible Rent Adjustments available under the prior versions of Chapter 8.22:

- a. May 6, 1980 through October 31, 1983, the annual rate was ten (10) percent.
- b. November 1, 1983 through September 30, 1986, the annual rate was eight (8) percent.
- c. October 1, 1986 through February 28, 1995, the annual rate was six (6) percent.
- d. March 1, 1995 through June 30, 2002, the annual rate was three (3) percent.

C. Rent Increases in Excess of the CPI Rent Adjustment.

1. A Tenant may file a petition in accordance with the requirements of Section 8.22.110 contesting any Rent increase which exceeds the CPI Rent Adjustment.

2. If a Tenant files a petition and if the Owner wishes to contest the petition, the Owner must respond by either claiming an exemption and/or justifying the Rent increase in excess of the CPI Rent Adjustment on one or more of the following grounds:

- a. Banking;
 - b. Capital improvement costs;
 - c. Uninsured repair costs;
 - d. Increased housing service costs;
 - e. Debt service costs;
 - f. The Rent increase is necessary to meet constitutional or fair return requirements.
3. The amount of Rent increase allowable for the grounds listed in Section 8.22.070 C.2 are subject to the limitations set forth in the Regulations.
4. An Owner must provide a summary of the justification for a Rent increase upon written request of the Tenant.

D. Operative Date of Rent Adjustment When Petition Filed.

1. While a Tenant petition is pending, a Tenant must pay when due, pursuant to the Rent increase notice, the amount of the Rent increase that is equal to the CPI Rent Adjustment unless:
- a. The Tenant's petition claims decreased Housing Services; or
 - b. The Owner failed to separately state in the Rent increase notice the amount of the Rent increase that equals the CPI Rent Adjustment pursuant to Section 8.22.070 H.
2. The amount of any noticed Rent adjustment above the CPI Rent Adjustment that is the subject of a petition is not operative until the decision of the Hearing Officer has been made and the time to appeal has passed.
3. When a party appeals the decision of a Hearing Officer, the Tenant must continue to pay the amount of the Rent adjustment due during the period prior to the issuance of the decision and the remaining amount of the noticed Rent increase is not operative until the Board has issued its written decision.
4. Following a final decision, a Rent adjustment takes effect on the following dates:
- a. In the case of a Rent increase, the date the increase would have been effective pursuant to a valid Rent increase notice given to the Tenant, unless a six (6) month forfeiture applies for an uncured failure to give the required notice at the commencement of tenancy;
 - b. In the case of a decrease in Housing Services, on the effective date for a noticed decrease in Housing Services or, if no notice was given, the date the decrease in Housing Services occurred.
5. A Tenant who files a petition following a thirty (30) day Rent increase notice and who does not file a petition before the increased Rent becomes due, must pay the increased Rent when due until the Tenant files the petition. Once the Tenant files the petition, the portion of Rent increase above the CPI Rent Adjustment need not be paid until the decision on the petition is final.
6. A Rent increase following an Owner's petition is operative on the date the decision is final and following a valid Rent increase notice based on the final decision.
7. No part of any noticed Rent increase is operative during the period after the Tenant has filed a petition and the applicable Covered Unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations as defined by Section 17920.3 of the California Health and Safety Code, excluding any violation caused by a disaster or where the owner proves the violation was solely caused by the willful conduct of the Tenant. In order for such rent increase to be operative the Owner must provide proof that the cited violation has been abated. The Owner must then issue a new Rent increase notice pursuant to California Civil Code Section

827. The Rent increase will be operative in accordance with Section 827.

E. An Owner cannot increase the Rent for a Covered Unit except by following the procedures set out in this Chapter or where Costa-Hawkins allows an Owner to set the initial Rent for a new Tenant without restriction.

F. Decreased Housing Services. A decrease in Housing Services is considered an increase in Rent. A Tenant may petition for an adjustment in Rent based on a decrease in Housing Services under standards in the Regulations. The Tenant's petition must specify the Housing Services decreased. Where a Rent or a Rent increase has been reduced for decreased Housing Services, the Rent or Rent increase may be restored in accordance with procedures set out in the Regulations when the Housing Services are reinstated.

G. Pass-through of Fee. An Owner may passthrough one half of the Fee to a Tenant in accordance with Section 8.22.180. The allowed Fee pass-through shall not be added to the Rent to calculate the CPI Rent Adjustment or any other Rent adjustment and shall not be considered a Rent increase.

