HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
SPECIAL MEETING

December 15, 2016
7:00 P.M.
CITY HALL, COUNCIL CHAMBERS
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2016 DEC -8 AM 11:52

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. OLD BUSINESS
   i. Discussion and Possible Action on Revisions to Rent Adjustment Regulations
5. NEW BUSINESS
   i. Board Training
6. SCHEDULING AND REPORTS
7. ADJOURNMENT

Accessibility. The meeting is held in a wheelchair accessible facility. Contact the office of the City Clerk, City Hall, One Frank Ogawa Plaza, or call (510) 238–3611 (voice) or (510) 839–6451 (TTY) to arrange for the following services: 1) Sign interpreters; 2) Phone ear hearing device for the hearing impaired; 3) Large print, Braille, or cassette tape text for the visually impaired The City of Oakland complies with applicable City, State and Federal disability related laws and regulations protecting the civil rights of persons with environmental illness/multiple chemical sensitivities (EI/MCS). Auxiliary aids and services and alternative formats are available by calling (510) 238-3716 at least 72 hours prior to this event.

Foreign language interpreters may be available from the Equal Access Office (510) 239-2368. Contact them for availability. Please refrain from wearing **strongly scented products** to this meeting.

Service Animals / Emotional Support Animals: The City of Oakland Rent Adjustment Program is committed to providing full access to qualified persons with disabilities who use services animals or emotional support animals.

If your service animal lacks visual evidence that it is a service animal (presence of an apparel item, apparatus, etc.), then please be prepared to reasonably establish that the animal does, in fact, perform a function or task that you cannot otherwise perform.

If you will be accompanied by an emotional support animal, then you must provide documentation on letterhead from a licensed mental health professional, not more than one year old, stating that you have a mental health-related disability, that having the animal accompany you is necessary to your mental health or treatment, and that you are under his or her professional care.

Service animals and emotional support animals must be trained to behave properly in public. An animal that behaves in an unreasonably disruptive or aggressive manner (barks, growls, bites, jumps, urinates or defecates, etc.) will be removed.

CITY OF OAKLAND

P.O. BOX 70243, OAKLAND, CA 94612-2043

Department of Housing and Community Development
Rent Adjustment Program

(510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

OUTLINE FOR BOARD TRAINING
December 15, 2016

1. 7:00-7:30 Board Procedures

- Robert's Rules
- Board Function

2. 7:30-8:30 Appeal Procedures

1. <u>Preliminary Review of Appeals</u>:

- Appeal is reviewed by Program Manager;
- Appeal form and attachments should not exceed 25 pages;
- Untimely appeals are dismissed;
- Timely appeals are reviewed by Hearing Officer for possible clerical errors;
- A Corrected Decision is issued in case of clerical errors;
- Decision can be set aside and a new hearing scheduled if the appellant has "good cause" for non-appearance;
- If it is decided that the appeal should go to the Board, a tentative date is set in the database;
- Either party can request a postponement for good cause; postponements are approved by the Program Manager.

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2. Appeal Process:

- Oral arguments – each party has 15 minutes – 5 for opening, 5 for rebuttal, 5 for questions from the Board; the Board may extend or reduce time in a particular case, so long as each party has equal time;
- Board may only decide the appeal on the issues raised in the appeal pleadings;
- The Board may not hear any new evidence at the appeal hearing. The Board is not hearing the matter *de novo* – only deciding whether the original decision was properly conducted or considered;
- The Board may overturn the hearing officer's decision, approve the decision, or remand the case back to the Hearing Officer to allow for certain evidence to be admitted or considered;
- The may remand the case back to staff or Hearing Officer for recalculations;
- Appeal Decisions are drafted by Staff
- Draft decisions are approved by the Board/City Attorney's office;
- Board Decision is final. Appeal is by Writ to Superior Court.

CITY OF OAKLAND

REPORT

To: Housing Residential Rent and Relocation Board
ATTN: Jessie Warner, Chairperson
FROM: Connie Taylor, Rent Adjustment Program Manager
DATE: November 2, 2016

RE: Revisions to Rent Adjustment Regulations

At its meeting of October 20, 2016, the Housing, Residential Rent and Relocation Board ("Board") considered amendments to the Rent Adjustment Regulations ("Regulations") brought forward by staff. The Regulations were brought to the Board to conform to the Regulations to recent and past Rent Adjustment Ordinance amendments. In the Board's discussion of the proposed Regulation amendments, the Board indicated some areas where it would like changes and some options. This supplemental report is to identify the modifications to the Regulations made in response to the Board's discussion.

The following is a list of the changes made from the draft submitted at the Board's October 20, 2016 meeting. Changes from that version are highlighted.

- Page 5, 8.22.040A.2 "City Manager" changed to "City Administrator".
- Page 15, 8.22.120A.1 Added language further explaining what is necessary for an adequate statement of the grounds for appeal.
- Page 18, 8.22.120G.2.a Eliminated language regarding Staff preparing appeal decision (addressed in another section).
- Pages 18-19, 8.22.120.G.c. Added "appeal " to i. Added list of options for issuing final Appeal decisions.
- Page 19, 8.22.120.H. Added new section on Dismissal of Appeal including deficiency notice and staff dismissal.
- Page 19, 8.22.120.I Renumbered.
- Page 23, 8.22.150A.4.f Added "(12)" after the word "twelve".
- Page 24, 8.22.150A.5 Clarifying regulations regarding cited party.
- Page 25, 8.22.150B.2. Clarifying that Civil Penalties apply to a cited party.

Respectfully submitted,

Connie Taylor
Rent Adjustment Program Manager

Exhibit A

RENT ADJUSTMENT PROGRAM REGULATIONS

8.22.010 FINDINGS AND PURPOSE.

A. Purpose of Regulations

1. These Regulations entirely replace the Regulations approved by the City Council in Resolution No. 71518 C.M.S. on December 6, 1994 except as provided for herein.

8.22.020 DEFINITIONS.

~~A. Definitions from Chapter 8.22~~

~~1. The following definitions are contained in Chapter 8.22 and are inserted for convenience:~~

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

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

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

"Appeal panel" means a three-member panel of board members authorized to hear appeals of Hearing Officer decisions. Appeals panels must be comprised of one residential rental property owner, one tenant, and one person who is neither a tenant not a residential rental property owner. Appeals panels may be made up of all regular board members, all alternates, or a combination of regular board members and alternates.

"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

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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 Rent Adjustment Program Regulations Effective 8-1-14 2 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 OMC 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 OMC 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 Housing 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 OMC 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. NOTE: Debt Service for newly-acquired units has been eliminated as a justification for new rent increases in excess of the CPI pursuant to Ordinance No. 13221 C.M.S., adopted by the Oakland City Council on April 1, 2014.

"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.

"Imputed interest" means the average of the 10 year United States treasury bill rate and the 10 year LIBOR swap rate for the quarter prior to the date the permits for the improvements were obtained plus an additional one and one-half percent. The Rent Program will post the quarterly interest rates allowable.

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

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

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

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

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

"Staff" means the staff appointed by City ~~Manager~~ Administrator to administer the Rent Adjustment Program.

"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 Rent Adjustment Program Regulations 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.

~~**B. New Definitions for Regulation** "Staff" means the staff appointed by City Manager to administer the Rent Adjustment Program.~~

8.22.030 EXEMPTIONS.

A. Dwelling Units That Are Not Covered Units.

1. In order to be a Covered Unit, the Owner must be receiving Rent in return for the occupancy of the dwelling unit.

a. Rent need not be cash, but can be in the form of "in-kind" services or materials that would ordinarily be the Owner's responsibility.

i. For example, a person who lives in a dwelling unit and paints the premises, repairs damage, or upgrades the unit is considered to be paying Rent unless the person caused the damage.

b. Payment of some of expenses of the dwelling unit even though not all costs are paid is Rent.

i. Payment of all or a portion of the property taxes or insurance.

ii. Payment of utility costs that are not directly associated with the use of the unit occupied.

2. If California law determines that an "employee of the Owner", including a manager who resides in the Owner's property, is not a tenant, then the dwelling unit occupied by such person is not subject to OMC Chapter 8.22 so long as the person is an employee and continues to reside in the unit.

B. Types of Dwelling Units Exempt

1. Subsidized units. Dwelling units whose rents are subsidized by a governmental unit, including the federal Section 8 voucher program.

2. Newly constructed dwelling units (receiving a certificate of occupancy after January 1, 1983).

a. Newly constructed units include legal conversions of uninhabited spaces not used by Tenants, such as:

i. Garages;

ii. Attics;

iii. Basements;

iv. Spaces that were formerly entirely commercial.

b. Any dwelling unit that is exempt as newly constructed under applicable interpretations of the new construction exemption pursuant to Costa-Hawkins (California Civil Code Section 1954.52).

c. Dwelling units not eligible for the new construction exemption include:

i. Live/work space where the work portion of the space was converted into a separate dwelling unit;

ii. Common area converted to a separate dwelling unit.

3. Substantially rehabilitated buildings.

a. In order to qualify for the substantial rehabilitation exemption, the rehabilitation work must be completed within a two (2) year period after the issuance of the building permit for the work unless the Owner demonstrates good cause for the work exceeding two (2) years.

b. For the substantial rehabilitation exemption, the entire building must qualify for the exemption and not just individual units.

4. Dwelling Units Exempt Under Costa-Hawkins. Costa-Hawkins addresses dwelling units that are exempt under state law. The Costa Hawkins exemptions are contained at California Civil Code Section 1954.52. The text of Costa-Hawkins is attached as an appendix to OMC Chapter 8.22.

C. Certificates of Exemption

1. Whenever an Owner seeks a Certificate of Exemption the following procedures apply:

a. The petition cannot be decided on a summary basis and may only be decided after a hearing on the merits;

b. Staff may intervene in the matter for the purpose of better ensuring that all facts relating to the exemption are presented to the Hearing Officer;

c. In addition to a party's right to appeal, Staff or the Hearing Officer may appeal the decision to the Rent Board; and,

d. A Certificate of Exemption shall be issued in the format specified by Government Code Section 27361.6 for purposes of recording with the County Recorder.

2. In the event that a previously issued Certificate of Exemption is found to have been issued based on fraud or mistake and thereby rescinded, the Staff shall record a rescission of the Certificate of Exemption against the affected real property with the County Recorder.

8.22.040 THE BOARD.

A. Meetings

1. Notice. Meetings shall be noticed and the agenda posted in accordance with the Ralph M. Brown Act (California Government Code Sections 54950, et. seq. ("Brown Act") and Sunshine Ordinance (OMC Chapter 2.20).

2. Regular Meetings. The Board or an Appeal Panel shall meet regularly on the second and fourth Thursdays of each month, unless cancelled. Rent Program staff is authorized to schedule these regular meetings either for the full Board or for an Appeal Panel.

3. Special Meetings. Meetings called by the Mayor or City ~~Manager~~Administrator, or meetings scheduled by the Board for a time and place other than regular meetings are to be designated Special Meetings. The agenda of Special Meetings shall be restricted to those matters for which the meeting was originally called and no additional matters may be added to the agenda.

4. Adjourned or Rescheduled Meetings. A meeting may be adjourned to a time and place to complete the agenda if voted by the Board members present. A rescheduled meeting may be held when a quorum cannot be convened for a regular meeting or when a quorum votes to substitute another time and/or place for a scheduled meeting. Notice of change of meeting time and/or place shall be sent to the City Clerk and absent Board members and provided in accordance with the Brown Act and Sunshine Ordinance.

5. Time of Meetings. Board meetings shall start at 7 p.m. and end by 10:00 p.m. unless some other time is set in advance or the meeting is extended by a vote of the Board.

6. Location of Meetings. The Board meetings shall be held at City Hall, One Frank H. Ogawa Plaza, Oakland, CA 94612, unless otherwise designated.

7. Agenda. The agenda for each meeting shall be posted at such time and places as required by the Brown Act and Sunshine Ordinance.

8. Board meetings shall be conducted in accordance with "Robert's Rules of Order (Revised)," unless modified by these Regulations, requirements of the Brown Act or Sunshine Ordinance, or the Board.

9. Open to Public. The meetings shall be open to the public in accordance with the Brown Act and the Sunshine Ordinance, except for circumstances where the Brown Act or Sunshine Ordinance permits the Board to address a matter in closed session, such as litigation or personnel matters.

10. Board Vacations. The Board may schedule dates during the year when no regular Board meetings may be held so that the entire Board may take vacations. The Board must schedule vacation times at least two (2) months prior to the date of the vacation time.

B. Quorum and Voting

1. Four Board members constitutes a quorum of the Board.

2. Decisions of the Board. For the Board to make a decision on the first time a matter comes before the Board, the quorum must include at least one of each of the three categories of Board members (tenant, residential rental property owner, and one who is neither of the foregoing). If a matter cannot be decided because at least one of each of the three categories of Board members is not present, the matter will be considered a second time at a future meeting where the matter can be decided even if at least one member from each category is not present. A majority of the Board members present are required to make decisions, provided a quorum is present and sufficient members of each category are present.

3. A Board member who does not participate in a matter because of a conflict of interest or incompatible employment neither counts towards a quorum nor in calculating the number of Board members required to make a majority.

C. Officers

1. The Board shall select a Chair from among the Board members who are neither tenants nor residential rental property owners. Each Appeal panel shall be chaired by the member of that panel who is neither a tenant nor a residential rental property owner.

2. The Board may also select a Vice-Chair (who is neither a tenant nor an owner) to act as Chair in the Chair's absence.

3. The Officers shall serve one-year terms.

4. The Board shall elect Officers each year at the second meeting in February.

5. The Chair votes on matters as any other Board member.

D. Standing Committees

~~1. The Board may establish one or more Appeal Committees to hear appeals of Hearing Officer decisions under procedures set out in Regulation 8.22.120.~~

~~a. The purpose of an Appeal Committee is to consider appeals in the extraordinary circumstance when the number of appeals is such that the Board cannot reasonably meet the timetable set out in OMC Chapter 8.22 and the Regulations considering and deciding appeals.~~

~~b. An Appeal Committee should only hear those appeals that involve issues of type previously decided by the Board. Rent Adjustment Program Regulations Effective 8-1-14-7~~

~~c. An Appeal Committee must be comprised of one tenant, one owner, and one Board member who is neither an owner nor tenant. No Board member can sit on more than one Appeal Committee at one time.~~

~~d. All Appeal Committee members must be present for a quorum. A majority of the Appeal Committee is required to decide an appeal.~~

~~e. Staff shall determine which appeals are appropriate for an Appeal Committee and which should go to the Board unless the Appeal Committee or Board decide otherwise.~~

~~f. A party to an appeal may elect not to have his/her case heard by an appeal panel and instead, be heard by the full Board. A party may so elect by notifying the Rent Adjustment Program not less than five (5) days prior to the first scheduled date for the appeal hearing.~~

~~2.~~ The Board may establish standing committees subject to prior approval of the City Council.

