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CITY ATTORNEY'S OFFICE

AS KALB, CAMPBELL WASHINGTON, GIBSON MCELHANEY, AND GUILLEN

**OAKLAND CITY COUNCIL**  
**ORDINANCE NO. 13891 C.M.S.**

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**ORDINANCE AMENDING CHAPTER 8.22, ARTICLE I (RENT ADJUSTMENT) OF THE OAKLAND MUNICIPAL CODE TO: (1) MODIFY EXEMPTIONS FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES AND SUBSTANTIALLY REHABILITATED PROPERTIES; (2) REQUIRE OWNERS FILE PETITIONS FOR RENT INCREASES OTHER THAN THOSE BASED ON THE ANNUAL CONSUMER PRICE INDEX INCREASE OR BANKING; (3) CHANGE THE DEFINITION OF CAPITAL IMPROVEMENTS TO PROVIDE AMORTIZATION OF THE COST OVER THE USEFUL LIFE OF THE IMPROVEMENT; AND (4) AMEND TIMELINES FOR FILING PETITIONS, AND AMENDING CHAPTER 8.22, ARTICLE V (TENANT PROTECTION ORDINANCE) TO CLARIFY THAT INCREASING A TENANT'S RENT PURSUANT TO STATE OR OAKLAND LAW SHALL NOT BE DEEMED A VIOLATION OF THE TENANT PROTECTION ORDINANCE**

**WHEREAS**, Oakland has a Rent Adjustment Program that presently permits landlords to petition for rent increases, but in most cases requires tenants to petition to contest rent increases over an annual rent increase allowance;

**WHEREAS**, on November 5, 2002, Oakland voters passed the Just Cause for Eviction Ordinance (Measure EE), codified as Article II of Title 8 of the Oakland Municipal Code; and

**WHEREAS**, the City of Oakland is experiencing a severe housing supply and affordability crisis; and

**WHEREAS**, the housing affordability crisis threatens the public health, safety and/or welfare of our residents; and

**WHEREAS**, 60 percent of Oakland residents are renters, who would not be able to locate comparably priced housing within the city if displaced (U.S. Census Bureau, ACS 2014 table S1101); and

**WHEREAS**, in February 2016 the median rental price for a one-bedroom unit in Oakland was \$2,250 per month (\$27,000 per year), a 13.6 percent increase in costs over February 2015, and the median rental price for a two-bedroom unit in February 2016 was \$2,700 per month (\$32,400 per year), an 18.9 percent increase over costs in February 2015 (Zumper National Rent Report: March 2016); and

**WHEREAS**, Oakland's rental housing costs are the fourth highest in the nation, behind San Francisco, New York, and Boston (Zumper National Rent Report: March 2016); and

**WHEREAS**, in 2014 the estimated annual median household income for households that rented in Oakland was \$36,657, which would result in a household earning the annual median household income paying 74 percent of household income for a one-bedroom unit or 85 percent of household income for a two-bedroom unit (U.S. Census Bureau, ACS 2014, Table S2503); and

**WHEREAS**, the affordable rent for a family earning \$36,657 is defined as only paying thirty percent of income on housing, which is approximately \$916 per month; and

**WHEREAS**, the median rent for all apartments rented in February of 2016 reached an all-time high of just over \$3,000 per month according to research from Trulia; and

**WHEREAS**, 22.5% of Oakland's households are "housing insecure," defined as facing high housing costs, poor housing quality, unstable neighborhoods, overcrowding, or homelessness; and

**WHEREAS**, over 26,000 Oakland households are severely rent burdened, which is defined as spending 50 percent or more of monthly household income on rent (Oakland Consolidated Housing Needs Assessment 2015 Analysis of HUD Data, as reported in the City's March 2016 Oakland at Home report, pp. 10-11); and

**WHEREAS**, displacement through unauthorized rent increases has a direct impact on the health, safety and/or welfare of Oakland's citizens by uprooting children from their schools, disrupting longstanding community networks that are integral to citizens' welfare, forcing low-income residents to pay unaffordable relocation costs, segregating low-income residents into less healthy, less safe and more overcrowded housing that is often further removed from vital public services and leaving residents with unhealthy levels of stress and anxiety as they attempt to cope with the threat of homelessness; and

**WHEREAS**, major capital improvements amortized over a short period of time may cause high rent increases and the costs of such improvements should be amortized over a period of time closer to their useful life, and tenants should not have to pay for improvements that upgrade amenities beyond what they already have without the tenants approval; and