H. Notice Required to Increase Rent or Change Other Terms of Tenancy.

1. As part of any notice to increase Rent or change any terms of tenancy, an Owner must include:

- a. Notice of the existence of Chapter 8.22;
- b. The Tenant's right to petition against any Rent increase in excess of the CPI Rent Adjustment;
- c. When an Owner notices a Rent increase in excess of the CPI Rent Adjustment, the notice must include a statement that the Owner must provide the Tenant with a summary of the justification for the amount of the Rent increase in excess of the CPI Rent adjustment if the Tenant makes a written request for such summary.
 - i. A Tenant request for a summary of the amount of the Rent increase in excess of the CPI Rent Adjustment, the Tenant must do so within thirty (30) days of service of the Rent increase notice;
 - ii. The Owner must respond to the request with a written summary within fifteen (15) days after service of the request by the Tenant.
- d. If the increase exceeds the CPI Rent Adjustment, the notice must state the amount of the increase constituting the CPI Rent Adjustment. If the amount constituting the CPI Rent Adjustment is not separately stated the Tenant is not required to pay the amount of the CPI Rent Adjustment while a petition challenging the Rent increase is pending.

2. A notice to increase Rent must include the information required by 8.22.070 H.1 using the language and in a form prescribed by the Rent Adjustment Program.

3. A Rent increase is not permitted unless the notice required by this Section is provided to the Tenant. An Owner's failure to provide the notice required by this Section invalidates the Rent increase or change of terms of tenancy. This remedy is not the exclusive remedy for a violation of this provision. If the Owner fails to timely give the Tenant a written summary of the basis for a Rent increase in excess of the CPI Rent Adjustment, as required by Section 8.22.070 H.1.c, the amount of the Rent increase in excess of the CPI Rent Adjustment is invalid.

I. An Owner may terminate the tenancy for non-payment of Rent (California Code of Civil Procedure Section 1161(2) (unlawful detainer)) of a Tenant who fails to pay the portion

of a Rent increase that is equal to the CPI Rent Adjustment when the Tenant is required to do so by this Subsection. In addition to any other defenses to the termination of tenancy the Tenant may have, a Tenant may defend such termination of tenancy on the basis that:

1. The Owner did not comply with the notice requirements for a Rent increase;
2. The Tenant's petition was based on Decreased Housing Services; or
3. That the Owner failed to give the Tenant a written summary of the basis for a Rent increase in excess of the CPI Rent Adjustment as required by Section 8.22.070 H.1.c.

8.22.080 Rent Increases Following Vacancies.

A. Purpose of Section. This Section sets forth how an Owner may set the Rents to a new Tenant following vacancies. Rent increases following an Owner's setting the initial Rent are regulated by this Chapter.

B. Setting Initial Rents to Tenants Without Restriction. Costa-Hawkins provides that Owners may set an initial Rent to a new Tenant without restriction except in certain circumstances.

C. Costa-Hawkins Exceptions. Costa-Hawkins permits an Owner to set initial Rents to a new Tenant without restriction except where the previous Tenant vacated under the following circumstances:

1. 1946 Termination of Tenancy. ("The previous tenancy has been terminated by the owner by notice pursuant to [California Civil Code §] 1946 . . .") (California Civil Code § 1954.53(a)(1)).

2. Change of Terms of Tenancy or Rent Increase Not Permitted by This Chapter. The previous tenancy was terminated following a notice of a Rent increase not permitted by this Chapter. ("The previous tenancy . . . has been terminated upon a change in the terms of the tenancy pursuant to [California Civil Code §] 827, except a change permitted by law in the amount of rent or fees.") (California Civil Code Sec. 1954.53(a)(1)).

3. Failure to Renew Contract With Government That Limits Rent Increases. In certain circumstances, "... an owner...[who] terminates or fails to renew a contract or recorded agreement with a government agency that provides for a rent limitation to a qualified tenant" ... "shall not be eligible to set an initial rent for three years following the date of the termination or nonrenewal of the contract or agreement". (California Civil Code § 1954.53(a)(1)(A)).

4. Owner Agrees to Rent Restriction in Exchange for Subsidy. The Owner has agreed to a rent restriction in return for public financial support. (California Civil Code § 1954(a)(1)(B)(2)).

5. Unabated Serious Code Violations. The dwelling unit was cited for serious health, safety, fire, or building code violations at least 60 days prior to the vacancy and the violations were not abated by the time the unit was vacated. (California Civil Code § 1954.53(f)).

D. Sublets and Assignments. Under specified conditions, Costa Hawkins permits an Owner to set initial Rents without restriction when a Covered Unit is sublet or assigned and none of the original occupants permanently reside in the Covered Unit. (California Civil Code § 1954.53(d)).

