
Deputy CITY ATTORNEY

CORRECTED COPY

ORDINANCE No. 10402 C. M. S.

AN ORDINANCE AMENDING ORDINANCE NUMBER 9980 C.M.S., THE RESIDENTIAL RENT ARBITRATION ORDINANCE, BY REDEFINING CERTAIN DUTIES OF THE RESIDENTIAL RENT ARBITRATION BOARD, CHANGING CERTAIN GUIDELINES FOR RENTAL INCREASES AND EVICTIONS, AND PROVIDING FOR AN ANNUAL REVIEW OF THE GENERAL RATE OF INCREASE.

The Council of the City of Oakland does ordain as follows:

SECTION 1. RESIDENTIAL RENT ARBITRATION BOARD

Pursuant to Section 501 of the Charter of the City of Oakland, there is hereby created a Residential Rent Arbitration Board.

SECTION 2. DEFINITIONS.

a. Board. The Residential Rent Arbitration Board established by this ordinance.

b. Capital Improvements. Those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new uses, and which may be amortized over the useful life of the improvement of the building in accordance with the Internal Revenue Code and regulations pursuant thereto.

c. Deb^t Service. The monthly principal and interest payments on the deed(s) of trust secured by the property.

d. Hearing Officer. Person(s) designated by the City Manager to render initial decisions in all rent arbitration disputes.

e. Housing Services. Services provided by the landlord related to the use or occupancy of a rental unit, including, but not limited to, insurance, repairs, replacement, maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.

f. Landlord. Any owner or lessor of real property or any other person or entity who receives or is entitled to receive rent for the use or occupancy of any rental unit in the City of Oakland, and the representative, agent, or successor of such person, persons, or entity.

g. Rent. The total consideration demanded or received by a landlord in exchange for the use or occupancy of a rental unit.

h. Rental History.

The record of any consideration demanded or received for rent, as defined by item (g) above, for a rental unit.

i. Rental Unit. Any residential unit, and all housing services provided with such unit that is located in the City of Oakland and used or occupied by the payment of rent; provided, however, that the following dwelling units are not deemed rental units for purposes of this ordinance:

- (1) Dwelling units whose rents are controlled or regulated by any government unit, agency or authority;
- (2) 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;
- (3) Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses; provided that such accommodations are not occupied by the same tenant for 60 or more continuous days;
- (4) Dwelling units in a nonprofit cooperative, owned, occupied, and controlled by a majority of the residents.
- (5) Buildings containing rental units which were newly constructed and received a certificate of occupancy on or after January 1, 1983.
- (6) Substantially rehabilitated buildings on which owners have spent a minimum of 50% of the average basic cost for new construction as determined by the Chief Building Inspector.

j. Security Deposits. 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 a landlord for a tenant's default in the 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.

k. Tenant. A person entitled, by written or oral agreement, to the use or occupancy of any rental unit.

l. Uninsured Repairs. That work done by a landlord or tenant to a rental unit or to the common area of the property or structure containing a rental 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.

m. Rules and Procedures. Rules and Procedures shall be those rules and procedures developed by the Residential Rent Arbitration Board and approved by the City Council for implementation of this Ordinance.

n. Voluntarily Vacated Unit. A voluntarily vacated unit shall be a unit where the tenant initiated the termination of tenancy.

o. Involuntarily Vacated Unit. An involuntarily vacated unit shall be a unit where the landlord initiated the termination of tenancy.

SECTION 3. PURPOSE AND FUNCTIONS OF BOARD.

It shall be the function and responsibility of the Residential Rent Arbitration Board to hear appeals from the decisions of the Hearing Officer(s) which the Board in its discretion determines are inconsistent with prior decisions of the Residential Rent Arbitration Board. The Board will also review all decisions involving new policy questions, and in cases where a Hearing Officer's decision is reversed, the Board will report its findings to the Hearing Officer(s). The Board can develop rules and procedures to implement this Ordinance, which shall be approved by the City Council.