~~a.~~ A request to create a standing committee must include:

i. The staffing costs for the committee; and

ii. The costs of complying with meeting noticing requirements.

8.22.050 SUMMARY OF NOTICES REQUIRED BY OMC CHAPTER 8.22.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.050.

8.22.060 NOTICE OF THE EXISTENCE OF CHAPTER 8.22 REQUIRED AT COMMENCEMENT OF TENANCY.

A. Providing Notice in Multiple Languages

1. The requirement to provide the Notice of the Existence of Chapter 8.22 Required at Commencement of Tenancy in multiple languages took effect on September 21, 2016 and only applies to new tenancies that commenced on or after that date..

2. No Owner will be penalized for failing to comply with this requirement until the later of sixty (60) days after the Rent Program makes a general announcement of the requirement or all the translations are available on the Rent Program website.

3. Until September 21, 2017, no Owner will be denied a Rent increase for failing to provide the notice in the required languages, unless:

a. the Tenant is proficient in one of non-English languages, and is not proficient in English;

b. the Owner negotiated the terms of the rental agreement in one of the non-English languages and failed to give the notice in that language.

~~[Reserved for potential future regulations]. See Ordinance, OMC 8.22.060.~~

8.22.65 RENT ADJUSTMENTS IN GENERAL

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.065.

8.22.070 RENT ADJUSTMENTS FOR OCCUPIED COVERED UNITS.

A. Purpose

This section sets forth the regulations for a Rent adjustment exceeding the CPI Rent Adjustment and that is not authorized as an allowable increase following certain vacancies.

B. Justifications for a Rent Increase in Excess of the CPI Rent Adjustment

~~1. The~~ Regulations regarding the justifications for a Rent increase in excess of the CPI Rent Adjustment are attached as Appendix A to these Regulations. The justifications are: banking; capital improvement costs; uninsured repair costs; increased housing service costs; and the rent increase is necessary to meet constitutional or fair return requirements.

~~2. Except for a Rent increase justified by banking, Rent may be increased by~~

~~a. the CPI Rent Adjustment, or~~

~~b. the total amount justified under provisions of OMC Section 8.22.070.D.1, whichever is greater.~~

~~3. Section 8.22.070.B.2. does not apply to any Rent increase based on Banking pursuant to Appendix A, Section 10.5~~

8.22.080 RENT INCREASES FOLLOWING VACANCIES.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.080.

8.22.090 PETITION AND RESPONSE FILING PROCEDURES.

A. Filing Deadlines

In order for a document to meet the filing deadlines prescribed by OMC Chapter 8.22.090, documents must be received by the Rent Adjustment Program offices no later than 5 PM on the date the document is due. A postmark is not sufficient to meet the requirements of OMC Chapter 8.22.090. Additional regulations regarding electronic and facsimile filing will be developed when these filing methods become available at the Rent Adjustment Program.

B. Tenant Petition and Response Requirements

1. A Tenant petition or response to an Owner petition is not considered filed until the following has been submitted:

a. Evidence that the Tenant is current on his or her Rent or is lawfully withholding Rent. For purposes of filing a petition or response, a statement under oath that a Tenant is current in his or her Rent or is lawfully withholding Rent is sufficient, but is subject to challenge at the hearing;

b. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath; and

c. For Decreased Housing Services claims, organized documentation clearly showing the Housing Service decreases claimed and the claimed value of the services, and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file.

2. Staff shall serve on respondents copies of the completed petition forms accepted for filing with notification that the petition has been filed. Staff shall serve on petitioners completed response forms accepted for filing. Attachments to petitions and responses shall not be included but will be available to review upon request of either party.

C. Owner Petition and Response Requirements

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1. An Owner's petition or response to a petition is not considered filed until the following has been submitted:

a. Evidence that the Owner has paid his or her City of Oakland Business License Tax;

b. Evidence that the Owner has paid his or her Rent Program Service Fee;

c. Evidence that the Owner has provided written notice, to all Tenants affected by the petition or response, of the existence and scope of the Rent Adjustment Program as required by OMC 8.22.060. For purposes of filing a petition or response, a statement that the Owner has provided the required notices is sufficient, but is subject to challenge at the hearing;

d. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath;

e. Organized documentation clearly showing the Rent increase justification and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file.

2. Staff shall serve on respondents copies of the completed petition forms accepted for filing with notification that the petition has been filed. Staff shall serve on petitioners completed response forms accepted for filing. Attachments to petitions and responses shall not be included but will be available to review upon request of either party.

D. Time of Hearing and Decision

1. The time frames for hearings and decisions set out below are repeated from OMC 8.22.110 D.

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

3. 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.

E. Designation of Representative

Parties have the right to be represented by the person of their choice. A Representative does not have to be a licensed attorney. Representatives must be designated in writing by the party. Notices and correspondence from the Rent Adjustment Program will be sent to representatives as well as parties so long as a written Designation of Representative has been received by the Rent Adjustment Program at least ten (10) days prior to the mailing of the notice or correspondence. Parties are encouraged to designate their representatives at the time of filing their petition or response whenever possible.

8.22.100 MEDIATION OF RENT DISPUTES.

A. Availability of Mediation

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Voluntary mediation of Rent disputes will be available to all parties participating in Rent adjustment proceedings after the filing of a petition and response. Mediation will only be conducted in those cases in which all parties agree in advance to an effort to mediate the dispute.

B. Procedures

1. Parties who desire mediation shall have the choice between the use of Rent Adjustment Program staff Hearing Officers acting as mediators or the selection of an outside mediator. Staff Hearing Officers shall be made available to conduct mediations free of charge. The Rent Adjustment Program will develop a list of available outside mediators for those who do not wish to have staff Hearing Officers mediate rent disputes. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

2. The following rules apply to mediations conducted by staff Hearing Officers and notices regarding the scheduling of a mediation session shall explain the following:

a. Participation in a mediation session is voluntary;

b. A request by any party for a hearing on the petition instead of the mediation session received prior to or during the scheduled mediation will be granted. Such a request will be immediately referred to the Rent Adjustment Program and a hearing on the petition will be scheduled;

c. Written notice of the mediation session shall be served on the parties by the Rent Adjustment Program in accordance with OMC 8.22.110.

d. It is the goal to have the mediation scheduled within the first 30 days after the response to the petition is filed.

e. Absence Of Parties

i. If a petitioner fails to appear at a properly noticed mediation, the Hearing Officer may, in the Hearing Officer's discretion, dismiss the case.

ii. If a respondent fails to appear, the Hearing Officer will refer the matter to the Rent Adjustment Program for administrative review or hearing on the petition, whichever is appropriate.

3. The following rules apply to mediations conducted by outside mediators and notices regarding the scheduling of a mediation session shall explain the following:

a. Participation in a mediation session is voluntary;

b. The Rent Adjustment Program will not schedule the mediation; the parties will be responsible for scheduling the mediation between themselves and the mediator and for notifying the Rent Adjustment Program of the time and date for the mediation;

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c. A request by any party for a hearing on the petition instead of the mediation session received prior to or during the scheduled mediation will be granted. Such a request will be immediately referred to the Rent Adjustment Program and an administrative hearing will be scheduled. In the event that the responding party fails to appear for the mediation session, the case will be referred back to the Rent Adjustment Program for administrative review and or hearing on the petition, whichever is appropriate.

d. In the event that the petitioning party fails to appear for the mediation session, the case will be referred back to the Rent Adjustment Program for administrative dismissal of the petition.

4. The regulations regarding representation by an agent and translation apply to mediations.

5. If the parties fail to settle the rent dispute through the mediation process after a good faith effort, a hearing on the petition will be scheduled on a priority basis with a staff Hearing Officer. If the mediation was conducted by a staff Hearing Officer, the hearing on the petition will be conducted by a different Hearing Officer.

6. If the parties reach an agreement during the mediation, a written mediation agreement will be prepared immediately by the mediator and signed by the parties at the conclusion of the mediation. To the extent possible, mediation agreements shall be self-enforcing. The Hearing Officer will issue an order corresponding to the mediated agreement and signed by the parties that either dismisses the petition or grants the petition according to terms set out in the mediation agreement.

7. A settlement agreement reached by the parties will become a part of the record of the proceedings on the petition unless the parties otherwise agree.

8. The parties cannot agree to grant an Owner a permanent exemption of for dwelling unit. Permanent exemption claims must be decided by a Hearing Officer after a hearing on the evidence.

C. Postponements of Mediations Before Hearing Officers

1. A Hearing Officer or designated Staff member may grant a postponement of the mediation only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" includes but is not limited to:

a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party;

b. Verified travel plans scheduled before the receipt of notice of hearing;

c. Any other reason that makes it impractical to appear at the scheduled mediation date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

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3. A request for a postponement of a mediation must be made in writing at the earliest date possible after receipt of the notice of mediation with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date set for the mediation.

8.22.110 HEARING PROCEDURE.

A. Postponements

1. A Hearing Officer or designated Staff member may grant a postponement of the hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" includes but is not limited to: a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party; b. Verified travel plans scheduled before the receipt of notice of hearing; c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of a hearing must be made in writing at the earliest date possible after receipt of the notice of hearing with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Arbitration Program office must be notified in writing at the earliest date possible prior to the date set for the hearing.

B. Absence Of Parties

1. If a petitioner fails to appear at a properly noticed hearing, the Hearing Officer may, in the Hearing Officer's discretion, dismiss the case.

2. If a respondent fails to appear, the Hearing Officer may rule against the respondent, or proceed to a hearing on the evidence.

C. Record Of Proceedings

1. All proceedings before a Hearing Officer or the Rent Board, except mediation sessions, shall be recorded by tape or other mechanical means. A party may order a Rent Adjustment Program Regulations Effective 8-1-14 13 duplicate or transcript of the tape recording of any hearing provided that the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.

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2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

D. Translation

Petitioners and respondents who do not speak or are not comfortable with English must provide their own translators. The translators will be required to take an oath that they are fluent in both English and the relevant foreign language and that they will fully and to the best of their ability translate the proceedings.

E. Conduct Of Hearings Before Hearing Officers

1. Each party, attorney, other representative of a party or witness appearing at the hearing shall complete a written Notice of Appearance and oath, as appropriate, that will be submitted to the Hearing Officer at the commencement of the hearing. All Notices of Appearance shall become part of the record.

2. All oral testimony must be given under oath or affirmation to be admissible.

3. Each party shall have these rights:

a. To call and examine witnesses;

b. To introduce exhibits;

c. To cross-examine opposing witnesses on any matter relevant to the issues even if that issue was not raised on direct examination;

d. To impeach any witness regardless of which party called first called him or her to testify;

e. To rebut the evidence against him or her;

f. To cross-examine an opposing party or their agent even if that party did not testify on his or her own behalf or on behalf of their principal.

4. Unless otherwise specified in these Regulations or OMC Chapter 8.22, the rules of evidence applicable to administrative hearings contained in the California Administrative Procedures Act (California Government Code Section 11513) shall apply.

F. Decisions Of The Hearing Officer

1. The Hearing Officer shall make written findings of fact and issue a written decision on petitions filed.

2. If an increase in Rent is granted, the Hearing Officer shall state the amount of increase that is justified, and the effective date of the increase.

3. If a decrease in Rent is granted, the Hearing Officer shall state when the decrease commenced, the nature of the service decrease, the value of the decrease in services, and the amount to which the rent

may be increased when the service is restored. When the service is restored, any Rent increase based on the restoration of service may only be taken following a valid change of terms of tenancy notice pursuant to California Civil Code Section 827. A Rent increase for restoration of decreased Housing Services is not considered a Rent increase for purposes of the limitation on one Rent increase in twelve (12) months pursuant to OMC 8.22.070 A. (One Rent Increase Each Twelve Months).

4. The Hearing Officer may order Rent adjustment for overpayments or underpayments over a period of months, however, such adjustments shall not span more than a twelve (12) month period, unless longer period is warranted for extraordinary circumstances. The following is a schedule of adjustments for underpayment and overpayments that Hearing Officers must follow unless the parties otherwise agree or good cause is shown:

a. If the underpayment or overpayment is 25% of the Rent or less, the Rent will be adjusted over 3 months;

b. If the underpayment or overpayment is 50% of the Rent or less, the Rent will be adjusted over 6 months;

c. If the underpayment or overpayment is 75% of the Rent or less, the Rent will be adjusted over 9 months;

d. If the underpayment or overpayment is 100% of the Rent or more, the Rent will be adjusted over 12 months.

5. For Rent overpayments based on an Owner's failure to reduce Rent after the expiration of the amortization period for a Capital Improvement, the Decision shall also include a calculation of any interest that may be due pursuant to Reg. 10.2.5 (see Appendix A).

8.22.120 APPEALS.

A. Statement of Grounds for Appeal and Supporting Documentation

1. A party who appeals a decision of a Hearing Officer or administrative decision must clearly state the grounds for the appeal on the appeal form or an attachment. The grounds for appeal must be stated sufficiently clearly for the responding party, and the Board to reasonably determine the basis for the appeal so that the responding party can adequately respond and the Board adequately adjudicate the appeal.

2. A party who files an appeal must file any supporting argument documentation and serve it on the opposing party within fifteen (15) days of filing the appeal along with a proof of service on the opposition party.

3. A party responding to an appeal must file any response to the appeal and any supporting documentation and serve it on the opposing party within fifteen (15) days of the service of the supporting documentation along with a proof of service on the opposing party.

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4. Any argument and supporting documentation may not be any more than twenty-five (25) pages. Arguments must be legible and double-spaced if typed. Any submissions not conforming to these requirements may be rejected by Staff. Staff may limit the pages for argument and supporting documentation submitted in consolidated cases.

5. Staff, in its discretion, may modify or waive the above requirements for good cause. The good cause must be provided in writing by the party seeking a waiver or modification.