E. Rent Increases After Setting an Initial Rent Without Restriction. After the Owner sets an initial Rent without restriction pursuant to Costa-Hawkins, the Owner may only increase

Rent in conformance with the requirements of Section 8.22.070, based on circumstances or cost increases that arise after the beginning of the new tenancy. The Owner may not increase Rents based on Banking, cost increases, capital improvements, or other circumstances that arose before the new tenancy began.

F. Restrictions Where the Owner May Not Set the Initial Rent. In circumstances in which Costa Hawkins does not give an Owner the right to set the initial Rents for new tenants, the following restrictions shall apply:

1. During the first twelve (12) months after the previous Tenant vacated a Covered Unit, on or after the Anniversary Date of the tenant who vacated the unit, the Owner may increase the Rent up to the CPI rent adjustment for the current year, which is authorized in Section 8.22.070 B.

2. Beginning twelve (12) months after the previous tenant vacated a Covered Unit, the Owner may increase the rent in accordance with Section 8.22.070 of this Ordinance. The Owner also may impose rent increases which could have been imposed on the prior tenant, provided that the Tenant was notified of the Owner's right to those increases prior to the commencement of the tenancy in accordance with Section 8.22.070 C. (Such rights include, but are not limited to, rights to Banked and Capital Improvement Rent adjustments.)

G. Tenant Petitions for Restitution of Rent Increases in Violation of this Section. If an Owner charges a Rent in excess of the Rent Permitted by this Section, the Tenant may petition the Rent Program to adjust the Rent to the permitted level and to provide for restitution of any overcharges.

8.22.090 Petition and Response Filing Procedures.

A. Tenant Petitions.

1. Tenant may file a petition regarding any of the following:

a. A Rent increase exceeds the CPI Rent Adjustment, including, without limitation circumstances where:

i. The Owner failed to timely give the Tenant a written summary of the basis for a Rent increase in excess of the CPI Rent Adjustment as required by Section 8.22.070 H.1.c; and

ii. The Owner failed to give the Tenant information on the Rent increases the Owner could have imposed on the Tenant whose tenancy was terminated by the 1946 Notice as required by Section 8.22.130 B.1.a.

b. The Owner set an initial Rent in excess of the amount permitted pursuant to Section 8.22.080 (Rent increases following vacancies);

c. A Rent increase notice fails to comply with the requirements of this Section 8.22.070 H;

d. The Owner failed to give the Tenant a notice in compliance with Section 8.22.060;

e. The Owner decreased Housing Services to the Tenant;

f. The Tenant alleges the Covered Unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Section 8.22.070 D.7;

g. The Tenant claims relocation restitution pursuant to Section 8.22.140 C.1.

2. For a petition contesting a Rent increase, the petition must be filed within sixty (60) days of which ever of the following is later:

a. The date the Owner serves the Rent increase notice; or

the hearing being sent. Disputes involving more than one Covered Unit in any single building may be consolidated for hearing.

D. Time of Hearing and Decision.

1. The Hearing Officer shall have the goal of hearing the matter within sixty (60) days of the original petition's filing date.

2. The Hearing Officer shall have a goal of rendering a decision within sixty (60) days after the conclusion of the hearing or the close of the record, whichever is later. The decision shall be issued in writing.

3. The decision of the examiner shall be based entirely on evidence placed into the record.

E. A Hearing Officer may order a Rent adjustment as restitution for any overcharges or undercharges due, subject to guidelines set out in the Regulations.

F. Administrative Decisions.

1. Notwithstanding the acceptance of a petition or response by the Rent Adjustment Program, if any of the following conditions exist, a hearing may not be scheduled and a Hearing Officer may issue a decision without a hearing:

a. The petition or response forms have not been properly completed or submitted;

b. The petition or response forms have not been filed in a timely manner.;

c. The required prerequisites to filing a petition or response have not been met;

or

d. Conclusive proof of exemption has been provided and is not challenged by the Tenant.

2. A notice regarding the parties' appeal rights will accompany any decision issued administratively. Appeals are governed by Section 8.22.120.

G. Should the petitioner fail to appear at the designated hearing, the Hearing Officer may dismiss the petition.

8.22.120 Appeal Procedure.

A. Filing An Appeal.

1. Either party may appeal the Hearing Officer's decision, including an administrative decision, within fifteen (15) days after service of the notice of decision by filing with the Rent Adjustment Program a written notice on a form prescribed by the Rent Adjustment Program setting forth the grounds for the appeal.

2. The matter shall be set for an appeal hearing and notice thereof shall be served on the parties not less than ten (10) days prior to such hearing.