SECTION 4. MEMBERS OF THE BOARD

a. The Board shall consist of seven (7) members appointed pursuant to Section 501 of the Charter, who shall serve without compensation.

b. Of the Board members appointed, one (1) shall be a landlord, one (1) shall be a tenant, and five (5) shall be neutrals (neither landlords nor tenants).

c. Four Board members shall constitute a quorum, and any decision by the Board shall require a majority of those members present.

In the event of a tie vote, the Hearing Officer's decision is affirmed.

d. All Board members shall be appointed for staggered terms of two (2) years' duration.

e. A vacancy on the Board will exist whenever a Board member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the Council within ten (10) days of appointment. A Board member may be removed pursuant to Section 501 of the Charter. Among other things, conviction of a felony, mis-absence from three (3) consecutive regular hearings, except on account of his/her illness, or when absent from the City by permission of the Board, shall constitute cause for removal.

SECTION 5. RENT INCREASE GUIDELINES.

a. Occupied Units. This ordinance shall apply to any occupied rental unit in the City of Oakland wherein the rental increase or total increases within any consecutive twelve (12) month period, beginning May 6, 1980, exceeds eight percent (8%), or any other percentage which the City Council, after a twelve (12) month review, deems appropriate.

If a landlord chooses not to increase his/her rents in excess of ten percent (10%) within any twelve (12) month period, beginning May 6, 1980, up to the effective date of this amendment, and eight percent (8%) on the effective date of this amendment and thereafter, he/she reserves the right to carry over the remaining allowable percentage increase to succeeding twelve (12) month periods.

b. Vacant Units.

(1) The rental increase for units not occupied on May 6, 1980, or for any rental unit which thereafter becomes vacant involuntarily shall not exceed twelve percent (12%) in any consecutive twelve (12) month period, or any other percentage which the City Council, after a twelve (12) month review, deems appropriate.

(2) If a unit becomes voluntarily vacated, the provisions of this section shall not apply. However, once a new tenancy has been created, the provisions of this section shall apply. This voluntary vacancy provision shall expire on May 1, 1984.

c. Standards. Any rental increase for any occupied rental unit which exceeds the aforementioned limitations and is under dispute must be justified on one or more of the following grounds:

- (1) Capital improvement costs;
- (2) Uninsured repair costs;
- (3) An increase in housing service costs;
- (4) Past history of rent increases;
- (5) Debt service costs;
- (6) Any other factors the Hearing Officer and the Board deem relevant.

d. Notice.

Landlords are hereby required to notify tenants in writing of the existence of the Residential Rent Arbitration Board. Said notice shall be in the form of an addendum to any lease in effect at the time of the effective date of this ordinance or any lease entered into after the effective date of this ordinance. In case of existing oral tenancies, landlords shall be required to give such notice, in writing, at the commencement of the tenancy. A landlord must demonstrate, in advance of a hearing, that he/she has given said notice to all tenants in the building under dispute.

Tenants occupying previously vacant units shall, at the commencement of such tenancy, be advised in writing by their landlord of the rent in effect, if any, prior to such tenancy.

Rental units which are vacant shall be suitably posted so as to advise prospective tenants of the rent previously in effect. Landlords shall post such information in a prominent location inside the rental unit.

SECTION 6. STAFF.

The positions of Hearing Officer and Secretary to the Rent Arbitration Board shall be established. Staffing shall be provided through the Office of the City Manager.

a. Hearing Officer. The Hearing Officer(s) shall hear all disputes between landlords and tenants regarding rent increases, arbitrate these disputes pursuant to the guidelines set forth in the ordinance, and render an initial decision which may be appealed by either party to the Residential Rent Arbitration Board. All cases involving policy considerations not covered in the Residential Rent Arbitration Board's rules and procedures shall be referred to the Board by the Hearing Officer with recommendations.

b. Secretary to the Board. The Secretary to the Board shall process all petitions for review submitted by landlords and/or tenants, set Board hearings, and perform the general administrative duties assigned to the Secretary by the Board.