B. Grounds for Appeal

The grounds on which a party may appeal a decision of a Hearing Officer include, but are not limited to, the following:

1. The decision is inconsistent with OMC Chapter 8.22, the Regulations, or prior decisions of the Board;

2. The decision is inconsistent with decisions issued by other Hearing Officers;

3. The decision raises a new policy issue that has not previously been decided by the Board;

4. The decision violates federal, state, or local law;

5. The decision is not supported by substantial evidence;

a. Where a party claims the decision is not supported by substantial evidence, the party making this claim has the burden to ensure that sufficient record is before the Board to enable to the Board to evaluate the party's claim;

~~5~~6. The Hearing Officer made a procedural error that denied the party sufficient opportunity to adequately present his or her claim or to respond to the opposing party; or

~~6~~7. The decision denies the Owner a fair return.

a. This appeal ground may only be used by an Owner when his or her underlying petition for approval of rent a rent increase was based on a fair return claim.

b. Where an Owner claims the decision denies a fair return, the owner must specifically state on the appeal form the basis for the claim, including any calculations, and the legal basis for the claim.

C. Postponements

1. The Board or Staff may grant a postponement of the appeal hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" shall include but is not limited to:

a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party;

b. Verified travel plans scheduled before the receipt of notice of hearing;

c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of an appeal hearing must be made in writing at the earliest date possible after receipt of the notice of appeal hearing with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Arbitration Program office must be notified in writing at the earliest date possible prior to the date for the appeal hearing.

D. Procedures at Appeal Hearings

1. It is the Board's or Appeal Panel's goal to hear ~~three (3)~~ four (4) appeals per meeting.

2. Unless the Board or Appeal Panel votes otherwise, each party will have ~~fifteen (15)~~ ten (10) minutes to present argument on or in opposition to the appeal. This time includes opening argument and any response.

3. Whenever the Board or Appeal Panel considers an appeal at more than one meeting, any Board member not present at a prior hearing must listen to a tape of the prior hearing in order to participate at a subsequent hearing.

4. Only those grounds presented in the written appeal may be argued before the Board.

E. Record Of Proceedings

1. All proceedings before the Rent Board shall be recorded by tape or other mechanical means. A party may order a duplicate or transcript of the tape recording of any appeal hearing provided that the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.

2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

F. Evidentiary Hearings

1. As a general rule, the Board and Appeal Panels should not conduct evidentiary hearings. When the Board or Appeal Panel determines that additional evidence or reconsideration of evidence is necessary, the Board or Appeal Panel should remand the matter back to a Hearing Officer for consideration of evidence.

2. The Board or Appeal Panel should only consider evidence when the evidence is limited in scope and resolution of the matter is more efficient than having it remanded to a Hearing Officer for consideration of the evidence.

3. In order for new evidence to be considered, the party offering the new evidence must show that the new evidence could not have been available at the Hearing Officer proceedings.

4. If the Board or Appeal Panel deems an evidentiary hearing necessary, the appeal will be continued and the Board will issue a written order setting forth the issues on which the parties may present evidence.

5. The parties must file any new documentary evidence with the Board or Appeal Panel and also serve it the opposing party not less than five working days prior to the date set for the evidentiary appeal hearing.

a. Parties must also file with the ~~Board~~ Rent Program proofs of service of the evidence on the opposing party.

b. Failure to file the evidence and the proofs of service may result in the evidence not being considered by the Board or Appeal Panel.

6. When the Board or Appeal Panel conducts an evidentiary hearing, the same rules will apply as to hearings before Hearing Officers.

G. Appeal Decisions

1. Vote Required. Provided a quorum of the Board is present, or all three panel members if a matter is being heard by an Appeal Panel, a majority vote of the Board members present is required to overturn or modify a Hearing Officer's decision. A tie vote upholds the Hearing Officer's decision. If no Board member makes a motion to uphold, reverse, or modify the Hearing Officer's decision on appeal or no motion receives a second, the appeal is deemed denied without comment.

2. Vote at Close of Appeal Hearing. Unless the Board or Appeal Panel votes otherwise, it shall vote on each appeal at the close of the appeal. The motion should include the reasons for the decisions so that the reasons can be set forth in a written decision.

a. Form of Decision. An appeal decision must be in writing and include findings and conclusions. ~~Staff will prepare a draft decision for consideration by the Board or Appeal Panel.~~

b. Time for Written Decision. The Board has the goal of issuing a written decision within thirty (30) days of the close of the appeal hearing.

c. Final decision.

i. Written appeal decisions are drafted by sStaff, reviewed by the City Attorney, signed by staff as the Board's designee, and served on the parties.

ii. In any individual matter, however, t~~T~~he Board may vote to require that a decision first come to the full Board or to the Board or Appeal Panel Chair for final approval and signature of that Chair. ~~must approve written decisions. A decision is not final until a written~~

~~decision is approved by the Board, signed by the Chair or the Board's designee,~~A decision is not final until signed by sStaff or the Board or Appeal Panel Chair and served on the parties.

Option 1: The Board must approve written decisions. A decision is not final until a written decision is approved by the Board, signed by the Chair or the Board's designee.

Option 2: The Board approves written decisions unless at the appeal hearing the Board authorizes the Chair or Staff to approve specific a decision.

Option 3: The Board may designate the Chair to approve written decisions.

Option 4: The Board may determine categories of appeal decisions that Staff may issue without return to the Board for approval (such as failure to appear at a hearing or appeal).

d. Staff shall serve decisions on the parties.

H. Dismissal of Appeal

1. Untimely appeal filing.

a. Staff may dismiss an appeal that is not timely filed.

b. Within ten (10) days following Staff's notice of the dismissal, the party filing the late appeal may submit a written statement explaining any good cause for the late filing.

c. If the good cause appears within the guidelines for acceptable good cause set out in Rent Board decisions, Staff may reinstate the appeal or set a hearing before the Board on whether there is good cause for the late appeal.

d. If the good cause does not appear within the acceptable good cause parameters, Staff may reject the good cause and affirm the appeal dismissal.

2. Failing to adequately state grounds for appeal.

a. If Staff determines that an appeal fails to adequately state the grounds for appeal, Staff will send a deficiency notice to the appellant notifying the appellant of the deficiency and giving the appellant ten (ten) days to correct the deficiency.

b. If the appellant fails to respond to the deficiency notice or fails to correct the deficiency in the response, Staff may dismiss the appeal, or ask the Rent Board to determine the adequacy of the appeal.

I. Failure to Appear.

1. Appellant. If an appellant fails to appear at an appeal hearing, the Board will consider the appeal dropped and will issue a decision dismissing the appeal, subject to the appellant showing good cause for the failure to appear.

a. Any excuse for failing to appear, along with supporting documentation, must be submitted to Staff with fifteen days of the date of the appeal decision.

b. Staff will, in the first instance determine if the excuse represents a prima facie case of good cause based on the standards for failing to appear at a hearing and any Board decisions interpreting good cause for failure to appear.

c. If a prima facie case of good cause is shown, Staff will schedule an appeal hearing on whether the Board accepts the good cause.

2. Responding party. If the responding party fails to appear, the Board must still hear and decide the appeal.

~~8.22.130 NOTICE REQUIREMENTS FOR A CIVIL CODE 1946 TERMINATION OF TENANCY.~~

~~A. Public Access to Notices and Information Required to be Filed Relating to a 1946 Termination of Tenancy~~

~~1. Purpose of Regulation. This Reg. 8.22.130 A is to implement OMC 8.22.130 F regarding the privacy of notices and reports that an Owner is required to file in connection with a 1946 Termination of Tenancy. Of concern is public access to:~~

~~a. The identity of the Tenant; and~~

~~b. Any information the Owner put into the 1946 Notice of any alleged misconduct by the Tenant.~~

~~2. Notices and Reports Affected. This Regulation covers the following notices and reports:~~

~~a. 1946 Notice (OMC 8.22.130 A).~~

~~b. Notice to New Tenant (OMC 8.22.130 B).~~

~~c. Report to the Rent Adjustment Program of the New Tenant's Rent (OMC 8.22.130 C).~~

~~d. Status Report to the Rent Adjustment Program after 1946 Termination of Tenancy (OMC 8.22.130 D).~~

~~3. Access to notices and reports identified in 8.22.130 A.2, above.~~

~~a. The following persons have full access to the notices and reports.~~

~~i. The Tenant whose tenancy was termination by the 1946 Notice;~~

~~ii. The Owner who terminated the tenancy.~~

~~iii. An attorney or other representative designated in writing by the Tenant or Owner.~~

~~b. The following persons have access to the notices and reports so long as any allegations of misconduct by the Tenant are first redacted from the documents.~~

~~i. Any Tenant who occupies the subject Covered Unit in the twelve (12) month period following the vacancy of the Tenant whose tenancy was terminated with a 1946 Notice.~~

~~ii. An attorney or other representative designated in writing by such Tenant. c. Any member of the public may have access to the notices and reports so long as the name of the Tenant and any alleged misconduct of the Tenant are first redacted from the documents.~~

~~4. Neither OMC 8.22.130 F nor this Reg. 8.22.130 is intended to nor shall create a private right of action or claim against the City of Oakland or any of its officers or employees for any release of information that is not in accordance with this Reg. 8.22.130.~~

~~8.22.140 UNLAWFUL TERMINATIONS OF TENANCIES.~~

~~[Reserved for potential future regulations]. See Ordinance, OMC 8.22.140.~~

8.22.1~~3~~50 RETALIATORY EVICTIONS.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.150.

8.22.~~160~~140 VOLUNTARY MEDIATION OF EVICTIONS.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.160.

8.22.~~170~~150 GENERAL REMEDIES.

A. Administrative Citation

1. General Intent of Administrative Citation The intent of this section is to provide a means to secure compliance with the Rent Adjustment Law without the parties having to go to court. This section provides an opportunity to cure a violation without penalty so long as compliance is demonstrated within 10 days of the notice of an initial violation. This section also provides for a series of increasing fines if violations of the law are not cured.

2. Violations Subject to Administrative Citation. Violations of the specific provisions of OMC Chapter 8.22 set forth in this Regulation are subject to administrative citation. The provisions of OMC Chapter 8.22 subject to administrative citation are:

a. Failure to give the required notice at commencement of the tenancy (OMC 8.22.060 A.)

b. Demanding payment of a rent increase if the increase is based on a notice that does not conform to OMC 8.22.070 H.

~~c. Terminating a tenancy pursuant to California Civil Code Section 1946 without giving the form of notice required by OMC 8.22.130.~~

~~d. Failing to file a 1946 Notice with the Rent Adjustment Program (OMC 8.22.130 A.2).~~

~~e. Following a 1946 Termination of Tenancy, a failure to either:~~

~~i. Give the new Tenant the required notice (OMC 8.22.130 B);~~

~~ii. Report the new Tenant's Rent to the Rent Adjustment Program (OMC Section 8.22.130 C); or~~

~~iii. File the rent report with the Rent Adjustment Program twelve (12) months after a 1946 Termination of Tenancy (OMC 8.22.130 D).~~

f. Demanding payment of a Rent increase in excess of that permitted after a Tenant has filed a petition challenging a Rent increase (OMC 8.22 .070 D).

g. Failure or refusal to abide by a final order of a Hearing Officer or the Board.

h. Failure to pay the Rent Adjustment Program Service Fee or passthrough as required pursuant to OMC 8.22.180.

i. Failure to file notice that a unit is no longer exempt as required under OMC 8.22.030 C.

j. Failure to remove a Capital Improvement Rent increase on the first month following the end of the amortization period.

3. Procedures for Issuing Administrative Citation.

a. Any person, including the City, who is affected by a violation of the Rent Adjustment Law may request that the Rent Adjustment Program issue an administrative citation. The Rent Adjustment Program may issue a notice of intent based on having reason to believe a violation has occurred.

b. Upon a sworn allegation of a violation of the Rent Adjustment Law, the Rent Adjustment Program may, at its discretion, serve a notice of intent to issue an administrative citation on the person allegedly committing the violation.

c. The notification by the Rent Adjustment Program shall be served by one or more of the following methods to the last known mailing address:

i. First-class mail accompanied by a proof of service;

ii. Personal delivery; or

iii. Certified mail with return receipt.

d. In response to the notice of intent to issue a citation, the party served with the notice of intent to issue a citation may, within ten (10) days of service of the notice of intent to issue a citation:

i. Cure the violation and send the Rent Adjustment Program evidence that the violation is cured; or

ii. Deny that the violation exists and send the Rent Adjustment Program evidence that the violation does not exist.

e. If the recipient of a notice of intent to issue citation does not respond within ten (10) days after service, the Rent Adjustment Program may issue a citation for the violation.

f. If the recipient of a notice of intent to issue a citation has responded within the ten (10) day period, the Rent Adjustment Program may either:

i. Issue a notice of no violation if the respondent's response is sufficient to demonstrate that there was no violation or that the violation is cured;

ii. Issue a citation if the respondent's response is insufficient to show that there was no violation;

iii. Issue a citation if this is the second violation of the same section of OMC Chapter 8.22, even if the violation is cured.

g. Both the recipient of a notice of intent to issue a citation and the person seeking the citation will be notified of the issuance or non-issuance of a citation.

4. Administrative Citation Penalties. The following are the penalties for administrative citations:

a. A first violation that is cured within the cure period set out in Regulation is not subject to a penalty.

b. If the recipient of a notice of intent to issue citation fails to cure the violation within the cure period or commits a second violation of the same provision of OMC Chapter 8.22, the citation amount is $100;

c. If the recipient of a notice of intent to issue a citation commits a third violation of the same provision of Chapter 8.22 or fails to cure a second violation within the cure period, the citation amount is $250;

d. For each violation after the third violation or failure to cure a third violation within the cure period, the citation amount is $500.

e. An uncured violation that is re-noticed is considered a subsequent violation and the citation amount equals that for a subsequent violation.

f. The following are required for a violation to be considered a subsequent violation:

i. The succeeding violation must have occurred within the twelve (12) month period following the date of service of the immediately prior violation;

ii. The succeeding violation must be for a violation of the same section of OMC Chapter 8.22 (for example failing to give a notice at the commencement of the Tenancy (OMC 8.22.060).

iii. Subsequent violation can occur for a different Tenant, at a different dwelling unit, or a different property as the first violation so long as the violator is the same.

g. Each day following the end of the cure period that a violation remains uncured may be subject to a separate violation.

h. Administrative citations for any individual recipient of a notice of violation, excluding accrued interest, shall not be assessed at more than five thousand dollars ($5000) cumulatively per twelve (12) month period starting with the date of issuance of the first violation.

i. After a recipient of a notice of violation has committed three (3) violations of any provision of OMC Chapter 8.22 subject to administrative citation, the Rent Adjustment Program may assess administrative costs, charges, fees, and interest as established in the master fee schedule of the city pursuant to OMC Section 1.12.070.

j. Full or partial reimbursement for recovery administrative penalties and administrative expenses shall not

i. Excuse the failure to correct violations wholly and permanently; nor

ii. Preclude the assessment of additional administrative citations or other abatement actions by the Rent Adjustment Program; nor iii. Preclude any other claims or penalties that may be available to any person under OMC Chapter 8.22.