B. Appeal Hearings. The following procedures shall apply to all Board appeal hearings:

1. The Board shall have a goal of hearing the appeal within thirty (30) days of filing the notice of appeal.

2. All appeal hearings conducted by the Board shall be public and recorded.

3. Any party to a hearing may be assisted by an attorney or any person so designated.

4. Appeals shall be based on the record as presented to the Hearing Officer unless the Board determines that an evidentiary hearing is required. If the Board deems an

b. The date the Tenant first receives written notice of the existence and scope of this Chapter as required by Section 8.22.060.

3. In order to file a petition or respond to an Owner petition, a Tenant must provide the following at the time of filing the petition or response:

a. A completed Tenant petition or response on a form prescribed by the Rent Adjustment Program;

b. Evidence that the Tenant's rent is current or that the Tenant is lawfully withholding rent; and

c. A statement of the services that have been reduced or eliminated, if the Tenant claims a decrease in Housing Services,.

d. A copy of the applicable citation, if the Tenant claims the Rent increase need not be paid because the Covered Unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Section 8.22.070 D.7.

4. A Tenant must file a response to an Owner's petition within thirty (30) days of service of the notice by the Rent Adjustment Program that an Owner petition was filed.

B. Owner Petitions and Owner Responses to Tenant Petitions.

1. In order for an Owner to file a response to a Tenant petition or to file a petition seeking a Rent increase, the Owner must provide the following:

a. Evidence of possession of a current City of Oakland business license;

b. Evidence of payment of the Rent Adjustment Program Service Fee;

c. Evidence of service of written notice of the existence and scope of the Rent Adjustment Program on the Tenant in each affected Covered Unit in the building prior to the petition being filed;

d. A completed response or petition on a form prescribed by the Rent Adjustment Program; and

e. Documentation supporting the Owner's claimed justification(s) for the Rent increase or supporting any claim of exemption;

2. An Owner must file a response to a Tenant's petition within thirty (30) days of service of the notice by the Rent Adjustment Program that a Tenant petition was filed.

8.22.100 Mediation of Rent Disputes.

Voluntary mediation of all rent increase disputes will be available to all parties to a Rent adjustment hearing after the filing of the petition and response.

8.22.110 Hearing Procedures.

A. Hearing Officer. A hearing shall be set before a Hearing Officer to decide the issues in the petition.

B. Hearings.

1. All hearings on petitions shall be open to the public and recorded.

2. Any party to a hearing may be assisted by a representative who may be an attorney or any other person. A party must designate his or her representative in writing.

C. Notification and Consolidation. Rent Adjustment Program staff shall notify the Owner and Tenant in writing of the time and place set for hearing. Representatives of parties shall also be notified of hearings, provided that the Rent Adjustment Program has been notified in writing of a party's designation of a representative at least ten (10) days prior to the notice of

evidentiary hearing necessary, the case will be continued and the Board shall issue a written order setting forth the issues on which the parties may present evidence. All evidence submitted to the Board must be submitted under oath.

5. Should the appellant fail to appear at the designated hearing, the Board may dismiss the appeal.

C. Board's Decision Final. The Board's decision is final. Parties cannot appeal to the City Council.

D. Court Review. A party may seek judicial review of a final decision of the Board pursuant to California Civil Code Section 1094.5 within the time frames set forth therein.

8.22.130 Notice Requirements for a Civil Code Section 1946 Termination of Tenancy.

A. 1946 Notice.

1. Form of 1946 Notice. A 1946 Notice must include the following information in the format prescribed by the Rent Adjustment Program:

- a. The last Rent and Anniversary Date for the vacating Tenant; and
- b. The rights of the vacating Tenant regarding the 1946 Termination of Tenancy.

2. Filing of 1946 Notice with Rent Adjustment Program. An Owner must file a copy of the 1946 Notice with the Rent Adjustment Program within ten (10) days following service of the 1946 Notice on the Tenant.

3. Failure to Comply as Defense to Eviction. An Owner's failure to comply with the notice and filing requirements of this Subsection is a defense in unlawful detainer action based on a 1946 Notice and may make the Owner liable for administrative and civil damages or penalties.