**WHEREAS**, The City Council finds that requiring property owners to file petitions for all rent increases other than those based on CPI Rent Increases or Banking would ensure greater fairness and compliance with the RAP Ordinance; and

**WHEREAS:** this action is exempt from the California Environmental Quality Act ("CEQA") under the following, each as a separate and independent basis, including but not limited to, the following: CEQA Guidelines Section 15378 (regulatory actions), Section 15061 (b) (3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning);

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Modification of Chapter 8.22 of the Oakland Municipal Code.** Relevant sections of Title 8 of the Oakland Municipal Code are hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

## Chapter 8.22 - RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS

### Article I. - Residential Rent Adjustment Program

#### **8.22.020 - Definitions.**

As used in this chapter, Article I:

"1946 notice" means any notice of termination of tenancy served pursuant to California Civil Code Section 1946. This notice is commonly referred to as a thirty (30) or sixty (60) 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. Capital improvement costs that may be passed through to tenants include seventy percent (70%) of actual costs, plus imputed financing. Capital improvement costs shall be amortized over the useful life of the improvement as set forth in an amortization schedule

developed by the Rent Board. Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements ("gold-plating" "over-improving") excluding: improvements approved in writing by the tenant, improvements that bring the unit up to current building or housing codes, or the cost of a substantially equivalent replacement.

"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 twelve (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 twelve (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 8.22.070B.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 8.22.030A as exempt.

"Ellis Act Ordinance" means the ordinance codified at O.M.C. 8.22.400 (Chapter 8.22, Article III) setting out requirements for withdrawal of residential rental units from the market pursuant to California Government Code § 7060, et seq. (the Ellis Act).

"Fee" means the Rent Program Service Fee as set out in O.M.C. 8.22.500 (Chapter 8.22, Article IV).

"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.

"Owner of record" means a natural person, who is an owner of record holding an interest equal to or greater than thirty-three percent (33%) in the property, but not including any lessor, sublessor, or agent of the owner of record.

"Just Cause for Eviction Ordinance" means the ordinance adopted by the voters on November 5, 2002 (also known as Measure EE) and codified at O.M.C. 8.22.300 (O.M.C. Chapter 8.22, Article II).

"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 that administers this chapter and also includes the board.

"Regulations" means the regulations adopted by the board and approved by the City Council for implementation of this chapter, Article I (formerly known as "Rules and Procedures") (After regulations 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, Article I only (the Just Cause for Eviction Ordinance (Chapter 8.22, Article II) and the Ellis Act Ordinance (Chapter 8.22, Article II)) have different exemptions):

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. This exemption does not apply to any newly constructed dwelling units that replace covered units withdrawn from the rental market in accordance with O.M.C. 8.22.400, et seq. (Ellis Act Ordinance). 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).
8. A dwelling unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by an owner of record as his or her principal residence. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the state of California.

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 obtain a certificate of exemption by claiming and proving an exemption in response to a tenant petition or by petitioning the Rent Adjustment Program for such exemption. A certificate of exemption may be granted only for dwelling units that are permanently exempt from the Rent Adjustment Ordinance as new construction, substantial rehabilitation, or by state law (Costa Hawkins).
- b. For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption 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. An Owner seeking to exempt a property on the basis of substantial rehabilitation must first obtain a certificate of exemption after completion of all work and obtaining a certificate of occupancy. If no certificate of occupancy was issued for the property, in lieu of the certificate of occupancy an owner may provide the last finalized permit. For any property that has a certificate of occupancy issued on or

before the date of enactment of this subparagraph O.M.C 8.22.30B.2.c. for which an Owner claims exemption as substantially rehabilitated, the Owner must apply for such exemption not later than June 30, 2017 or such exemption will be deemed to be vacated.

- 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 8.22.030A.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, Article I. Such notice must be on a form prescribed by the Rent Adjustment Program.
- D. Exemptions for Owner-Occupied Properties of three or Fewer Units. Units in owner-occupied properties divided into three or fewer units will be exempt from this chapter, Article I under the following conditions:
1. ~~Two-One-Year~~ Minimum Owner Occupancy. A qualifying Owner of Record must first occupy one of the units continuously as his or her principal residence for at least two one years. This requirement does not apply to any property in which the owner resides in the premises on or before August 1, 2016.
  2. Continuation of Exemption. The owner-occupancy exemption continues until a qualifying owner of record no longer continuously occupies the property
  3. Rent Increases. The owner of record qualifying for this exemption may notice the first rent increase that is not regulated by this chapter, Article I ~~one year after the effective date of this exemption or~~ two one years after the date the qualifying owner of record starts residing at the affected property as his or her principal place of residence.
  4. An owner claiming such exemption must provide information to the Rent Program on when the owner occupancy began and documentation showing the minimum of two years continuous occupancy. Staff shall develop a form for this purpose.
  4. ~~Effective date of this Exemption. This exemption for owner-occupied properties of three or fewer units takes effect one year after the adoption of this ordinance modifying this chapter, Article I.~~

#### **8.22.060 - Notice of the existence of this chapter 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 this chapter; and
    - b. The tenant's rights to petition against certain rent increases.