5. Hearing on Administrative Citation.

a. ~~Any~~ The cited party may request a hearing before a Hearing Officer on the issuance ~~or non-issuance~~ of a violation.

b. A hearing must be requested within 10 (ten) days of service of the citation ~~or non-issuance of the citation~~.

c. The ~~party~~ City has ~~seeking the hearing~~ has the burden ~~of proving the existence or non-existence of~~ proving the violation by a preponderance of the evidence.

d. The cited party has the option of using an hearing officer other than the Rent Program Hearing Officers under the same terms as hearing officers used for Building Code violations.

d. Hearings shall be conducted under the same rules and time frames as for Rent adjustment hearings as set out in OMC Section 8.22.110.

6. Appeal.

a. ~~Any~~ The cited party may request an appeal of the Hearing Officer's decision to the Board.

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b. The timeframes and procedures for appeal shall be the same as those for a Rent adjustment proceeding as set out in OMC Section 8.22.120.

B. Administrative Assessment of Civil Penalties

1. Violations of OMC Chapter 8.22 that are subject to civil penalties.

a. Five concurrent uncured administrative citations received by any recipient for any violation subject to administrative citation.

2. Amount of Civil Penalties.

a. ~~An Owner~~ cited party will be assessed $500 as the first civil penalty.

b. ~~An Owner~~ cited party will be assessed $750 as the second civil penalty.

c. ~~An Owner~~ cited party will be assessed $1,000 as the third civil penalty.

d. ~~An Owner~~ cited party may be assessed a maximum of $5,000 in any one twelve (12) month period commencing from the date of the initial civil penalty.

3. Procedures for issuing and appealing civil penalties will be the same as for administrative citations.

~~**8.22.180 RENT PROGRAM SERVICE FEE.**~~

~~**A. Payment of Fee After Loss of Exemption**~~

~~1. A dwelling unit that was exempt from Chapter 8.22 less than nine months during a year must pay the full fee for that year.~~

~~2. After a dwelling unit loses its exemption, the Fee is due within 30 days after the loss of the exemption and late 90 days after the loss of the exemption.~~

~~**B. Pass-through of One-half of the Fee to Tenant**~~

~~1. If an Owner elects to pass through one-half of the Fee to the Tenant, the Owner must pass through the one-half of the Fee in the fiscal year in which the Fee is due, provided the Owner has paid the Fee before it is deemed delinquent.~~

~~2. The pass-through amount may be part of the Rent or simply a debt due from the Tenant to the Owner at the Owner's option.~~

~~3. The Owner may submit a request for payment of the pass-through amount, in which case the pass-through will be a debt to the Owner and not collectable as part of the Rent.~~

~~4. Pass-through as Rent. The pass-through of one-half of the fee to the Tenant will be considered part of the Tenant's Rent provided that the Owner does the following:~~

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~~a. If the Tenant has a month-to-month rental agreement, the Owner must first give the Tenant a notice of change of term of tenancy pursuant to state law (California Civil Code Section 827) and the requirements of OMC 8.22.070 H. (requirements for Rent increase notices). The Fee may be passed on in a lump sum amount or spread out at the Owner's option.~~

~~b. If the tenant has a term other than month to month, the Owner must give the Tenant a notice in accordance with the terms of the rental agreement.~~

~~c. Any notice of Rent increase for the fee is not subject to the restriction of one Rent increase per year pursuant to OMC 8.22.070 H. d. The Fee is not part of the Base Rent for purposes of calculating the Rent increases.~~

~~**C. Fee is not a Housing Service Cost**~~

~~The Owner's portion of the Fee cannot be used to calculate an increase in costs to justify a Rent increase.~~

~~**D. Fees and Delinquencies Payable by Successor to Owner**~~

~~Fees and delinquent charges are payable by any successor to the Owner's business of renting the Covered Units on which the Fee is charged.~~

~~**E. Fee Regulations Repealed if Fee Sunsets**~~

~~1. The Fee sunsets on June 30, 2003 unless extended by the City Council (OMC 8.22.180 I.).~~

~~2. If the Fee is allowed to sunset, this Reg. 8.22.180 is automatically repealed, except to the extent necessary to complete collection of any Fees, delinquencies, or other costs that became during the period when the Fee was in place.~~

~~3. If the Fee is reinstated in the future, then this regulation will also be reinstated.~~

8.22.~~190~~ 160 COMPUTATION OF TIME.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.190.

8.22.~~200~~ 170 SEVERABILITY.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.200.

8.22.~~210~~ 180 NONWAIVERABILITY.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.210.

8.22.~~220~~ 190 APPLICABILITY—EFFECTIVE DATE OF CHAPTER.

A. Effective Date of Regulations

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1. The amended and restated OMC Chapter 8.22 passed by the City Council on February 5, 2002 provided that it was not to go into effect until July 1, 2002, unless otherwise provided in OMC Chapter 8.22.

2. The Regulations adopted herein take effect as follows unless otherwise stated in the applicable regulation:

a. Rent adjustments:

i. To any Rent increase wherein the notice is served on the Tenant on or after July 1, 2002;

ii. To any decrease in Housing Services wherein the notice is served on the Tenant on or after July 1, 2002, or, if no notice is served, to any Housing Service decrease that occurs on or after July 1, 2002.

b. Terminations of Tenancy

i. To any tenancy terminated by a notice served by either the Owner or the Tenant on or after July 1, 2002.

8.22.~~180~~500 RENT PROGRAM SERVICE FEE.

A. Payment of Fee After Loss of Exemption

1. A dwelling unit that was exempt from Chapter 8.22 less than nine months during a year must pay the full fee for that year.

2. After a dwelling unit loses its exemption, the Fee is due within 30 days after the loss of the exemption and late 90 days after the loss of the exemption.

B. Pass-through of One-half of the Fee to Tenant

1. If an Owner elects to pass through one half of the Fee to the Tenant, the Owner must pass through the one half of the Fee in the fiscal year in which the Fee is due, provided the Owner has paid the Fee before it is deemed delinquent.

2. The pass-through amount may be part of the Rent or simply a debt due from the Tenant to the Owner at the Owner's option.

3. The Owner may submit a request for payment of the pass-through amount, in which case the pass-through will be a debt to the Owner and not collectable as part of the Rent.

4. Pass-through as Rent. The pass-through of one-half of the fee to the Tenant will be considered part of the Tenant's Rent provided that the Owner does the following:

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a. If the Tenant has a month to month rental agreement, the Owner must first give the Tenant a notice of change of term of tenancy pursuant to state law (California Civil Code Section 827) and the requirements of OMC 8.22.070 H. (requirements for Rent increase notices). The Fee may be passed on in a lump sum amount or spread out at the Owner's option.

b. If the tenant has a term other than month to month, the Owner must give the Tenant a notice in accordance with the terms of the rental agreement.

c. Any notice of Rent increase for the fee is not subject to the restriction of one Rent increase per year pursuant to OMC 8.22.070 H. d. The Fee is not part of the Base Rent for purposes of calculating the Rent increases.

C. Fee is not a Housing Service Cost

The Owner's portion of the Fee cannot be used to calculate an increase in costs to justify a Rent increase.

D. Fees and Delinquencies Payable by Successor to Owner

Fees and delinquent charges are payable by any successor to the Owner's business of renting the Covered Units on which the Fee is charged.

E. Fee Regulations Repealed if Fee Sunsets

1. The Fee sunsets on June 30, 2003 unless extended by the City Council (OMC 8.22.180 I.).

2. If the Fee is allowed to sunset, this Reg. 8.22.180 is automatically repealed, except to the extent necessary to complete collection of any Fees, delinquencies, or other costs that became during the period when the Fee was in place.

3. If the Fee is reinstated in the future, then this regulation will also be reinstated.

CITY OF OAKLAND

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

RESOLUTION

RESOLUTION NO. R16-001

RESOLUTION ADOPTING, SUBJECT TO CITY COUNCIL RATIFICATION, VARIOUS AMENDMENTS TO THE RENT ADJUSTMENT PROGRAM REGULATIONS REVISING REGULATIONS AND APPENDIX A TO CONFORM THE REGULATIONS TO RENT ADJUSTMENT ORDINANCE (O.M.C 8.22.100, et seq.) AMENDMENTS AND TO MAKE OTHER EFFICIENCY AND CLARIFYING AMENDMENTS

Whereas, the Oakland City Council amended the Rent Adjustment Ordinance (O.M.C 8.22.100, et seq.) on several occasions, most recently June 6, 2016 (Ordinance 13373 No. C.M.S.) and September 20, 2016 (Ordinance No. 12391 C.M.S.) and the Rent Adjustment Program Regulations ("Regulations") have not been updated to conform to the amendments made by these Ordinances;

Whereas, In Ordinance No. 12391 C.M.S. the City Council required the Housing, Residential Rent and Relocation Board ("Rent Board") to return to the Council within 120 days with proposed regulations to conform the Regulations to the Ordinance amendments and to improve Rent Program efficiency;

Whereas, on October 20, 2016 the Rent Board received a staff report presenting Regulation amendments in response to the recent Rent Adjustment Ordinance amendments, some previous Ordinance amendments and some amendments to clarify other Regulations and the Rent Board made comments on the proposed Regulation Amendments;

Whereas, on November 10, 2016 the Rent Board again considered the proposed Regulation amendments as modified from the October 20, 2016 meeting;

Whereas, the proposed Regulation amendments include the following:

- Allowing regular Board meeting dates to be either full Board meetings or Appeal Panels;
- Setting out when Owners can be penalized for failing to provide notices in required languages;
- Allowing Owners to increase rents by the annual CPI Adjustment in addition to a capital improvement increase;

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- Modifying appeal procedures to make appeals more efficient;
- Clarifying citation procedures;
- Eliminating sections no longer needed due to Ordinance amendments;
- Modifying the capital improvement time frames to take into account the Owner petitioning requirement;
- Adding regulations regarding "Gold plating" capital improvements;
- Modifying the amortization period for capital improvements and including an amortization schedule;
- Including a definition for imputed interest;
- Adding a fair return standard, ; and be it hereby

Resolved: That the Housing, Residential Rent and Relocation Board hereby adopts the amendments to the Rent Adjustment Regulations attached to this Resolution as Exhibit A, subject to ratification by the Oakland City Council;

Resolved Further: That the amendment to the Rent Adjustment Program Regulations set out in Attachment A shall be effective seven (7) days after ratification by the Oakland City Council.

APPROVED BY THE FOLLOWING VOTE

AYES:

NOES:

ABSENT:

ABSTENTION:

_____
Date:

ATTEST_____
Rent Adjustment Program Manager

CITY OF OAKLAND

REPORT

To: Housing Residential Rent and Relocation Board
ATTN: Jessie Warner, Chairperson
FROM: Connie Taylor, Rent Adjustment Program Manager
DATE: September 26, 2016

RE: Revisions to Rent Adjustment and Just Cause Regulations

The Housing Residential Rent and Relocation Board ("Board") is tasked with adopting Rent Adjustment regulations and proposing them to City Council for final adoption. The Board is also tasked with final adoption of Just Cause regulations. Two recent ordinances adopted by City Council make changes to the Residential Rent Adjustment Program (O.M.C. Chapter 8.22, Article I) and require that the Board consider and adopt conforming regulations. In addition, the Council asked the Board to consider and adopt regulations for the Just Cause for Eviction Ordinance (O.M.C. Chapter 8.22, Article II) to require landlord certifications for certain types of evictions.

I recommend adoption of the modifications to the regulations and forwarding the Rent Adjustment Regulations to the City Council for approval.

The City Council

On June 7, 2016, City Council voted to approve for final passage an ordinance (Attachment A) that increases the number of Rent Board alternate members and authorizes more cases be heard by Board Appeals Panels.

On September 20, 2016, City Council approved for final passage an ordinance (Attachment B) that makes numerous changes to the Residential Rent Adjustment Ordinance. The City Council asked that these regulations be returned to the City Council within 120 days of the ordinance's adoption. In order to meet that deadline and the timetable for bringing matters to the City Council, the Rent Board needs to adopt the final version by mid-November. For that purpose, I propose two meetings: the first to receive public input, review, discuss, and propose changes to the draft regulations, and at least one more meeting to adopt the regulations with any amendments proposed at the first meeting and to get any further public input.

I attach a matrix showing the changes to the Ordinance made by the Council. The significant changes are as follows:

- Requiring landlords to file petition petitions for all rent increases except the CPI increase and banking.
- Change time deadlines for tenants to file petitions from 60 days to 90 days when they receive a proper notice, and to 120 when the rent increase notice does not contain the required rent program notification.
- Change the amortization for capital improvements from 5 years to the useful life of the improvement.

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- Requiring the notice at the commencement of tenancy to be in English, Spanish, Chinese, and Vietnamese.
- For substantial rehabilitation exemptions, landlords are required to obtain a certificate of exemption before the property is exempt.
- For the owner-occupancy exemption for duplexes and triplexes, the owner must owner-occupy a unit for two years, instead of one.

In addition, the Council asked the Board to amend the Regulations to:

- permit a landlord to take the CPI Adjustment along with a capital improvement;
- make changes to streamline the program.

The attached redlined versions of the Rent Adjustment regulations (Attachment C) and the Just Cause for Eviction regulations (Attachment D) are offered for your consideration and possible adoption to conform these regulations to Council's recent actions.

