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APPROVED AS TO FORM AND LEGALITY

  
CITY ATTORNEY

**ORDINANCE NO. 12538 C.M.S.**

**AN ORDINANCE AMENDING CHAPTER 8.22 OF THE OAKLAND MUNICIPAL CODE, RESIDENTIAL RENT ARBITRATION PROGRAM AND EVICTIONS, TO AMEND PROVISIONS CONCERNING INCREASING RENTS AFTER CERTAIN TERMINATIONS OF TENANCIES, TO REMOVE THE RENT PROGRAM SERVICE FEE FOR INSERTION IN A DIFFERENT PART OF THE MUNICIPAL CODE, TO MODIFY CONTROLS ON RENTS FOLLOWING TERMINATIONS OF TENANCIES AND TO EXEMPT OWNER-OCCUPIED PROPERTIES WITH OF A MAXIMUM OF THREE UNITS**

**Whereas**, on November 5, 2002, the voters approved Measure EE, the Just Cause for Eviction Ordinance, which took effect on December 27, 2002;

**Whereas**, the Just Cause for Eviction Ordinance limits landlords' ability to evict tenants without cause so as to make unnecessary the provisions of Chapter 8.22 that limit rents to new tenants after terminations of tenancy pursuant California Civil Code Section 1946;

**Whereas**, in light of the Just Cause for Eviction Ordinance, the City Council wishes to eliminate the eviction restricts in Chapter 8.22 on rents after terminations of tenancy pursuant to Civil Code Section 1946 that are no longer necessary;

**Whereas**, the City Council believes that the relationship between landlords and tenants in smaller owner-occupied rental properties involve special relationships between the landlord and the tenants residing in the same smaller property. Smaller property owners also have a difficult time understanding and complying with rent and eviction regulation. The Just Cause for Eviction Ordinance recognizes this special relationship and exempts from its coverage owner-occupied properties divided into a maximum of three units. For these reasons, the City Council believes owner-occupied rental properties exempt from the Just Cause for Eviction Ordinance should similarly be exempt from the Rent Adjustment Program so long as the property is owner-occupied. In order to permit tenants to adjust to the possibility of unregulated rents and to address the potential for abuse of the owner-occupancy exemption

by landlords who are motivated to move into a property to gain an exemption just to increase rent and not to reside in the property, this exemption should not take effect for one year after the amendment to Chapter 8.22 exempting these rental units is adopted, or one year after the landlord begins owner-occupancy, whichever is later.

**Whereas**, other amendments to Chapter 8.22 are necessary in order to conform the Chapter to the Just Cause for Eviction Ordinance;

**Whereas**, Measure EE did not provide a source for funding the new administrative responsibilities the measure creates for the Rent Program administration;

**Whereas**, approximately 19,000 units subject to the Just Cause for Eviction Ordinance are not covered by the Rent Adjustment Program and do not pay the Rent Program Service Fee;

**Whereas**, the Rent Program Service should be extended to all units covered by the Just Cause for Eviction Ordinance as a reasonable fee for the additional administrative services necessary to administer that Ordinance for those units not already paying the Rent Program Service Fee and for this reason and the Rent Program Service Fee should be put into its own Article in Chapter 8.22.

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

## **CHAPTER 8.22**

### **RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS**

#### **ARTICLE I**

#### **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, Article I.**
- 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 Retaliatory Evictions.
- 8.22.140 Voluntary Mediation of Evictions.
- 8.22.150 General Remedies.
- 8.22.160 Computation of Time.
- 8.22.170 Severability.
- 8.22.180 Nonwaiverability.
- 8.22.190 Applicability—Effective date of Chapter 8.22, Article I.

#### **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. Terminations of Tenancies.** On November 5, 2002, Oakland voters passed the Just Cause for Eviction Ordinance (Measure EE). The enactment of the Just Cause for Eviction Ordinance by the electorate makes unnecessary the need for the eviction restrictions in Chapter 8.22, Article I (Rent Adjustment Ordinance) for a tenant whose tenancy is terminated by California Civil Code Section 1946 and also overrides portions of the Rent Adjustment Ordinance.