B. Notice to New Tenant. After an Owner terminates a tenancy with a 1946 Notice, and prior to the commence of the first tenancy subsequent to the 1946 Termination of Tenancy, the Owner must provide the new Tenant for the subject Covered Unit with a notice using the language and in a form prescribed by the Rent Adjustment Program. This notice shall include the following:

1. Information about Rent Restrictions applicable following the 1946 Termination of Tenancy including:

a. A statement of the Owner's right to impose Rent increases that could have been imposed on the Tenant whose tenancy was terminated by the 1946 Notice, including the basis for and the percentage or amount of such Rent increases. An Owner who fails to provide the required information on such Rent increases cannot impose these Rent increases on the new Tenant;

b. The rights of the first subsequent Tenant within the twelve (12) month period following the vacancy by the Tenant whose tenancy was terminated by the 1946 Notice;

2. The last Rent and Anniversary Date of the Tenant whose tenancy was terminated pursuant to a 1946 Notice; and

3. The date the Tenant whose tenancy was terminated by the 1946 Notice vacated the Covered Unit.

C. Report to the Rent Adjustment Program of the New Tenant's Rent. During the twelve (12) month period after a Tenant vacates a Covered Unit pursuant to a 1946 Termination of Tenancy, within thirty (30) days after the commencement of the new tenancy, the Owner must report the initial Rent for any new Tenant and the date the prior Tenant vacated the

Covered Unit. If a new tenancy has not commenced within 90 days of service of the 1946 Notice, the Owner must file a report on the status of the occupancy or vacancy. The reports required by this Subsection must be on forms prescribed by the Rent Adjustment Program and served on the current Tenant if there is one.

D. Status Report to the Rent Adjustment Program After 1946 Termination of Tenancy. Within ten (10) days after the end of the twelve (12) month period following a vacancy pursuant to a 1946 Termination of Tenancy, the Owner must report the Rent and occupancy status of the subject Covered Unit on a form prescribed by the Rent Adjustment Program and served on the current Tenant if there is one.

E. 1946 Notice Required to Terminate Tenancy at End of Term. A termination of tenancy based on the end of the term of an oral or written lease or rental agreement, including a lease or rental agreement of more than thirty (30) days, may only be made pursuant to a 1946 Notice.

F. Privacy Provisions Applicable to Notices. In order to protect the privacy of Tenants, the Regulations shall include provisions regarding public access to notices filed pursuant to this Section.

G. Terminating Tenancy to Rehabilitate Covered Unit. An Owner seeking to vacate a Covered Unit in order to rehabilitate the Covered Unit must, prior to serving the Tenant with a 1946 Notice, obtain a building permit from the City of Oakland, if a permit is required for the work to be performed. A copy of the building permit must be attached to the 1946 Notice. An Owner's failure to obtain permit in advance of serving the 1946 Notice is a defense to an unlawful detainer action brought based on the 1946 Notice.

8.22.140 Unlawful Terminations of Tenancies.

A. Purpose of Section. This Section sets forth conduct constituting an unlawful termination of tenancy based on an Owner increasing the Rent to a new Tenant following a vacancy and the remedies available to the Tenant who vacated.

B. Conduct Constituting Unlawful Termination of Tenancy.

1. **Rent or Rent Increase to Subsequent Tenant in Excess of Permitted Amount.** A tenancy is considered to have been unlawfully terminated when both of the following occur:

a. The Tenant vacates a Covered Unit under circumstances where an Owner may not set an initial Rent to the following Tenant pursuant to Costa-Hawkins (Section 8.22.080 C); and

b. The Owner increased the Rent for the new Tenant in excess of the amount permitted by Section 8.22.080 within the first twelve (12) months following the vacancy.

2. **Unlawful Termination of Tenancy After Impermissible Rent Increase.** This Subsection sets forth the requirements for when a Tenant may bring an administrative action or claim for unlawful termination of tenancy because the Tenant vacated after receiving a Rent increase or other change in terms of tenancy not permitted by this Chapter. A Tenant may bring an administrative or legal claim pursuant to this Section when the following occur:

a. The Owner gave the Tenant a notice of a Rent increase in excess of the CPI Rent Adjustment or notice of other change of terms of tenancy that constitute a decrease in housing services equivalent to a Rent increase in excess of the CPI; and

- b. The Rent increase notice did not conform with the requirements of Section 8.22.070 H (Rent increase notice requirements); and
- c. The Tenant vacates before the increased Rent is due; or
- d. The Tenant vacates following a notice to pay rent or quit for non-payment of the increased amount in excess of the CPI Rent Adjustment provided that such notice to pay rent or quit is served within sixty (60) days following the date the Rent increase is first due.

3. Subsequent Tenancies Created to Evade Vacancy Rent Restrictions ("Sham Tenancies").

- a. This Section applies where an Owner creates a short-term tenancy for the purpose of evading the Rent increase restrictions in Section 8.22.080.
- b. A rebuttable presumption of an unlawful termination of tenancy exists when all of the following apply:
 - i. An initial vacancy occurred under circumstances in which the City can regulate the initial Rent to the new Tenant (Section 8.22.080 C);
 - ii. A subsequent vacancy occurred when the first new Tenant vacated within less than twelve (12) months following the initial vacancy; and
 - iii. The Rent to the second new Tenant exceeds the amount that could have been charged to the first new Tenant.
- c. The Owner can rebut the presumption of an unlawful termination of tenancy by demonstrating that the Owner did not enter into the tenancy following the initial vacancy in order to create a second vacancy for the purpose of evading the Rent increase restrictions in Section 8.22.080.