Notable proposed Regulation changes include the following;

- 8.22.020 Definitions:
  - Adding Appeal Panel
  - Modifying Capital Improvements
  - Adding Imputed Interest (for capital improvements)
  - Moving Staff definition.
- 8.22.040 The Board
  - A.2 Permitting staff to schedule regular meetings for either Board or Panel.
  - C.1 Appeal Panels chaired by neutral.
  - D.1 Modifying Standing Committees to remove language inserted into Ordinance.
- 8.22.060 Notice at the Commencement of Tenancy
  - Regulations added to address penalties for non-compliance with new requirement for notice in multiple languages.
- 8.22.065 Rent Adjustments in General
  - New section added in Ordinance, but reserved for future regulations.
- 8.22.070 Justifications for Rent Increase
  - B. Modified to remove prohibition on landlord taking CPI Rent Increase with other rent increases.
- 8.22.120 Appeal Procedure
  - A Modified to set out timelines for foiling supporting documentation and limitations on documents.
  - B7 Fair return. Clarifying that a landlord can only appeal on the basis of fair return only if fair return was a basis for the underlying petition.
  - D Adding Appeal Panel
  - D.4 Limiting argument to grounds submitted in written appeal.
  - F Adding Appeal Panel
  - G Adding Appeal Panel
  - G.2.c Modifying how appeal decisions are issued. Requiring the Board to ask to review a final decision.
  - H Adding regulation on failure to appear.
- 8.22.130-220 Clean up. Removing and renumbering various sections to conform to the ordinance.
- 8.22.500 Rent Program Service Fee

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- o Regulations moved to new section to conform to ordinance.

Appendix A

10.2 Capital Improvement Costs

10.2.1 Amending the date for when the twenty-four month (24) period for completing capital improvements ends. Formerly with rent increase notice, proposed with filing of landlord petition.

10.2.2 Goldplating. Per ordinance amendments, providing examples and burden of proof.

10.2.3 Calculation of Capital improvements.

2. Calculated over useful life.
3. Imputed interest included.
7. Delete requirement to include landlord financing for capital improvements.

10.4 Debt Service Costs

Section removed with explanation and former regulations included as exhibit.

10.6 Fair Return

Adds section on fair return using net operating income as standard.

Additionally, City Council directed that the Rent Board develop a Capital Improvement amortization schedule for final adoption by City Council. Attachment E provides a proposed amortization schedule. The proposed schedule is from Santa Monica's rent regulations.

Just Cause for Eviction Regulations

8.22.340 – Definitions

Definitions for Eviction and Endeavoring to recover possession included to assist in enforcement of evictions where the Tenant is not at fault.

8.22.360B.8 Owner Certifications For Certain Evictions

Requested by City Council. Regulations requiring certification of possession, rerenting, rents following owner or close relative move-in or repairs. The Council viewed these regulations as necessary for compliance with Just Cause and Rent Adjustment Ordinances.

Respectfully submitted,

Connie Taylor
Rent Adjustment Program Manager

FILED
OFFICE OF THE CITY CLERK
OAKLAND
16 APR 13 PM 4:05

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER KAPLAN

OAKLAND CITY COUNCIL

ORDINANCE NO. 13373 C.M.S.

ORDINANCE AMENDING CHAPTER 8.22 (RENT AJUSTMENT PROGRAM) OF THE OAKLAND MUNICIPAL CODE TO: (1) INCREASE THE NUMBER OF ALTERNATE BOARD MEMBERS; AND (2) AUTHORIZE MORE CASES BE HEARD BY BOARD APPEALS PANELS

WHEREAS, the City of Oakland intends to have fair and timely resolution of Rent Program cases in the interest of justice; and

WHEREAS, when appeals are not heard timely, or when appeal hearings are cancelled, it causes hardship to the public in Oakland, including to landlords and tenants; and

WHEREAS, in order to minimize Rent Board meeting cancellations, it will be helpful to have a sufficient number of available Board members; and

WHEREAS, in order to solve and prevent a backlog of cases, the use of Appeal Panels should be encouraged;

WHEREAS, the provision that time served as regular board member shall be considered separately from time served as an Alternate is declarative of existing law; 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

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).

"Appeal panel" means a three-member panel of board members authorized to hear appeals of Hearing Officer decisions. Appeal panels must be comprised of one residential rental property owner, one tenant, and one person who is neither a tenant nor a residential rental property owner. Appeal panels may be made up of all regular board members, all alternates, or a combination of regular board members and alternates.

"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 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.

8.22.040 - Composition and functions of the Board.

A. Composition

1. Members. The Board shall consist of seven regular members appointed pursuant to Section 601 of the City 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. The Board shall also have ~~three~~ six alternate members, ~~one~~ two residential rental property owners, ~~one~~ two tenants and ~~one~~ two persons who ~~is~~ are neither ~~a~~ tenants nor residential rental property owners appointed pursuant to Section 601 of the Charter. An alternate member may act at Board meetings in the absence of a regular Board member of the same category, and at appeal panels meetings without such an absence.
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 ~~semi~~annually to the Office of the Mayor and to the City Council.

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 as a board member, nor more than two consecutive terms as an alternate. Time served as a board member shall be considered separately from time served as an alternate.

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 or 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 or an Appeal Panel hears appeals from decisions of hearing officers under the procedures set out in O.M.C. Section 8.22.120.
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.
5. Regular Meetings. The Board or an Appeal Panel shall meet regularly on the second and fourth Thursdays of each month unless cancelled. Rent Program staff is authorized to schedule these regular meetings either for the full Board or for an Appeal Panel.
6. Special Meetings. The Board or an Appeal Panel may meet at additional times as scheduled by the Board Chair or Rent Program staff.

E. Appeal Panels

1. Appeal Panels shall hear appeals of Hearing Officer decisions.
2. Rent Program staff shall determine whether an appeal should be heard by an Appeal Panel or the full Board. A party to an appeal may, however, elect not to have his/her case heard by a panel and instead to be heard by the full Board. A party may so elect by notifying the Rent Adjustment Program not less than fifteen (15) days after the notice of the panel hearing is mailed.
3. All Appeal Panel members must be present for a quorum. A majority of the Appeal Panel is required to decide an appeal.
4. Membership on an Appeal Panel is determined by Rent Program staff. Membership need not be permanent, but may be selected for each panel meeting.

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 days prior to such hearing.

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

1. The Board or Appeal Panel 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 or Appeal Panel 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 or Appeal Panel determines that an evidentiary hearing is required. If the Board or Appeal Panel deems an evidentiary hearing necessary, the case will be continued and the Board or Appeal Panel shall issue a written order setting forth the issues on which the parties may present evidence. All evidence submitted to the Board or Appeal Panel must be submitted under oath.
5. Should the appellant fail to appear at the designated hearing, the Board or Appeal Panel may dismiss the appeal.

C. Board or Appeal Panel's Decision Final. The Board's decision is final. Parties cannot appeal to the City Council. Parties cannot appeal the decision of an Appeal Panel to the full Board.

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

SECTION 2. 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 3. 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.

SECTION 4. 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. The Rent Adjustment Board shall propose changes to the Rent Board regulations to conform the regulations to the changes hereby made to the Ordinance and propose such changes to the City Council within 90 days of the adoption of this ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, = JUN 07 2016

PASSED BY THE FOLLOWING VOTE:

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

NOES - Ø

ABSENT - 1 - REID

ABSTENTION - Ø

ATTEST: LaTonda Simmons

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

Date of Attestation: June 13, 2016

000347

NOTICE AND DIGEST

ORDINANCE AMENDING CHAPTER 8.22 (RENT AJUSTMENT PROGRAM) OF THE OAKLAND MUNICIPAL CODE TO: (1) INCREASE THE NUMBER OF ALTERNATE BOARD MEMBERS; AND (2) AUTHORIZE MORE CASES BE HEARD BY BOARD APPEALS PANELS

The Ordinance amends the Oakland Municipal Code to increase the number of alternate Rent Board members and authorize more cases be heard by Board Appeals Panels.

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2016 APR 13 PM 4:07

FILED
OFFICE OF THE CITY CLERK
OAKLAND

TING JULY 19, 2016

16 JUL 22 PM 2:34

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

.S KALB, CAMPBELL WASHINGTON, GIBSON MCELHANEY, AND GUILLEN

OAKLAND CITY COUNCIL

ORDINANCE NO. 13391 C.M.S.

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

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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~~T~~he 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.

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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 - Ø

ABSENT - Ø

ABSTENTION - BROOKS - 1

Introduction Date

JUL 19 2016

ATTEST: LaTonda Simmons

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

Date of Attestation: 10-4-2016

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.

RENT ADJUSTMENT PROGRAM REGULATIONS

8.22.010 FINDINGS AND PURPOSE.

A. Purpose of Regulations

1. These Regulations entirely replace the Regulations approved by the City Council in Resolution No. 71518 C.M.S. on December 6, 1994 except as provided for herein.

8.22.020 DEFINITIONS.

~~A. Definitions from Chapter 8.22~~

~~1. The following definitions are contained in Chapter 8.22 and are inserted for convenience:~~

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

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

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

"Appeal panel" means a three-member panel of board members authorized to hear appeals of Hearing Officer decisions. Appeals panels must be comprised of one residential rental property owner, one tenant, and one person who is neither a tenant not a residential rental property owner. Appeals panels may be made up of all regular board members, all alternates, or a combination of regular board members and alternates.

"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

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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 Rent Adjustment Program Regulations Effective 8-1-14 2 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 OMC 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 OMC 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 Housing 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 OMC 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. NOTE: Debt Service for newly-acquired units has been eliminated as a justification for new rent increases in excess of the CPI pursuant to Ordinance No. 13221 C.M.S., adopted by the Oakland City Council on April 1, 2014.

"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.

"Imputed Interest" means the average of the 10 year United States treasury bill rate and the 10 year LIBOR swap rate for the quarter prior to the date the permits for the improvements were obtained plus an additional one and one-half percent. The Rent Program will post the quarterly interest rates allowable.

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

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

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

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

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

"Staff" means the staff appointed by City ~~Manager~~ Administrator to administer the Rent Adjustment Program.

"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 Rent Adjustment Program Regulations 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.

~~B. New Definitions for Regulation "Staff" means the staff appointed by City Manager to administer the Rent Adjustment Program.~~

8.22.030 EXEMPTIONS.

A. Dwelling Units That Are Not Covered Units

1. In order to be a Covered Unit, the Owner must be receiving Rent in return for the occupancy of the dwelling unit.

a. Rent need not be cash, but can be in the form of "in-kind" services or materials that would ordinarily be the Owner's responsibility.

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i. For example, a person who lives in a dwelling unit and paints the premises, repairs damage, or upgrades the unit is considered to be paying Rent unless the person caused the damage.

b. Payment of some of expenses of the dwelling unit even though not all costs are paid is Rent.

i. Payment of all or a portion of the property taxes or insurance.

ii. Payment of utility costs that are not directly associated with the use of the unit occupied.

2. If California law determines that an "employee of the Owner", including a manager who resides in the Owner's property, is not a tenant, then the dwelling unit occupied by such person is not subject to OMC Chapter 8.22 so long as the person is an employee and continues to reside in the unit.

B. Types of Dwelling Units Exempt

1. Subsidized units. Dwelling units whose rents are subsidized by a governmental unit, including the federal Section 8 voucher program.

2. Newly constructed dwelling units (receiving a certificate of occupancy after January 1, 1983).

a. Newly constructed units include legal conversions of uninhabited spaces not used by Tenants, such as:

i. Garages;

ii. Attics;

iii. Basements;

iv. Spaces that were formerly entirely commercial.

b. Any dwelling unit that is exempt as newly constructed under applicable interpretations of the new construction exemption pursuant to Costa-Hawkins (California Civil Code Section 1954.52).

c. Dwelling units not eligible for the new construction exemption include:

i. Live/work space where the work portion of the space was converted into a separate dwelling unit;

ii. Common area converted to a separate dwelling unit.

3. Substantially rehabilitated buildings.

a. In order to qualify for the substantial rehabilitation exemption, the rehabilitation work must be completed within a two (2) year period after the issuance of the building permit for the work unless the Owner demonstrates good cause for the work exceeding two (2) years.

b. For the substantial rehabilitation exemption, the entire building must qualify for the exemption and not just individual units.

4. Dwelling Units Exempt Under Costa-Hawkins. Costa-Hawkins addresses dwelling units that are exempt under state law. The Costa Hawkins exemptions are contained at California Civil Code Section 1954.52. The text of Costa-Hawkins is attached as an appendix to OMC Chapter 8.22.

C. Certificates of Exemption

1. Whenever an Owner seeks a Certificate of Exemption the following procedures apply:

a. The petition cannot be decided on a summary basis and may only be decided after a hearing on the merits;

b. Staff may intervene in the matter for the purpose of better ensuring that all facts relating to the exemption are presented to the Hearing Officer;

c. In addition to a party's right to appeal, Staff or the Hearing Officer may appeal the decision to the Rent Board; and,

d. A Certificate of Exemption shall be issued in the format specified by Government Code Section 27361.6 for purposes of recording with the County Recorder.

2. In the event that a previously issued Certificate of Exemption is found to have been issued based on fraud or mistake and thereby rescinded, the Staff shall record a rescission of the Certificate of Exemption against the affected real property with the County Recorder.

8.22.040 THE BOARD.

A. Meetings

1. Notice. Meetings shall be noticed and the agenda posted in accordance with the Ralph M. Brown Act (California Government Code Sections 54950, et. seq. ("Brown Act") and Sunshine Ordinance (OMC Chapter 2.20).

2. Regular Meetings. The Board or an Appeal Panel shall meet regularly on the second and fourth Thursdays of each month, unless cancelled. Rent Program staff is authorized to schedule these regular meetings either for the full Board or for an Appeal Panel.

3. Special Meetings. Meetings called by the Mayor or City Manager, or meetings scheduled by the Board for a time and place other than regular meetings are to be designated Special Meetings. The agenda of Special Meetings shall be restricted to those matters for which the meeting was originally called and no additional matters may be added to the agenda.

4. Adjourned or Rescheduled Meetings. A meeting may be adjourned to a time and place to complete the agenda if voted by the Board members present. A rescheduled meeting may be held when a quorum cannot be convened for a regular meeting or when a quorum votes to substitute another time and/or

place for a scheduled meeting. Notice of change of meeting time and/or place shall be sent to the City Clerk and absent Board members and provided in accordance with the Brown Act and Sunshine Ordinance.

5. Time of Meetings. Board meetings shall start at 7 p.m. and end by 10:00 p.m. unless some other time is set in advance or the meeting is extended by a vote of the Board.

