

PRODUCED BY COUNCILMAN _____

Michael Marchand
Deputy CITY ATTORNEY

ORDINANCE No. 10116 C.M.S.

MCM:sec

AN ORDINANCE AMENDING ORDINANCE NO. 9980
C.M.S., CREATING A RESIDENTIAL RENT
ARBITRATION BOARD, IN ORDER TO PROVIDE
FOR CONSIDERATION OF DEBT SERVICE,
RENT INCREASE BANKING PROVISIONS, AND
OTHER TECHNICAL CHANGES.

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. Debt 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. Any monies paid or demanded for rent, as defined in item (f) above, for a rental unit, for two years preceding the effective date of the proposed rent increase.

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:

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- (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, non-profit 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; and
- (4) Dwelling units in a non-profit cooperative, owned, occupied, and controlled by a majority of the residents.

i. 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.

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

k. 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.

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).

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, misconduct, incompetency, inattention or inability to perform his/her duties, or 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 of 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, exceeds ten percent (10%), 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, he/she reserves the right to carryover the remaining allowable percentage increase to succeeding twelve (12) month periods.

b. Vacant Units. The rental increase for units not occupied at the time this ordinance becomes effective or for any rental unit which becomes vacant and is subsequently occupied, 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.

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 policies 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. 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.

SECTION 9.1. REMEDY.

a. Any 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 the lawful 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 by imposition of a fine not to exceed five hundred dollars (\$500) or by imprisonment in the County Jail for a period of thirty (30) days or by both fine and imprisonment. Such violations may be prosecuted in the name of the People of the State of California by the District Attorney or may be redressed by civil action brought by the City Attorney or the landlord, tenant or his/her representative.

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. NON WAIVERABILITY. 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.

IN COUNCIL, OAKLAND, CALIF., AUG 4 1981, 19

PASSED BY THE FOLLOWING VOTE:


VICE-PRESIDENT MOORE
AYES — ENG, GIBSON, GILMORE, ~~MOORE~~, OGAWA, RILES, SPEES, SUTTER
AND ~~PRESIDENT WILSON~~ - 8-

NOES — NONE

ABSENT — PRESIDENT WILSON, -1

ABSTENTION — NONE

ATTEST:


ARRECE JAMESON
City Clerk and Clerk of the Council
of the City of Oakland, California