2. The Owner must give the initial notice in four languages: English, Spanish, Mandarin, and Cantonese.

- 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.

**8.22.065 - Rent Adjustments In General.**

- A. Notwithstanding any other provision of this Chapter, owners may increase rents only for increases based on the CPI Rent Adjustment or Banking, or by filing a petition to increase rent in excess of that amount. Any rent increase not based on the CPI Rent Adjustment or Banking that is not first approved by the Rent Adjustment Program is void and unenforceable.
- B. Rent increases are subject to the requirements of this Chapter and Regulations.
- C. The changes reflected in this O.M.C. subsection 8.22.065 apply only to rent increases noticed on or after February 1, 2017.

**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 Subsection 8.22.070H.1.c.; and



- ii. The owner set an initial rent in excess of the amount permitted pursuant to Section 8.22.080 (Rent increases following vacancies);
  - iii. A rent increase notice fails to comply with the requirements of Subsection 8.22.070H;
  - iv. The owner failed to give the tenant a notice in compliance with Section 8.22.060;
  - v. The owner decreased housing services to the tenant;
  - vi. 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 Subsection 8.22.070 D.7;
  - vii. The owner fails to reduce rent on the month following the expiration of the amortization period for capital improvements, or to pay any interest due on any rent overcharges from the failure to reduce rent for a capital improvement.
  - viii. The owner noticed a rent increase of more than the ten percent annual limit or that exceeds the rent increase limit of 30 percent in five years.
  - b. The tenant claims relocation restitution pursuant to Subsection 8.22.140 C.1.
  - c. The petition is permitted by the Just Cause for Eviction Ordinance (Measure EE) O.M.C. 8.22.300.
  - d. The petition is permitted by the Ellis Act Ordinance, O.M.C. 8.22.400.
  - e. The tenant contests an exemption from this O.M.C. 8.22, Article I.
2. For a petition contesting a rent increase, the petition must be filed within the following timelines ~~sixty (60) days of whichever of the following is later:~~
- a. If the owner provided written notice of the existence and scope of this chapter as required by Section 8.22.060 at the inception of tenancy:
    - i. the petition must be filed within ninety (90) days of the date the owner serves the rent increase notice if the owner provided the RAP notice with the rent increase; or
    - ii. the petition must be filed within one hundred and twenty (120) days of the date the owner serves the rent increase if the owner did not provide the RAP notice with the rent increase.
  - b. If the owner did not provide written notice of the existence and scope of this chapter as required by Section 8.22.060 at the inception of tenancy, within ninety (90) days of t~~The date the tenant first receives written notice of the existence and scope of this chapter as required by Section 8.22.060.~~
3. For a petition claiming decreased housing:
- a. If the decreased housing is the result of a noticed or discrete change in services provided to the tenant (e.g., removal of parking place, requirement that tenant pay utilities previously paid by owner) the petition must be filed within ninety (90) days of whichever of the following is later:

- i. The date the tenant is noticed or first becomes aware of the decreased housing service; or
- ii. The date the tenant first receives written notice of the existence and scope of this chapter as required by Section 8.22.060.
- b. If the decreased housing is ongoing (e.g., a leaking roof), the tenant may file a petition at any point but is limited in restitution for ninety (90) days before the petition is filed and to the period of time when the owner knew or should have known about the decreased housing service.

4.-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 8.22.070D.7.

5. 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 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.

**8.22.185. Miscellaneous**

A. Translation services. Translation services for documents, procedure, and hearings in languages other than English pursuant to the Equal Access to Services Ordinance (O.M.C.

Chapter 2.3) shall be made available to persons requesting such services subject to the City's ability to provide such services.