6. Location of Meetings. The Board meetings shall be held at City Hall, One Frank H. Ogawa Plaza, Oakland, CA 94612, unless otherwise designated.

7. Agenda. The agenda for each meeting shall be posted at such time and places as required by the Brown Act and Sunshine Ordinance.

8. Board meetings shall be conducted in accordance with "Robert's Rules of Order (Revised)," unless modified by these Regulations, requirements of the Brown Act or Sunshine Ordinance, or the Board.

9. Open to Public. The meetings shall be open to the public in accordance with the Brown Act and the Sunshine Ordinance, except for circumstances where the Brown Act or Sunshine Ordinance permits the Board to address a matter in closed session, such as litigation or personnel matters.

10. Board Vacations. The Board may schedule dates during the year when no regular Board meetings may be held so that the entire Board may take vacations. The Board must schedule vacation times at least two (2) months prior to the date of the vacation time.

B. Quorum and Voting

1. Four Board members constitutes a quorum of the Board.

2. Decisions of the Board. For the Board to make a decision on the first time a matter comes before the Board, the quorum must include at least one of each of the three categories of Board members (tenant, residential rental property owner, and one who is neither of the foregoing). If a matter cannot be decided because at least one of each of the three categories of Board members is not present, the matter will be considered a second time at a future meeting where the matter can be decided even if at least one member from each category is not present. A majority of the Board members present are required to make decisions, provided a quorum is present and sufficient members of each category are present.

3. A Board member who does not participate in a matter because of a conflict of interest or incompatible employment neither counts towards a quorum nor in calculating the number of Board members required to make a majority.

C. Officers

1. The Board shall select a Chair from among the Board members who are neither tenants nor residential rental property owners. Each Appeal panel shall be chaired by the member of that panel who is neither a tenant nor a residential rental property owner.

2. The Board may also select a Vice-Chair (who is neither a tenant nor an owner) to act as Chair in the Chair's absence.

3. The Officers shall serve one-year terms.

4. The Board shall elect Officers each year at the second meeting in February.

5. The Chair votes on matters as any other Board member.

D. Standing Committees

~~1. The Board may establish one or more Appeal Committees to hear appeals of Hearing Officer decisions under procedures set out in Regulation 8.22.120.~~

~~a. The purpose of an Appeal Committee is to consider appeals in the extraordinary circumstance when the number of appeals is such that the Board cannot reasonably meet the timetable set out in OMC Chapter 8.22 and the Regulations considering and deciding appeals.~~

~~b. An Appeal Committee should only hear those appeals that involve issues of type previously decided by the Board. Rent Adjustment Program Regulations Effective 8-1-14 7~~

~~c. An Appeal Committee must be comprised of one tenant, one owner, and one Board member who is neither an owner nor tenant. No Board member can sit on more than one Appeal Committee at one time.~~

~~d. All Appeal Committee members must be present for a quorum. A majority of the Appeal Committee is required to decide an appeal.~~

~~e. Staff shall determine which appeals are appropriate for an Appeal Committee and which should go to the Board unless the Appeal Committee or Board decide otherwise.~~

~~f. A party to an appeal may elect not to have his/her case heard by an appeal panel and instead, be heard by the full Board. A party may so elect by notifying the Rent Adjustment Program not less than five (5) days prior to the first scheduled date for the appeal hearing.~~

~~2.~~ The Board may establish standing committees subject to prior approval of the City Council.

~~a.~~ A request to create a standing committee must include:

i. The staffing costs for the committee; and

ii. The costs of complying with meeting noticing requirements.

8.22.050 SUMMARY OF NOTICES REQUIRED BY OMC CHAPTER 8.22.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.050.

8.22.060 NOTICE OF THE EXISTENCE OF CHAPTER 8.22 REQUIRED AT COMMENCEMENT OF TENANCY.

A. Providing Notice in Multiple Languages

1. The requirement to provide the Notice of the Existence of Chapter 8.22 Required at Commencement of Tenancy in multiple languages took effect on September 21, 2016 and only applies to new tenancies that commenced on or after that date..

2. No Owner will be penalized for failing to comply with this requirement until the later of sixty (60) days after the Rent Program makes ~~and~~ general announcement of the requirement or all the translations are available on the Rent Program website.

3. Until September 21, 2017, no Owner will be denied a Rent Increase for failing to provide the notice in the required languages, unless:

a. the Tenant is proficient in one of non-English languages, and is not proficient in English;

b. the Owner negotiated the terms of the rental agreement in one of the non-English languages and failed to give the notice in that language.

~~[Reserved for potential future regulations]. See Ordinance, OMC 8.22.060.~~

8.22.65 RENT ADJUSTMENTS IN GENERAL

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.065.

8.22.070 RENT ADJUSTMENTS FOR OCCUPIED COVERED UNITS.

A. Purpose

This section sets forth the regulations for a Rent adjustment exceeding the CPI Rent Adjustment and that is not authorized as an allowable increase following certain vacancies.

B. Justifications for a Rent Increase in Excess of the CPI Rent Adjustment

~~1. The~~ Regulations regarding the justifications for a Rent increase in excess of the CPI Rent Adjustment are attached as Appendix A to these Regulations. The justifications are: banking; capital improvement costs; uninsured repair costs; increased housing service costs; and the rent increase is necessary to meet constitutional or fair return requirements.

~~2. Except for a Rent increase justified by banking, Rent may be increased by~~

~~a. the CPI Rent Adjustment, or~~

~~b. the total amount justified under provisions of OMC Section 8.22.070.D.1, whichever is greater.~~

~~3. Section 8.22.070.B.2. does not apply to any Rent increase based on Banking pursuant to Appendix A, Section 10.5~~

8.22.080 RENT INCREASES FOLLOWING VACANCIES.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.080.

8.22.090 PETITION AND RESPONSE FILING PROCEDURES.

A. Filing Deadlines

In order for a document to meet the filing deadlines prescribed by OMC Chapter 8.22.090, documents must be received by the Rent Adjustment Program offices no later than 5 PM on the date the document is due. A postmark is not sufficient to meet the requirements of OMC Chapter 8.22.090. Additional regulations regarding electronic and facsimile filing will be developed when these filing methods become available at the Rent Adjustment Program.

B. Tenant Petition and Response Requirements

1. A Tenant petition or response to an Owner petition is not considered filed until the following has been submitted:

a. Evidence that the Tenant is current on his or her Rent or is lawfully withholding Rent. For purposes of filing a petition or response, a statement under oath that a Tenant is current in his or her Rent or is lawfully withholding Rent is sufficient, but is subject to challenge at the hearing;

b. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath; and

c. For Decreased Housing Services claims, organized documentation clearly showing the Housing Service decreases claimed and the claimed value of the services, and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file.

2. Staff shall serve on respondents copies of the completed petition forms accepted for filing with notification that the petition has been filed. Staff shall serve on petitioners completed response forms accepted for filing. Attachments to petitions and responses shall not be included but will be available to review upon request of either party.

C. Owner Petition and Response Requirements

1. An Owner's petition or response to a petition is not considered filed until the following has been submitted:

a. Evidence that the Owner has paid his or her City of Oakland Business License Tax;

b. Evidence that the Owner has paid his or her Rent Program Service Fee;

c. Evidence that the Owner has provided written notice, to all Tenants affected by the petition or response, of the existence and scope of the Rent Adjustment Program as required by OMC 8.22.060. For purposes of filing a petition or response, a statement that the Owner has provided the required notices is sufficient, but is subject to challenge at the hearing;

d. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath;

e. Organized documentation clearly showing the Rent increase justification and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file.

2. Staff shall serve on respondents copies of the completed petition forms accepted for filing with notification that the petition has been filed. Staff shall serve on petitioners completed response forms accepted for filing. Attachments to petitions and responses shall not be included but will be available to review upon request of either party.

D. Time of Hearing and Decision

1. The time frames for hearings and decisions set out below are repeated from OMC 8.22.110 D.

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

3. 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.

E. Designation of Representative

Parties have the right to be represented by the person of their choice. A Representative does not have to be a licensed attorney. Representatives must be designated in writing by the party. Notices and correspondence from the Rent Adjustment Program will be sent to representatives as well as parties so long as a written Designation of Representative has been received by the Rent Adjustment Program at least ten (10) days prior to the mailing of the notice or correspondence. Parties are encouraged to designate their representatives at the time of filing their petition or response whenever possible.

8.22.100 MEDIATION OF RENT DISPUTES.

A. Availability of Mediation

Voluntary mediation of Rent disputes will be available to all parties participating in Rent adjustment proceedings after the filing of a petition and response. Mediation will only be conducted in those cases in which all parties agree in advance to an effort to mediate the dispute.

B. Procedures

1. Parties who desire mediation shall have the choice between the use of Rent Adjustment Program staff Hearing Officers acting as mediators or the selection of an outside mediator. Staff Hearing Officers shall be made available to conduct mediations free of charge. The Rent Adjustment Program will develop a list of available outside mediators for those who do not wish to have staff Hearing Officers mediate rent disputes. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

2. The following rules apply to mediations conducted by staff Hearing Officers and notices regarding the scheduling of a mediation session shall explain the following:

a. Participation in a mediation session is voluntary;

b. A request by any party for a hearing on the petition instead of the mediation session received prior to or during the scheduled mediation will be granted. Such a request will be immediately referred to the Rent Adjustment Program and a hearing on the petition will be scheduled;

c. Written notice of the mediation session shall be served on the parties by the Rent Adjustment Program in accordance with OMC 8.22.110.

d. It is the goal to have the mediation scheduled within the first 30 days after the response to the petition is filed.

e. Absence Of Parties

i. If a petitioner fails to appear at a properly noticed mediation, the Hearing Officer may, in the Hearing Officer's discretion, dismiss the case.

ii. If a respondent fails to appear, the Hearing Officer will refer the matter to the Rent Adjustment Program for administrative review or hearing on the petition, whichever is appropriate.

3. The following rules apply to mediations conducted by outside mediators and notices regarding the scheduling of a mediation session shall explain the following:

a. Participation in a mediation session is voluntary;

b. The Rent Adjustment Program will not schedule the mediation; the parties will be responsible for scheduling the mediation between themselves and the mediator and for notifying the Rent Adjustment Program of the time and date for the mediation;

c. A request by any party for a hearing on the petition instead of the mediation session received prior to or during the scheduled mediation will be granted. Such a request will be immediately referred to the Rent Adjustment Program and an administrative hearing will be scheduled. In the event that the responding party fails to appear for the mediation session, the case will be referred back to the Rent Adjustment Program for administrative review and or hearing on the petition, whichever is appropriate.

d. In the event that the petitioning party fails to appear for the mediation session, the case will be referred back to the Rent Adjustment Program for administrative dismissal of the petition.

4. The regulations regarding representation by an agent and translation apply to mediations.

5. If the parties fail to settle the rent dispute through the mediation process after a good faith effort, a hearing on the petition will be scheduled on a priority basis with a staff Hearing Officer. If the mediation was conducted by a staff Hearing Officer, the hearing on the petition will be conducted by a different Hearing Officer.

6. If the parties reach an agreement during the mediation, a written mediation agreement will be prepared immediately by the mediator and signed by the parties at the conclusion of the mediation. To the extent possible, mediation agreements shall be selfenforcing. The Hearing Officer will issue an order corresponding to the mediated agreement and signed by the parties that either dismisses the petition or grants the petition according to terms set out in the mediation agreement.

7. A settlement agreement reached by the parties will become a part of the record of the proceedings on the petition unless the parties otherwise agree.

8. The parties cannot agree to grant an Owner a permanent exemption of for dwelling unit. Permanent exemption claims must be decided by a Hearing Officer after a hearing on the evidence.

C. Postponements of Mediations Before Hearing Officers

1. A Hearing Officer or designated Staff member may grant a postponement of the mediation only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" includes but is not limited to:

a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party;

b. Verified travel plans scheduled before the receipt of notice of hearing;

c. Any other reason that makes it impractical to appear at the scheduled mediation date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

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3. A request for a postponement of a mediation must be made in writing at the earliest date possible after receipt of the notice of mediation with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date set for the mediation.

8.22.110 HEARING PROCEDURE.

A. Postponements

1. A Hearing Officer or designated Staff member may grant a postponement of the hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" includes but is not limited to: a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party; b. Verified travel plans scheduled before the receipt of notice of hearing; c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of a hearing must be made in writing at the earliest date possible after receipt of the notice of hearing with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Arbitration Program office must be notified in writing at the earliest date possible prior to the date set for the hearing.

B. Absence Of Parties

1. If a petitioner fails to appear at a properly noticed hearing, the Hearing Officer may, in the Hearing Officer's discretion, dismiss the case.

2. If a respondent fails to appear, the Hearing Officer may rule against the respondent, or proceed to a hearing on the evidence.

C. Record Of Proceedings

1. All proceedings before a Hearing Officer or the Rent Board, except mediation sessions, shall be recorded by tape or other mechanical means. A party may order a Rent Adjustment Program Regulations Effective 8-1-14 13 duplicate or transcript of the tape recording of any hearing provided that the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.

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2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

D. Translation

Petitioners and respondents who do not speak or are not comfortable with English must provide their own translators. The translators will be required to take an oath that they are fluent in both English and the relevant foreign language and that they will fully and to the best of their ability translate the proceedings.

E. Conduct Of Hearings Before Hearing Officers

1. Each party, attorney, other representative of a party or witness appearing at the hearing shall complete a written Notice of Appearance and oath, as appropriate, that will be submitted to the Hearing Officer at the commencement of the hearing. All Notices of Appearance shall become part of the record.

2. All oral testimony must be given under oath or affirmation to be admissible.

3. Each party shall have these rights:

a. To call and examine witnesses;

b. To introduce exhibits;

c. To cross-examine opposing witnesses on any matter relevant to the issues even if that issue was not raised on direct examination;

d. To impeach any witness regardless of which party called first called him or her to testify;

e. To rebut the evidence against him or her;

f. To cross-examine an opposing party or their agent even if that party did not testify on his or her own behalf or on behalf of their principal.

4. Unless otherwise specified in these Regulations or OMC Chapter 8.22, the rules of evidence applicable to administrative hearings contained in the California Administrative Procedures Act (California Government Code Section 11513) shall apply.

F. Decisions Of The Hearing Officer

1. The Hearing Officer shall make written findings of fact and issue a written decision on petitions filed.

2. If an increase in Rent is granted, the Hearing Officer shall state the amount of increase that is justified, and the effective date of the increase.