SECTION 7. HEARING PROCESS.

The Hearing Officer shall hear matters to determine whether a rent increase complies with the provisions of SECTION 5 of this ordinance upon receipt of a petition for review submitted by a landlord and/or tenant, provided the following conditions are met:

a. The petition, made under penalty of perjury, alleges a rent increase which exceeds the amount authorized by SECTION 5.

b. Each petition shall be accompanied by a \$10 filing fee. In the event the Secretary consolidates hearings, as authorized hereinafter, a filing fee of \$10 plus \$5 for each additional unit shall be required.

c. The petition is filed within thirty (30) calendar days after receipt of a notice of a proposed rent increase or thirty (30) calendar days after receipt of a notice as described in SECTION 5 d. NOTICE, whichever is most recent. To be eligible to file a petition, a tenant's rent must be current.

d. The Secretary shall notify the opposing party to the petition for review that he/she has 14 calendar days to file a response to the petition. To be eligible to file a response to a petition, a landlord must hold a current City business license.

e. The Secretary shall notify the landlord and tenant in writing of the time and place set for hearing. Disputes involving more than one unit in any single building may be consolidated for hearing by the Secretary if the Secretary determines consolidation to be in the best interest of the parties.

f. The Hearing Officer shall have a goal of hearing the matters within thirty (30) calendar days of the filing of the original petition. In those instances where the goal cannot be achieved, the Hearing Officer shall assure

that the landlord and tenant both receive notification of the reason(s) for delay each thirty (30) day period following the filing of the original petition.

g. The Hearing Officer shall render his/her decision not more than seven (7) calendar days after the conclusion of the hearing, and all parties shall be notified in writing.

h. Any proposed rent increase that exceeds the amount authorized by SECTION 5 is not operative until the decision of the Hearing Officer has been made.

i. Either party may appeal the Hearing Officer's decision within seven (7) calendar days after receipt of the notice of decision by filing with the Secretary to the Board a written notice of such appeal setting forth the grounds therefor. Each appeal petition shall be accompanied by a \$10 filing fee plus \$5 for each additional unit in consolidation cases. The Secretary to the Board shall set the matter for hearing and cause notice thereof to be given to appellant not less than five (5) days prior to such hearing.

j. The Board shall have a goal of hearing the appeal within thirty (30) calendar days of filing of the notice of appeal. In those instances where the goal cannot be achieved, the Board shall assure that the landlord and tenant receive notification of the reasons for the delay each thirty (30) day period following the filing of the notice of appeal.

SECTION 8. CONDUCT OF BOARD HEARINGS.

The following procedures shall apply to all hearings of the Board:

a. All hearings conducted by the Board shall be public and tape cassette recorded.

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

c. Any relevant evidence may be submitted by any party and shall be submitted under oath.

d. In the event that either party fails to appear at the designated hearing, the Board may hear and review such evidence as may be presented and render a decision.

e. The Board must render its decision employing the standards set forth in SECTION 5 of this ordinance.

f. No rent adjustment above the limit set forth in SECTION 5 of this ordinance shall be granted unless supported by a preponderance of the evidence submitted at the hearing.

g. The conclusions and findings of the Board shall be final, and there shall be no appeal rights to the City Council. The Board's action does not preclude review by a court of competent jurisdiction.