C. Remedies for Unlawful Terminations of Tenancies.

1. Administrative Remedies – Relocation Restitution.

- a. A Tenant displaced by an unlawful termination of tenancy shall be entitled to an order for restitution of relocation costs in the set amount of \$1,000 plus two months of the "HUD Fair Market Rent" for the type of unit that was vacated by the displaced Tenant.
 - i. "HUD Fair Market Rent" means the amount specified in the schedule of Fair Market Rents for existing housing published by the United States Department of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, applicable to the City of Oakland and current as of the date the displaced Tenant vacated the unit. If the "HUD Fair Market Rent" standard ceases to exist, the Regulations shall set a standard that is comparable to the "HUD Fair Market Rent".
- b. A Tenant seeking the relocation restitution must file a petition with the Rent Adjustment Program in accordance with the procedures set forth in Section 8.22.090. The hearing on the Tenant's petition will follow the procedures set forth in Section 8.22.110. Either party may appeal the Hearing Officer's decision to the Board in accordance with Section 8.22.120. If a Tenant prevails and the Owner fails to pay, the Tenant may seek redress in court to enforce the restitution order.
- c. An Owner who violates Section 8.22.080 more than once must pay two times the amount of the relocation restitution for the second violation. Each successive violation following will result in an additional doubling of the amount the Owner must pay. Concurrent initial violations shall not result in a doubling of the amount payable. Any amount by which the amount payable for a subsequent violation exceeds the calculated restitution for relocation pursuant to Section 8.22.140 C.1.a, above, shall be not be paid to the displaced Tenant, but shall retained by the City as a civil penalty which shall be used to fund affordable housing.
- d. Time to Petition. A Tenant must file a petition pursuant to this Section:

- i. Within twelve (12) months following the date the Tenant discovered the violation (the unlawful Rent increase), or
- ii. If the Tenant vacated following a 1946 Notice and the notice did not conform to the requirements of Section 8.22.130, the Tenant must file the petition within twenty-four months following the date the Tenant discovered the violation (the unlawful Rent increase).

2. Civil Damages for Unlawful Termination Following Certain Vacancies.

a. A violation of Section 8.22.080 may also give rise to a civil claim for wrongful eviction in favor of the Tenant whose tenancy is so terminated and such Tenant may bring a civil claim against a violating Owner. The City Attorney on the Tenant's behalf, may bring a claim for civil damages against a violating Owner who has multiple violations of Section 8.22.080.

b. In any civil action seeking damages for a violation of this Section, the court may award attorney's fees to a prevailing Tenant in an amount determined by the court as reasonable. In order for the court to award attorney's fees, the Tenant must first have petitioned the Rent Adjustment Program for relocation restitution under Section 8.22.140 C.1.

c. Time to Bring Action. A Tenant must bring a civil action for violation of this Section:

- i. Within twelve (12) months following final action on a petition filed with the Rent Adjustment Program pursuant to this Section, or
- ii. If no petition was filed, within twenty-four (24) months following the date the Tenant discovered the violation (the unlawful Rent increase), or
- iii. If the Tenant vacated following a 1946 Notice that did not substantially conform to the requirements of Section 8.22.130, the Tenant must file the action within thirty-six (36) months following the date the Tenant discovered the violation (the unlawful Rent increase).

3. An Owner is not subject to the remedies set out in this Section if the Owner proves that the Rent charged to the subsequent Tenant exceeds by an insubstantial amount the Rent that could be charged under Section 8.22.080 (Rent increases following vacancies), and the excess was charged in good faith as a result of a unintentional error or other mistake of fact.

D. Pattern or Practice of Raising Rents Following 1946 Termination of Tenancy. A Tenant who has received a 1946 Notice from an Owner may defend against an unlawful detainer action based on the 1946 Notice by proving the Owner has a pattern or practice of *terminating tenancies by a 1946 Notice and raising rents above those permitted by Section 8.22.080*. If the Tenant proves the allegations, in addition to a defense against the immediate unlawful detainer, the Tenant is entitled to a rebuttable presumption for the six months following the date of the Court's decision that any 1946 Notice is unlawful. An Owner who has been found to have violated Section 8.22.140 pursuant to Subsection 8.22.140 C on more than one occasion is presumed to have a pattern and practice of evicting tenants to increase Rents.