3. If a decrease in Rent is granted, the Hearing Officer shall state when the decrease commenced, the nature of the service decrease, the value of the decrease in services, and the amount to which the rent

may be increased when the service is restored. When the service is restored, any Rent increase based on the restoration of service may only be taken following a valid change of terms of tenancy notice pursuant to California Civil Code Section 827. A Rent increase for restoration of decreased Housing Services is not considered a Rent increase for purposes of the limitation on one Rent increase in twelve (12) months pursuant to OMC 8.22.070 A. (One Rent Increase Each Twelve Months).

4. The Hearing Officer may order Rent adjustment for overpayments or underpayments over a period of months, however, such adjustments shall not span more than a twelve (12) month period, unless longer period is warranted for extraordinary circumstances. The following is a schedule of adjustments for underpayment and overpayments that Hearing Officers must follow unless the parties otherwise agree or good cause is shown:

a. If the underpayment or overpayment is 25% of the Rent or less, the Rent will be adjusted over 3 months;

b. If the underpayment or overpayment is 50% of the Rent or less, the Rent will be adjusted over 6 months;

c. If the underpayment or overpayment is 75% of the Rent or less, the Rent will be adjusted over 9 months;

d. If the underpayment or overpayment is 100% of the Rent or more, the Rent will be adjusted over 12 months.

5. For Rent overpayments based on an Owner's failure to reduce Rent after the expiration of the amortization period for a Capital Improvement, the Decision shall also include a calculation of any interest that may be due pursuant to Reg. 10.2.5 (see Appendix A).

8.22.120 APPEALS.

A. Statement of Grounds for Appeal and Supporting Documentation

1. A party who appeals a decision of a Hearing Officer or administrative decision must clearly state the grounds for the appeal on the appeal form or an attachment.

2. A party who files an appeal must file any supporting argument documentation and serve it on the opposing party within fifteen (15) days of filing the appeal along with a proof of service on the opposition party.

3. A party responding to an appeal must file any response to the appeal and any supporting documentation and serve it on the opposing party within fifteen (15) days of the service of the supporting documentation along with a proof of service on the opposing party.

4. Any argument and supporting documentation may not be any more than twenty-five (25) pages. Arguments must be legible and double-spaced if typed. Any submissions not conforming to these

requirements may be rejected by Staff. Staff may limit the pages for argument and supporting documentation submitted in consolidated cases.

5. Staff, in its discretion, may modify or waive the above requirements for good cause. The good cause must be provided in writing by the party seeking a waiver or modification.

B. Grounds for Appeal

The grounds on which a party may appeal a decision of a Hearing Officer include, but are not limited to, the following:

1. The decision is inconsistent with OMC Chapter 8.22, the Regulations, or prior decisions of the Board;

2. The decision is inconsistent with decisions issued by other Hearing Officers;

3. The decision raises a new policy issue that has not previously been decided by the Board;

4. The decision violates federal, state, or local law;

5. The decision is not supported by substantial evidence;

a. Where a party claims the decision is not supported by substantial evidence, the party making this claim has the burden to ensure that sufficient record is before the Board to enable to the Board to evaluate the party's claim;

~~5~~6. The Hearing Officer made a procedural error that denied the party sufficient opportunity to adequately present his or her claim or to respond to the opposing party; or

~~6~~7. The decision denies the Owner a fair return.

a. This appeal ground may only be used by an Owner when his or her underlying petition for approval of rent a rent increase was based on a fair return claim.

b. Where an Owner claims the decision denies a fair return, the owner must specifically state on the appeal form the basis for the claim, including any calculations, and the legal basis for the claim.

C. Postponements

1. The Board or Staff may grant a postponement of the appeal hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" shall include but is not limited to:

a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party;

b. Verified travel plans scheduled before the receipt of notice of hearing;

c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of an appeal hearing must be made in writing at the earliest date possible after receipt of the notice of appeal hearing with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Arbitration Program office must be notified in writing at the earliest date possible prior to the date for the appeal hearing.

D. Procedures at Appeal Hearings

1. It is the Board's or Appeal Panel's goal to hear ~~three (3)~~ four (4) appeals per meeting.

2. Unless the Board or Appeal Panel votes otherwise, each party will have ~~fifteen (15)~~ ten (10) minutes to present argument on or in opposition to the appeal. This time includes opening argument and any response.

3. Whenever the Board or Appeal Panel considers an appeal at more than one meeting, any Board member not present at a prior hearing must listen to a tape of the prior hearing in order to participate at a subsequent hearing.

4. Only those grounds presented in the written appeal may be argued before the Board.

E. Record Of Proceedings

1. All proceedings before the Rent Board shall be recorded by tape or other mechanical means. A party may order a duplicate or transcript of the tape recording of any appeal hearing provided that the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.

2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

F. Evidentiary Hearings

1. As a general rule, the Board and Appeal Panels should not conduct evidentiary hearings. When the Board or Appeal Panel determines that additional evidence or reconsideration of evidence is necessary, the Board or Appeal Panel should remand the matter back to a Hearing Officer for consideration of evidence.

2. The Board or Appeal Panel should only consider evidence when the evidence is limited in scope and resolution of the matter is more efficient than having it remanded to a Hearing Officer for consideration of the evidence.

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3. In order for new evidence to be considered, the party offering the new evidence must show that the new evidence could not have been available at the Hearing Officer proceedings.

4. If the Board or Appeal Panel deems an evidentiary hearing necessary, the appeal will be continued and the Board will issue a written order setting forth the issues on which the parties may present evidence.

5. The parties must file any new documentary evidence with the Board or Appeal Panel and also serve it the opposing party not less than five working days prior to the date set for the evidentiary appeal hearing.

a. Parties must also file with the ~~Board~~ Rent Program proofs of service of the evidence on the opposing party.

b. Failure to file the evidence and the proofs of service may result in the evidence not being considered by the Board or Appeal Panel.

6. When the Board or Appeal Panel conducts an evidentiary hearing, the same rules will apply as to hearings before Hearing Officers.

G. Appeal Decisions

1. Vote Required. Provided a quorum of the Board is present, or all three panel members if a matter is being heard by an Appeal Panel, a majority vote of the Board members present is required to overturn or modify a Hearing Officer's decision. A tie vote upholds the Hearing Officer's decision. If no Board member makes a motion to uphold, reverse, or modify the Hearing Officer's decision on appeal or no motion receives a second, the appeal is deemed denied without comment.

2. Vote at Close of Appeal Hearing. Unless the Board or Appeal Panel votes otherwise, it shall vote on each appeal at the close of the appeal. The motion should include the reasons for the decisions so that the reasons can be set forth in a written decision.

a. Form of Decision. An appeal decision must be in writing and include findings and conclusions. Staff will prepare a draft decision for consideration by the Board or Appeal Panel.

b. Time for Written Decision. The Board has the goal of issuing a written decision within thirty (30) days of the close of the appeal hearing.

c. Final decision. Written decisions are drafted by staff, reviewed by the City Attorney, signed by staff as the Board's designee, and served on the parties. In any individual matter, however, t~~T~~he Board may vote to require that a decision first come to the full Board or to the Board or Appeal Panel Chair for final approval and signature of that Chair. ~~must approve written decisions. A decision is not final until a written decision is approved by the Board, signed by the Chair or the Board's designee,~~ A decision is not final until signed by staff ~~or~~ the Board or Appeal Panel Chair and served on the parties.

d. Staff shall serve decisions on the parties.

H. Failure to Appear.

1. Appellant. If an appellant fails to appear at an appeal hearing, the Board will consider the appeal dropped and will issue a decision dismissing the appeal, subject to the appellant showing good cause for the failure to appear.

a. Any excuse for failing to appear, along with supporting documentation, must be submitted to Staff with fifteen days of the date of the appeal decision.

b. Staff will, in the first instance determine if the excuse represents a prima facie case of good cause based on the standards for failing to appear at a hearing and any Board decisions interpreting good cause for failure to appear.

c. If a prima facie case of good cause is shown, Staff will schedule an appeal hearing on whether the Board accepts the good cause.

2. Responding party. If the responding party fails to appear, the Board must still hear and decide the appeal.

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~~8.22.130 NOTICE REQUIREMENTS FOR A CIVIL CODE 1946 TERMINATION OF TENANCY.~~

~~A. Public Access to Notices and Information Required to be Filed Relating to a 1946 Termination of Tenancy~~

~~1. Purpose of Regulation. This Reg. 8.22.130 A is to implement OMC 8.22.130 F regarding the privacy of notices and reports that an Owner is required to file in connection with a 1946 Termination of Tenancy. Of concern is public access to:~~

~~a. The identity of the Tenant; and~~

~~b. Any information the Owner put into the 1946 Notice of any alleged misconduct by the Tenant.~~

~~2. Notices and Reports Affected. This Regulation covers the following notices and reports:~~

~~a. 1946 Notice (OMC 8.22.130 A).~~

~~b. Notice to New Tenant (OMC 8.22.130 B).~~

~~c. Report to the Rent Adjustment Program of the New Tenant's Rent (OMC 8.22.130 C).~~

~~d. Status Report to the Rent Adjustment Program after 1946 Termination of Tenancy (OMC 8.22.130 D).~~

~~3. Access to notices and reports identified in 8.22.130 A.2, above.~~

~~a. The following persons have full access to the notices and reports.~~

~~i. The Tenant whose tenancy was termination by the 1946 Notice;~~

~~ii. The Owner who terminated the tenancy.~~

~~iii. An attorney or other representative designated in writing by the Tenant or Owner.~~

~~b. The following persons have access to the notices and reports so long as any allegations of misconduct by the Tenant are first redacted from the documents.~~

~~i. Any Tenant who occupies the subject Covered Unit in the twelve (12) month period following the vacancy of the Tenant whose tenancy was terminated with a 1946 Notice.~~

~~ii. An attorney or other representative designated in writing by such Tenant. c. Any member of the public may have access to the notices and reports so long as the name of the Tenant and any alleged misconduct of the Tenant are first redacted from the documents.~~

~~4. Neither OMC 8.22.130 F nor this Reg. 8.22.130 is intended to nor shall create a private right of action or claim against the City of Oakland or any of its officers or employees for any release of information that is not in accordance with this Reg. 8.22.130.~~

~~8.22.140 UNLAWFUL TERMINATIONS OF TENANCIES.~~

~~[Reserved for potential future regulations]. See Ordinance, OMC 8.22.140.~~

8.22.1~~3~~50 RETALIATORY EVICTIONS.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.150.

8.22.~~160~~ 140 VOLUNTARY MEDIATION OF EVICTIONS.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.160.

8.22.~~170~~ 150 GENERAL REMEDIES.

A. Administrative Citation

1. General Intent of Administrative Citation The intent of this section is to provide a means to secure compliance with the Rent Adjustment Law without the parties having to go to court. This section provides an opportunity to cure a violation without penalty so long as compliance is demonstrated within 10 days of the notice of an initial violation. This section also provides for a series of increasing fines if violations of the law are not cured.

2. Violations Subject to Administrative Citation. Violations of the specific provisions of OMC Chapter 8.22 set forth in this Regulation are subject to administrative citation. The provisions of OMC Chapter 8.22 subject to administrative citation are:

a. Failure to give the required notice at commencement of the tenancy (OMC 8.22.060 A.)

b. Demanding payment of a rent increase if the increase is based on a notice that does not conform to OMC 8.22.070 H.

~~c. Terminating a tenancy pursuant to California Civil Code Section 1946 without giving the form of notice required by OMC 8.22.130.~~

~~d. Failing to file a 1946 Notice with the Rent Adjustment Program (OMC 8.22.130 A.2).~~

~~e. Following a 1946 Termination of Tenancy, a failure to either:~~

~~i. Give the new Tenant the required notice (OMC 8.22.130 B);~~

~~ii. Report the new Tenant's Rent to the Rent Adjustment Program (OMC Section 8.22.130 C); or~~

~~iii. File the rent report with the Rent Adjustment Program twelve (12) months after a 1946 Termination of Tenancy (OMC 8.22.130 D).~~

f. Demanding payment of a Rent Increase in excess of that permitted after a Tenant has filed a petition challenging a Rent Increase (OMC 8.22 .070 D).

g. Failure or refusal to abide by a final order of a Hearing Officer or the Board.

h. Failure to pay the Rent Adjustment Program Service Fee or passthrough as required pursuant to OMC 8.22.180.

I. Failure to file notice that a unit is no longer exempt as required under OMC 8.22.030 C.

j. Failure to remove a Capital Improvement Rent Increase on the first month following the end of the amortization period.

3. Procedures for Issuing Administrative Citation.

a. Any person, including the City, who is affected by a violation of the Rent Adjustment Law may request that the Rent Adjustment Program issue an administrative citation. The Rent Adjustment Program may issue a notice of intent based on having reason to believe a violation has occurred.

b. Upon a sworn allegation of a violation of the Rent Adjustment Law, the Rent Adjustment Program may, at its discretion, serve a notice of intent to issue an administrative citation on the person allegedly committing the violation.

c. The notification by the Rent Adjustment Program shall be served by one or more of the following methods to the last-known mailing address:

i. First-class mail accompanied by a proof of service;

ii. Personal delivery; or

iii. Certified mail with return receipt.

d. In response to the notice of intent to issue a citation, the party served with the notice of intent to issue a citation may, within ten (10) days of service of the notice of intent to issue a citation:

i. Cure the violation and send the Rent Adjustment Program evidence that the violation is cured; or

ii. Deny that the violation exists and send the Rent Adjustment Program evidence that the violation does not exist.

e. If the recipient of a notice of intent to issue citation does not respond within ten (10) days after service, the Rent Adjustment Program may issue a citation for the violation.

f. If the recipient of a notice of intent to issue a citation has responded within the ten (10) day period, the Rent Adjustment Program may either:

i. Issue a notice of no violation if the respondent's response is sufficient to demonstrate that there was no violation or that the violation is cured;

ii. Issue a citation if the respondent's response is insufficient to show that there was no violation;

iii. Issue a citation if this is the second violation of the same section of OMC Chapter 8.22, even if the violation is cured.

g. Both the recipient of a notice of intent to issue a citation and the person seeking the citation will be notified of the issuance or non-issuance of a citation.