**F.** The City Council believes that the relationship between landlords and tenants in smaller owner-occupied rental properties involve special relationships between the landlord and the tenants residing in the same smaller property. Smaller property owners also have a difficult time understanding and complying with rent and eviction regulation. The Just Cause for Eviction Ordinance recognizes this special relationship and exempts from its coverage owner-occupied properties divided into a maximum of three units. For these reasons, the City Council believes owner-occupied rental properties exempt from the Just Cause for Eviction Ordinance should similarly be exempt from the Rent Adjustment Program so long as the property is owner-occupied. In order to permit tenants to adjust to the possibility of unregulated rents and to address the potential for abuse of the owner-occupancy exemption by landlords who are motivated to move into a property to gain an exemption just to increase rent and not to reside in the property, this exemption should not take effect for one year after the amendment to Chapter 8.22 exempting these rental units is adopted, or one year after the landlord begins owner-occupancy, whichever is later.

**G.** 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. With the enactment of the Just Cause for Eviction Ordinance, the City Council desires to extend the Rent Program Service Fee to all residential rental units covered by either Residential Rent Adjustment Program or the Just Cause for Eviction Ordinance and, therefore, moves the section of Article I pertaining to the fee to a new Chapter 8.22, Article IV.

#### **8.22.020 Definitions.**

As used in Chapter 8.22, Article I:

**"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 or 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.

**"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 property on which the Covered Units are located.

**"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 of Oakland that administers Chapter 8.22 and also includes the Board.

**"Regulations"** means the regulations adopted by the Board and approved by the City Council for implementation of Chapter 8.22, 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 8.22, 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 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, 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 Chapter 8.22, Article I under the following conditions:

1. **One-Year Minimum Owner Occupancy.** A qualifying Owner of Record must first occupy one of the units continuously as his/her principal residence for at least one year.

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 8.22, Article I one year after the effective date of this exemption or one year after the qualifying Owner of Record starts residing at the affected property as his/her principal place of residence.

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 Chapter 8.22, Article 1.

**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 8.22, Article I.**

The following is a summary of notices required by this Chapter 8.22, Article I (the Just Cause for Eviction Ordinance (Chapter 8.22, Article II) and the Ellis Act Ordinance (Chapter 8.22, Article III) may require other or different notices). Details of the requirements for each notice are found in the applicable Section.

**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).

**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 8.22 (including the Just Cause for Eviction Ordinance (O.M.C. Chapter 8.22, Article II) and the Ellis Act Ordinance (O.M.C. Chapter 8.22, Article II)) 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 pass-through one half of the Fee to a Tenant in accordance with Section 8.22.500 G. 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. If a Tenant requests 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 8.22. The previous tenancy was terminated following a notice of a Rent increase not permitted by this Chapter 8.22. ("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.**

1. The Just Cause for Eviction Ordinance (O.M.C. 8.22.300 (Chapter 8.22, Article II)) provides for certain restrictions on setting initial rents to new tenants and upon re-rental to former tenants.

2. The Ellis Act Ordinance (O.M.C. 8.22.400 (Chapter 8.22, Article III)) provides for certain restrictions on setting initial rents to new tenants and upon re-rental to former tenants.

**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:
    - b. 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
    - c. The Owner set an initial Rent in excess of the amount permitted pursuant to Section 8.22.080 (Rent increases following vacancies);
    - d. A Rent increase notice fails to comply with the requirements of this Section 8.22.070 H;
    - e. The Owner failed to give the Tenant a notice in compliance with Section 8.22.060;
    - f. The Owner decreased Housing Services to the Tenant;
    - g. 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;
    - h. The Tenant claims relocation restitution pursuant to former Section 8.22.010 A.1;
    - i. The petition is permitted by the Just Cause for Eviction Ordinance (Measure EE) O.M.C. 8.22.300;
    - j. The petition is permitted by the Ellis Act Ordinance, O.M.C. 8.22.400.
    - k. 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 sixty (60) days of which ever of the following is later:
    - a. The date the Owner serves the Rent increase notice; or
    - 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 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 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 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.

### **8.22.140 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.

### **8.22.150 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 O.M.C 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 O.M.C 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.

#### **8.22.160 Computation of Time.**

In this O.M.C. 8.22, Article I, 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.

#### **8.22.170 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.

#### **8.22.180 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.

#### **8.22.190 Applicability—Effective date of Chapter 8.22, Article I.**

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 Chapter 8.22, Article I to provide for this exemption is adopted by the City Council in accordance with Paragraph 8.22.030 D.4.

C. 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.

IN COUNCIL, OAKLAND, CALIFORNIA,

, 2003 SEP 30 2003

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, ~~BRUNNER~~, CHANG, NADEL, QUAN, REID, WAN, AND  
PRESIDENT DE LA FUENTE -5

NOES- BRUNNER, NADEL, QUAN -3

ABSENT- 0

ABSTENTION- 0

**Introduction Date:**

JUL 15 2003

ATTEST:



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