E. Remedies Cumulative and Not Exclusive. The remedies available pursuant to this Section are cumulative and not exclusive of any other remedies by statute, common law, or this Chapter.

8.22.150 Retaliatory Evictions.

An Owner may not recover possession of a Covered Unit in retaliation against a Tenant for exercising rights under this Chapter. If an Owner attempts to terminate the Tenancy of a Tenant who files a petition under this Chapter from the date the petition filing to within six months after the notice of final decision, such termination of tenancy will be rebuttably presumed to be in retaliation against the Tenant for the exercise rights under this Chapter.

8.22.160 Voluntary Mediation of Evictions.

The Rent Arbitration Program will assist in making voluntary mediation of evictions in Covered Units available to Tenants and Owners prior to an unlawful detainer lawsuit being filed.

8.22.170 General Remedies.

A. Violations of Chapter 8.22.

1. Violations of Orders or Decisions. Failure of a party to abide by an order or decision of a Hearing Officer and/or the Board shall be deemed a violation of Chapter 8.22 and shall be punishable administratively or by civil remedies unless otherwise provided in this Chapter .

2. Violations of Chapter 8.22. Violations of Chapter 8.22 may be enforced administratively or by civil remedies as set forth in this Section or as otherwise specifically set out in this Chapter .

3. In addition to the remedies provided in this Chapter, a violator is liable for such costs, expenses, and disbursements paid or incurred by the City in abatement and prosecution of the violation.

4. The remedies available in this Chapter are not exclusive and may be used cumulatively with any other remedies in this Chapter or at law.

5. Remedies for violations of Section 8.22.080 are set out in that Section.

B. General Administrative Remedies.

1. Administrative Citation. Anyone who violates specified provisions of Chapter 8.22 may be issued an administrative citation. Administrative citations shall be issued in accordance with OMC Chapter 1.12 (Administrative Citations). The specified sections of Chapter 8.22 that may be enforced by administrative citation shall be set out in the Regulations.

2. Administrative Assessment of Civil Penalties. Anyone who violates specified provisions of Chapter 8.22 may be administratively assessed a civil penalty. Civil penalties for violations are assessed in accordance with OMC Chapter 1.08 (Administrative Assessment of Civil Penalties) as a major violation under that Chapter 1.08. Specified sections of Chapter 8.22 that may be enforced with civil penalties shall be set out in the Regulations.

3. The City Manager shall designate staff authorized to issue administrative citation and civil penalties.

4. Each and every day or any portion of a day during which a violation of any provision of this Chapter is committed, continued, or permitted is a separate violation and shall be punishable accordingly.

C. General Civil Remedies.

An aggrieved party or the City Attorney, on behalf of such party, may bring a civil action for injunctive relief or damages, or both, for any violation of the provisions of this Chapter or an order or decision issued by a Hearing Officer or the Board.

8.22.180 Rent Program Service Fee.

A. Establishment of the Fee. The Rent Program Service Fee (the "Fee") is hereby established. The Fee and any penalties or costs for late or non payment of the Fee are dedicated solely to the payment of services and costs of the Rent Adjustment Program and may be used only for the administration, outreach, legal needs, enforcement of Chapter 8.22, collection of this Fee, and other costs of the Rent Adjustment Program and cannot be used for any other purpose. The City Manager shall develop procedures for collection of the Fee and ensuring that all funds generated by the Fee will be used only for the Rent Adjustment Program.

B. Amount of Fee. The amount of the Fee shall be set by the City Council in the Master Fee Schedule. The Fee is set at \$24.00 per Covered Unit for the City's fiscal years of 2001 – 2002, and 2002 -- 2003. Each fiscal year the City Manager shall report to the City Council on the costs of the Rent Adjustment Program for the preceding fiscal year and the anticipated costs of the Rent Adjustment Program for the coming year.

C. Fee Charged on Covered Units. The Fee is to be charged on a per unit basis against all Covered Units. An Owner who does not timely pay the Fee because the Owner claims an exemption must pay all Fees, delinquent charges, interest, and collection costs for any dwelling unit that is found not to be exempt by the Rent Adjustment Program. Neither the fact that an Owner paid the Fee nor that an Owner claimed an exemption from the Fee can be used as evidence in any determination of a petition with the Rent Adjustment Program regarding whether the subject dwelling unit is exempt.

D. Fee Based on Business Operation. The Fee is a fee associated with the operation of a residential rental property business and not a fee based on ownership of real property.