- B. Periodic reports. Staff shall report annually to Council on rent board vacancies, statistics on petition filings and outcomes, timeliness of appeal hearings and appeals, statistics on numbers and types of evictions, and statistics on numbers and types of covered units.
- C. Request for Enforcement Action. The Rent Board may request enforcement actions be taken by the City Administrator or the City Attorney.
- D. Studies and Investigations. The Rent Board may request Council direct the City Administrator undertake studies, surveys, or investigations related to administering and enforcement of renter protection laws.

#### **8.22.190 - Applicability—Effective date of chapter.**

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

- A. 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);
- B. ~~Exemption for Owner-occupied Properties of Three or Fewer Units. The exemption for owner-occupied properties of three or fewer units is effective one year after this ordinance amending this chapter, Article I to provide for this exemption is adopted by the City Council in accordance with Paragraph 8.22.030(D)(4).~~
- C. Unless otherwise specified in a specific provision of this Chapter 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 until that new section takes effect.

#### **Article V. – Tenant Protection Ordinance**

##### **8.22.640 - Tenant harassment.**

- A. No Owner or such Owner's agent, contractor, subcontractor, or employee, shall do any of the following, in bad faith.
  - 1. Interrupt, terminate, or fail to provide housing services required by contract or by State, County or municipal housing, health or safety laws, or threaten to do so;
  - 2. Fail to perform repairs and maintenance required by contract or by State, County or municipal housing, health or safety laws, or threaten to do so;
  - 3. Fail to exercise due diligence in completing repairs and maintenance once undertaken or fail to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts;

4. Abuse the Owner's right of access into a rental housing unit as that right is provided by law;
  5. Remove from the Rental Unit personal property, furnishings, or any other items without the prior written consent of the Tenant, except when done pursuant to the procedure set forth in Civil Code section 1980, et seq. (disposition of Tenant's property after termination of tenancy).
  6. Influence or attempt to influence a Tenant to vacate a Rental Unit through fraud, intimidation or coercion, which shall include threatening to report a Tenant to U.S. Immigration and Customs Enforcement, though that prohibition shall not be construed as preventing communication with U.S. Immigration and Customs Enforcement regarding an alleged violation;
  7. Offer payments to a Tenant to vacate more than once in six (6) months, after the Tenant has notified the Owner in writing the Tenant does not desire to receive further offers of payments to vacate;
  8. Attempt to coerce a Tenant to vacate with offer(s) of payments to vacate which are accompanied with threats or intimidation. This shall not include settlement offers made in good faith and not accompanied with threats or intimidation in pending eviction actions;
  9. Threaten the tenant, by word or gesture, with physical harm;
  10. Substantially and directly interfere with a Tenant's right to quiet use and enjoyment of a rental housing unit as that right is defined by California law;
  11. Refuse to accept or acknowledge receipt of a Tenant's lawful rent payment, except as such refusal may be permitted by state law after a notice to quit has been served on the Tenant and the time period for performance pursuant to the notice has expired;
  12. Refuse to cash a rent check for over thirty (30) days unless a written receipt for payment has been provided to the Tenant, except as such refusal may be permitted by state law after a notice to quit has been served on the Tenant and the time period for performance pursuant to the notice has expired;
  13. Interfere with a Tenant's right to privacy;
  14. Request information that violates a Tenant's right to privacy, including but not limited to residence or citizenship status or social security number, except as required by law or, in the case of a social security number, for the purpose of obtaining information for the qualifications for a tenancy, or not release such information except as required or authorized by law;
  15. Other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy;
  16. Removing a housing service for the purpose of causing the Tenant to vacate the Rental Unit. For example, taking away a parking space knowing that a Tenant cannot find alternative parking and must move.
- B. Retaliation Prohibited. Retaliation against a Tenant because of the Tenant's exercise of rights under the TPO is prohibited. Retaliation claims may only be brought in court and may not be addressed administratively. A court may consider the protections afforded by the TPO in evaluating a claim of retaliation.

- C. Evictions. Nothing in the TPO shall be construed as to prevent an Owner from lawfully evicting a Tenant pursuant to state law or Oakland's Just Cause for Eviction Ordinance. (O.M.C. 8.22.300, et seq.).
- D. Rent Adjustments. Nothing in the TPO shall be construed as to prevent an Owner from lawfully increasing a Tenant's rent pursuant to state law or Oakland's Rent Adjustment Ordinance (O.M.C. 8.22.100, et seq.), and such increases shall not be deemed violations of Section 8.22.640 of the TPO.
- E. Notice to Tenants.
  - 1. Commencement.
    - a. For Rental Units covered by the Rent Adjustment Ordinance the Notice at Commencement of Tenancy required by O.M.C. 8.22.06 shall include a reference to the TPO.
    - b. For all Rental Units that are not covered by the Rent Adjustment Ordinance, Owners are required to provide a notice regarding the TPO to all Tenants using the required form prescribed by the City staff.
  - 2. Common area. If Rental Units subject to this ordinance are located in a building with an interior common area that all of the building's Tenants have access to, the Owner must post a notice in at least one (1) such common area in the building via a form prescribed by the City staff.
- F. Repairs and maintenance. Nothing in the TPO shall be construed as requiring different timelines or standards for repairs or maintenance, as required by contract or State, County or municipal housing, health, and safety laws, or according to appropriate industry protocols.