SECTION 9. RETALIATORY EVICTIONS.

a. The landlord may not recover possession of a rental unit in retaliation against a tenant for exercising his/her rights pursuant to this ordinance. If a landlord attempts to recover a rental unit from the date of the original filing of a petition to within six (6) months after the notice of final decision, such recovery will be rebuttably presumed to be in retaliation against the tenant for the exercise of his/her rights pursuant to this ordinance.

b. Section 1942.5 of the California Civil Code also precludes a landlord from retaliating against a tenant for exercising his/her rights pursuant to this Ordinance.

c. Prior to commencing an eviction for the purposes of rehabilitating the premises, a landlord must first obtain a City of Oakland building permit, when required, to do the proposed work on the premises.

d. A tenant who alleges that his or her landlord has a pattern or practice of evicting other tenants in the building to substantially raise rents above those permitted by this ordinance shall have standing to appear before the Residential Rent Arbitration Board to plead and prove said pattern or practice. If the Residential Rent Arbitration Board finds that the tenant's allegations are true, said tenant shall be entitled to a six-month rebuttable presumption that an unlawful detainer action brought against him or her by said landlord is retaliatory.

SECTION 9.1. REMEDY.

a. An aggrieved party may bring an action for injunctive relief or damages, or both, in a court of competent jurisdiction for any violation of the provisions of this ordinance.

b. Failure of a party to abide by an order or decision of a Hearing Officer and/or the Residential Rent Arbitration Board shall be deemed a violation of this ordinance and shall be punishable as an infraction unless otherwise provided in this code.

c. Each party violating this ordinance shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this ordinance is committed, continued, or permitted by such person and shall be punishable accordingly.

d. Such violations may be redressed by Civil Action brought by the City Attorney or the landlord, tenant, or his/her representative.

e. Any person convicted of an infraction under the provisions of this ordinance shall be punishable upon a first conviction of a fine of not more than \$50.00, and for a second conviction within a period of one year by a fine of not more than \$100.00, and for a third or any subsequent conviction within a one-year period by a fine of not more than \$250.00. However, any violation beyond the third conviction within a one-year period may be charged by the City

Attorney or the District Attorney as a misdemeanor, and the penalty for conviction of the same shall be punishable by a fine of not more than \$500.00 or by imprisonment in the county jail for a period of not more than six months or by both.

f. In addition to the punishment provided by law, a violator is liable for such costs, expenses, and disbursements paid or incurred by the City in abatement and prosecution of the violation.

g. Pursuant to Section 836.5 of the California Penal Code, the Deputy City Manager or his/her authorized representatives are hereby authorized to enforce this ordinance and arrest violators thereof.

h. The City Manager shall have the power to designate by written order that particular officers or employees shall be authorized to enforce particular provisions of this ordinance in addition to those officers enumerated in subsection g. Officers or employees so designated shall have the authority to arrest persons who violate any of said provisions. (As amended by Ordinance No. 10008 C.M.S. 12/23/80, Ordinance No. 10090 C.M.S. 7/7/81, and Ordinance No. 10389 C.M.S. 10/18/83.

SECTION 10. SEVERABILITY.

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

SECTION 11. NONWAIVERABILITY.

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

SECTION 12. ANNUAL RATE OF REVIEW

The Legislative Committee of the City Council shall review the general rate of increase annually in the month of May to determine whether a change in the rate is necessary.

IN COUNCIL, OAKLAND, CALIFORNIA, November 1, 19 83

PASSED BY THE FOLLOWING VOTE:

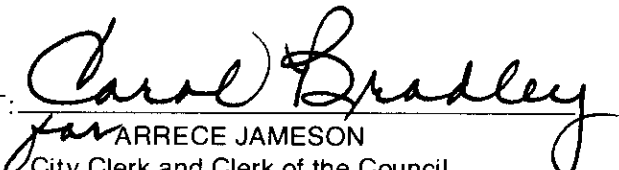
AYES— BAZILE, CANNON, GIBSON, GILMORE, ~~MOORE~~, OGAWA, ~~RILES~~, SPEES, ~~and PRESIDENT WILSON~~ - 6

NOES— MOORE AND RILES - 2

ABSENT— PRESIDENT WILSON - 1

ABSTENTION— 0

ATTEST:


CAROL BRADLEY
City Clerk and Clerk of the Council
of the City of Oakland, California