E. Due Date for Fee. For the first fiscal year of 2001-2002, the Fee will be due on March 1, 2002 and will be deemed delinquent if not paid by May 1, 2002. For all subsequent fiscal years, the Fee will be due on January 1, and will be deemed delinquent if not paid by March 1. When a dwelling unit loses its exemption under Section 8.22.030 A.1 (subsidized or regulated dwelling units) or Section 8.22.030 A.2 (transient dwelling units), the Owner must pay the Fee within 30 Days of the dwelling unit being reoccupied as a Covered Unit.

F. Passthrough of One-Half of Fee. An Owner may pass through one-half of the Fee to a Tenant in the year in which it is due, unless the Owner does not pay the Fee before the date it is deemed late. An Owner may not pass through any penalties, delinquent charges, or interest to a Tenant.

G. Delinquent Owner. An Owner who has not paid the Fee and any charges related to a delinquency in payment of the Fee cannot:

1. Respond to a petition brought by the a Tenant; or
2. Petition for a Rent increase.

H. Delinquent Charges, Interest, and Collection Costs.

1. An Owner who does not pay the Fee on or before the date it is considered late must pay a delinquency charge according to the following schedule:

- a. 10% of the Fee due if paid in full within 30 Days of the date it is considered

late;

- b. 25% of the fee due if paid in full within 60 Days of the date it is considered late;
- c. 50% if paid after 60 Days of the date it is considered late.

2. In addition to the delinquent charges, an Owner who fails to remit the Fee due by the date it is late shall pay simple interest at the rate of one percent per month or fraction thereof on the amount of the Fee inclusive of delinquent charges from the date the Fee is late.

3. An Owner who has not paid the Fee by the end of the fiscal year in which it is due may also be assessed the City's costs of collecting the Fee, including any attorney's fees.

4. The amount of any Fee, delinquent charges, interest, and collection costs imposed by Chapter 8.22 shall be deemed a debt to the City and any Owner carrying on a residential rental business with Covered Units without paying the Fee and/or any delinquent charges, interest or collection costs shall be liable in an action in the name of the City in any court of competent jurisdiction, for the amount of the Fee and any tax and delinquent charges, interest or collection costs imposed. An action to collect the Fee must be commenced within three years of the date the Fee became due. An action to collect delinquent charges, interest or collection costs for nonpayment of the Fee must be commenced within three years of the date such accrues.

I. Sunset. The Fee will sunset on June 30, 2003 unless the City Council acts to continue it by reinstating the Fee in the Master Fee Schedule.

8.22.190 Computation of Time.

In this Chapter, days are computed using calendar days unless otherwise specifically stated. Date of service of any matter under this Chapter is the date the matter is placed in the mail (in which case the time for responding is extended by five days) or the date of receipt for a matter personally served. Timely filing requires receipt by the Rent Arbitration Program on or before 5:00 p.m. on the last day to file the document as prescribed in this Chapter or the Regulations. If the last day to file is a weekend or holiday the period of time to file the document is extended to the next business day. The Rent Arbitration Program may establish rules and procedures to accept electronic filing of certain documents.

8.22.200 Severability.

This Chapter shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this Chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application; and to this end the provisions of this Chapter are declared to be severable and are intended to have independent validity.

8.22.210 Nonwaiverability.

Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this Chapter is waived or modified, is against public policy and void.

8.22.220 Applicability—Effective date of Chapter.

The ordinance codified in this Chapter shall take effect as follows:

A. The Fee. The Fee established herein shall be implemented in accordance with the schedule set forth in Section 8.22.180;

B. The CPI Rent Adjustment. The CPI Rent Adjustment is effective for Rent increases taking effect on or after July 1, 2002 in accordance with Section 8.22.070 B.1;

C. Vacancy Rent Adjustment. New provisions regarding increasing Rents following vacancies (Section 8.22.080), 1946 Termination of Tenancy notice requirements (Section 8.22.130) and the penalties for improperly increasing Rents following vacancies (Section 8.22.140) take effect for all vacancies noticed on or after July 1, 2002.

D. Other Provisions. All other provisions of this Chapter take effect pursuant to Section 216 of the Oakland City Charter. Whenever a new Section takes effect on a date after this amended Chapter takes effect pursuant to Section 216 of the Oakland City Charter, the provisions of the former Chapter 8.22 will apply.

Introduction: January 22, 2002

IN COUNCIL, OAKLAND, CALIFORNIA, FEB 02 2002

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, MAYNE, ~~NADIEL~~, REID, SPEES, ~~WAN~~, AND
PRESIDENT DE LA FUENTE - 6

NOES- Nadel, WAN - 2

ABSENT- 0

ABSTENTION- 0

ATTEST: 

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California