**SECTION 2. DIRECTIONS TO RENT ADJUSTMENT BOARD AND STAFF.** The City Council gives the following directions to the Rent Adjustment Board and Staff:

- 1. The Board and staff shall develop and bring forward recommendations that will create efficiencies for the Board and Rent Program administration in handling petitions and appeals.
- 2. The Board shall consider Just Cause regulations to require owners to report their compliance with evictions where the tenant is not at fault: O.M.C. Section 8.22.360 A.9 (Owner move-in), O.M.C. Section 8.22.360 A.10 (substantial repairs); O.M.C. Section 8.22.360 A.11 (Ellis Act).
- 3. The Board shall return to Council revisions to the Rent Adjustment regulations that will permit Owners to take the CPI Rent Adjustment at the same time as a Capital Improvement rent increase.
- 4. The Rent Adjustment Board shall propose changes to the Rent Adjustment regulations to conform the regulations to the changes hereby made to the Ordinance and propose such changes to the City Council within 120 days of the adoption of this ordinance.
- 5. Staff shall return to Council within 120 days of the adoption of this ordinance with proposed revisions to the Rent Adjustment Ordinance to conform the remainder of that Ordinance with the revisions adopted herein.

**SECTION 3. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 4. Effective Date.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption. The revised amortization period for Capital improvements as set forth in amended section 8.22.020 shall be effective for all Capital improvements for which permits are first issued on or after February 1, 2017.

**SECTION 5. CEQA.** This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: section 15378 (regulatory actions), section 15061(b)(3) (no significant environmental impact), and section 15183 (consistent with general plan and zoning).

**SECTION 5. Transition.** The changes to this O.M.C. Chapter 8.22 shall not apply to any rent increase noticed on or before the effective date of this Ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE: **SEP 20 2016**

AYES - ~~BROOKS~~, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND  
PRESIDENT GIBSON MCELHANEY — **7**

NOES - **0**

ABSENT - **0**

ABSTENTION - **BROOKS - 1**

Production Date

**JUL 19 2016**

ATTEST:

  
**LATONDA SIMMONS**

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

Date of Attestation:

**90-4-2016**

## **NOTICE AND DIGEST**

**ORDINANCE AMENDING CHAPTER 8.22, ARTICLE I (RENT ADJUSTMENT) OF THE OAKLAND MUNICIPAL CODE TO: (1) MODIFY EXEMPTIONS FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES AND SUBSTANTIALLY REHABILITATED PROPERTIES; (2) REQUIRE OWNERS FILE PETITIONS FOR RENT INCREASES OTHER THAN THOSE BASED ON THE ANNUAL CONSUMER PRICE INDEX INCREASE OR BANKING; (3) CHANGE THE DEFINITION OF CAPITAL IMPROVEMENTS TO PROVIDE AMORTIZATION OF THE COST OVER THE USEFUL LIFE OF THE IMPROVEMENT; AND (4) AMEND TIMELINES FOR FILING PETITIONS, AND AMENDING CHAPTER 8.22, ARTICLE V (TENANT PROTECTION ORDINANCE) TO CLARIFY THAT INCREASING A TENANT'S RENT PURSUANT TO STATE OR OAKLAND LAW SHALL NOT BE DEEMED A VIOLATION OF THE TENANT PROTECTION ORDINANCE**

The Ordinance would amend the Oakland Municipal Code Chapter 8.22. Article I (Rent Adjustment) to modify the exemption for owner-occupied duplexes and triplexes to extend the occupancy time by the owner to two years before the units become exempt; modify the substantial rehabilitation exemption to require owners petition for a certificate of exemption; require that owners file petitions for rent increases other than those based on CPI increase or banking; change the definition of capital improvements to provide for amortization of the cost over the useful life of the improvement; amend timelines for filing petitions; and clarify that increasing a tenant's rent pursuant to state or Oakland law shall not be deemed a violation of the TPO.