4. Administrative Citation Penalties. The following are the penalties for administrative citations:

a. A first violation that is cured within the cure period set out in Regulation is not subject to a penalty.

b. If the recipient of a notice of intent to issue citation fails to cure the violation within the cure period or commits a second violation of the same provision of OMC Chapter 8.22, the citation amount is $100;

c. If the recipient of a notice of intent to issue a citation commits a third violation of the same provision of Chapter 8.22 or fails to cure a second violation within the cure period, the citation amount is $250;

d. For each violation after the third violation or failure to cure a third violation within the cure period, the citation amount is $500.

e. An uncured violation that is re-noticed is considered a subsequent violation and the citation amount equals that for a subsequent violation.

f. The following are required for a violation to be considered a subsequent violation:

i. The succeeding violation must have occurred within the twelve month period following the date of service of the immediately prior violation;

ii. The succeeding violation must be for a violation of the same section of OMC Chapter 8.22 (for example failing to give a notice at the commencement of the Tenancy (OMC 8.22.060).

iii. Subsequent violation can occur for a different Tenant, at a different dwelling unit, or a different property as the first violation so long as the violator is the same.

g. Each day following the end of the cure period that a violation remains uncured may be subject to a separate violation.

h. Administrative citations for any individual recipient of a notice of violation, excluding accrued interest, shall not be assessed at more than five thousand dollars ($5000) cumulatively per twelve (12) month period starting with the date of issuance of the first violation.

i. After a recipient of a notice of violation has committed three (3) violations of any provision of OMC Chapter 8.22 subject to administrative citation, the Rent Adjustment Program may assess administrative costs, charges, fees, and interest as established in the master fee schedule of the city pursuant to OMC Section 1.12.070.

j. Full or partial reimbursement for recovery administrative penalties and administrative expenses shall not

i. Excuse the failure to correct violations wholly and permanently; nor

ii. Preclude the assessment of additional administrative citations or other abatement actions by the Rent Adjustment Program; nor iii. Preclude any other claims or penalties that may be available to any person under OMC Chapter 8.22.

5. Hearing on Administrative Citation.

a. Any party may request a hearing before a Hearing Officer on the issuance or non-issuance of a violation.

b. A hearing must be requested within 10 (ten) days of service of the citation or non-issuance of the citation.

c. The party seeking the hearing has the burden of proving the existence or non-existence of the violation by a preponderance of the evidence.

d. Hearings shall be conducted under the same rules and time frames as for Rent adjustment hearings as set out in OMC Section 8.22.110.

6. Appeal.

a. Any party may request an appeal of the Hearing Officer's decision to the Board.

b. The timeframes and procedures for appeal shall be the same as those for a Rent adjustment proceeding as set out in OMC Section 8.22.120.

B. Administrative Assessment of Civil Penalties

1. Violations of OMC Chapter 8.22 that are subject to civil penalties.

a. Five concurrent uncured administrative citations received by any recipient for any violation subject to administrative citation.

2. Amount of Civil Penalties.

a. An Owner will be assessed $500 as the first civil penalty.

b. An Owner will be assessed $750 as the second civil penalty.

c. An Owner will be assessed $1,000 as the third civil penalty.

d. An Owner may be assessed a maximum of $5,000 in any one twelve (12) month period commencing from the date of the initial civil penalty.

3. Procedures for issuing and appealing civil penalties will be the same as for administrative citations.

~~8.22.180 RENT PROGRAM SERVICE FEE.~~

~~A. Payment of Fee After Loss of Exemption~~

~~1. A dwelling unit that was exempt from Chapter 8.22 less than nine months during a year must pay the full fee for that year.~~

~~2. After a dwelling unit loses its exemption, the Fee is due within 30 days after the loss of the exemption and late 90 days after the loss of the exemption.~~

~~B. Pass through of One half of the Fee to Tenant~~

~~1. If an Owner elects to pass through one-half of the Fee to the Tenant, the Owner must pass through the one-half of the Fee in the fiscal year in which the Fee is due, provided the Owner has paid the Fee before it is deemed delinquent.~~

~~2. The pass-through amount may be part of the Rent or simply a debt due from the Tenant to the Owner at the Owner's option.~~

~~3. The Owner may submit a request for payment of the pass-through amount, in which case the pass-through will be a debt to the Owner and not collectable as part of the Rent.~~

~~4. Pass-through as Rent. The pass-through of one-half of the fee to the Tenant will be considered part of the Tenant's Rent provided that the Owner does the following:~~

~~a. If the Tenant has a month-to-month rental agreement, the Owner must first give the Tenant a notice of change of term of tenancy pursuant to state law (California Civil Code Section 827) and the requirements of OMC 8.22.070 H. (requirements for Rent Increase notices). The Fee may be passed on in a lump sum amount or spread out at the Owner's option.~~

~~b. If the tenant has a term other than month to month, the Owner must give the Tenant a notice in accordance with the terms of the rental agreement.~~

~~c. Any notice of Rent increase for the fee is not subject to the restriction of one Rent increase per year pursuant to OMC 8.22.070 H. d. The Fee is not part of the Base Rent for purposes of calculating the Rent increases.~~

~~C. Fee is not a Housing Service Cost~~

~~The Owner's portion of the Fee cannot be used to calculate an increase in costs to justify a Rent increase.~~

~~D. Fees and Delinquencies Payable by Successor to Owner~~

~~Fees and delinquent charges are payable by any successor to the Owner's business of renting the Covered Units on which the Fee is charged.~~

~~E. Fee Regulations Repealed If Fee Sunsets~~

~~1. The Fee sunsets on June 30, 2003 unless extended by the City Council (OMC 8.22.180 I.).~~

~~2. If the Fee is allowed to sunset, this Reg. 8.22.180 is automatically repealed, except to the extent necessary to complete collection of any Fees, delinquencies, or other costs that became during the period when the Fee was in place.~~

~~3. If the Fee is reinstated in the future, then this regulation will also be reinstated.~~

8.22.~~190~~ 160 COMPUTATION OF TIME.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.190.

8.22.~~200~~170 SEVERABILITY.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.200.

8.22.~~210~~180 NONWAIVERABILITY.

[Reserved for potential future regulations]. See Ordinance, OMC 8.22.210.

8.22.~~220~~190 APPLICABILITY—EFFECTIVE DATE OF CHAPTER.

A. Effective Date of Regulations

1. The amended and restated OMC Chapter 8.22 passed by the City Council on February 5, 2002 provided that it was not to go into effect until July 1, 2002, unless otherwise provided in OMC Chapter 8.22.

2. The Regulations adopted herein take effect as follows unless otherwise stated in the applicable regulation:

a. Rent adjustments:

I. To any Rent Increase wherein the notice is served on the Tenant on or after July 1, 2002;

II. To any decrease in Housing Services wherein the notice is served on the Tenant on or after July 1, 2002, or, if no notice is served, to any Housing Service decrease that occurs on or after July 1, 2002.

b. Terminations of Tenancy

I. To any tenancy terminated by a notice served by either the Owner or the Tenant on or after July 1, 2002.

8.22.~~180~~500 RENT PROGRAM SERVICE FEE.

A. Payment of Fee After Loss of Exemption

1. A dwelling unit that was exempt from Chapter 8.22 less than nine months during a year must pay the full fee for that year.

2. After a dwelling unit loses its exemption, the Fee is due within 30 days after the loss of the exemption and late 90 days after the loss of the exemption.

B. Pass-through of One-half of the Fee to Tenant

1. If an Owner elects to pass through one half of the Fee to the Tenant, the Owner must pass through the one half of the Fee in the fiscal year in which the Fee is due, provided the Owner has paid the Fee before it is deemed delinquent.

2. The pass-through amount may be part of the Rent or simply a debt due from the Tenant to the Owner at the Owner's option.

3. The Owner may submit a request for payment of the pass-through amount, in which case the pass-through will be a debt to the Owner and not collectable as part of the Rent.

4. Pass-through as Rent. The pass-through of one-half of the fee to the Tenant will be considered part of the Tenant's Rent provided that the Owner does the following:

a. If the Tenant has a month to month rental agreement, the Owner must first give the Tenant a notice of change of term of tenancy pursuant to state law (California Civil Code Section 827) and the requirements of OMC 8.22.070 H. (requirements for Rent increase notices). The Fee may be passed on in a lump sum amount or spread out at the Owner's option.

b. If the tenant has a term other than month to month, the Owner must give the Tenant a notice in accordance with the terms of the rental agreement.

c. Any notice of Rent increase for the fee is not subject to the restriction of one Rent increase per year pursuant to OMC 8.22.070 H. d. The Fee is not part of the Base Rent for purposes of calculating the Rent increases.

C. Fee is not a Housing Service Cost

The Owner's portion of the Fee cannot be used to calculate an increase in costs to justify a Rent increase.

D. Fees and Delinquencies Payable by Successor to Owner

Fees and delinquent charges are payable by any successor to the Owner's business of renting the Covered Units on which the Fee is charged.

E. Fee Regulations Repealed If Fee Sunsets

1. The Fee sunsets on June 30, 2003 unless extended by the City Council (OMC 8.22.180 I.).

2. If the Fee is allowed to sunset, this Reg. 8.22.180 is automatically repealed, except to the extent necessary to complete collection of any Fees, delinquencies, or other costs that became during the period when the Fee was in place.

3. If the Fee is reinstated in the future, then this regulation will also be reinstated.

REGULATIONS FOR THE JUST CAUSE FOR EVICTION ORDINANCE
(MEASURE EE, CODIFIED IN THE OAKLAND MUNICIPAL CODE AT
8.22.300, et seq.)

Introduction

The following regulations address portions of the Just Cause for Eviction Ordinance ("Just Cause Ordinance"). Only those sections where the Housing, Residential Rent and Relocation Board ("Rent Board") adopted regulations are included. The numbering system follows the codified version of the Just Cause Ordinance. These Regulations were originally adopted in 2004 and include the 2007 and 2009 Amendments.

8.22.350 Applicability. ~~[Section 5]~~

B. Health Facilities.

1. Where a federal, state, county, or local license or permit is required in order to lawfully engage in the activity that qualifies for the exemption, the landlord must plead and prove that the facility is properly licensed.

C. Substance Abuse Treatment Facilities.

1. Where a federal, state, county, or local license or permit is required in order to lawfully engage in the activity that qualifies for the exemption, the landlord must plead and prove that the facility is properly licensed.

D. Homeless Transitional Facilities.

1. Where federal, state or local license or permit is required in order to lawfully engage in the activity that qualifies for the exemption, the landlord must plead and prove that the facility is properly licensed.

H. New Construction Exemption.

1. Date to Qualify for Exemption. The new construction exemptions under the Just Cause Ordinance and the Rent Adjustment Ordinance differ as the date after which units must be constructed for the units to qualify for the new construction exemption. For purposes of O.M.C. 8.22.350 H (exemption under the Just Cause Ordinance for newly constructed units), newly constructed rental units are residential rental units that have a certificate of occupancy as new construction issued after October 14, 1980 and are first offered for rent on or after that date. (The new construction exemption under the Rent Adjustment Ordinance is for units newly constructed and that received a certificate of occupancy on or after January 1, 1983 (O.M.C. 8.22.030 A5)).

2. The intent of this regulation is to conform the definitions of what constitutes new construction in the Just Cause Ordinance and the Rent Adjustment Ordinance for purposes of the new construction exemption. To qualify as a newly constructed rental unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential.

a. Newly constructed units include legal conversions of uninhabited spaces not used by tenants, such as:

i. Garages;

ii. Attics;

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iii. Basements;

iv. Spaces that were formerly entirely commercial.

b. Dwelling units not eligible for the new construction exemption include:

i. Live/work space where the work portion of the space was converted into a separate dwelling unit;

ii. Common area converted to a separate dwelling unit.

8.22.360 Good Cause Required for Eviction

8.22.360.A.2.

a. ————A "material term of the tenancy" of the lease includes obligations that are implied by law into a residential tenancy or rental agreement and are an obligation of the tenant. Such obligations that are material terms of the tenancy include, but are not limited to:

i. Nuisance. The obligation not to commit a nuisance. A nuisance, as used in these regulations, is any conduct that constitutes a nuisance under Code of Civil Procedure § 1161 (4). Provided that a termination of tenancy for any conduct that might be included under O.M.C. 8.22.360 A4 (causing substantial damage), A5 (disorderly conduct), or A6 (using premises for illegal purpose) and which also be considered a nuisance, can follow the requirements of those sections in lieu of this section (O.M.C 8.22.360 A2). Nuisance also includes conduct by the tenant occurring on the property that substantially interferes with the use and enjoyment of neighboring properties that rises to the level of a nuisance under Code of Civil Procedures § 1161 (4).

ii. Waste. The obligation not to commit waste, as the term waste may be applicable to a residential tenancy under California Code of Civil Procedure § 1161. Waste, as used in these regulations, is any conduct that constitutes waste under Code of Civil Procedure § 1161 (4). Provided that a termination of tenancy for any conduct that falls under O.M.C 8.22.360 A4 (causing substantial damage) and might also be considered waste can follow the requirements of that section in lieu of this section (O.M.C 8.22360 A2).

b. Repeated violations for nuisance, waste or dangerous conduct.

i. Repeating the same nuisance, waste, or dangerous conduct within 12 months. The first time a tenant engages in conduct that constitutes nuisance, waste or is dangerous to persons or property within any 12 month period, the landlord must give the tenant a warning notice to cease and not repeat the conduct. If the tenant repeats the same or substantially similar nuisance, waste or dangerous conduct within 12 months after the landlord served the prior notice to cease, the landlord need not serve a further notice to cease, but may give a notice pursuant to Code of Civil Procedure § 1161 for the repeated conduct.

ii. Repeating different nuisance or waste conduct within 24 months. The first two times a tenant engages in different conduct that constitutes waste or a nuisance that interferes with the right of quiet enjoyment of other tenants at the property, the landlord must give the tenant a warning notice to cease and not repeat the conduct. If within 24 months after the landlord served the first of the two notices to cease for the waste or nuisance conduct, the tenant again engages conduct that constitutes waste or a nuisance that interferes with the right of quiet enjoyment of other tenants at the property, the landlord need not serve a further notice to cease, but may give a notice pursuant to Code of Civil Procedure § 1161 for the third incident of waste or nuisance conduct.

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c. By giving a tenant a notice that the tenant has violated a material term of tenancy, the landlord is not precluded from also noticing a possible eviction for the same conduct under a separate subsection of O.M.C. 8.22.360 so long as the notices are not contradictory or conflicting.

~~Reg.~~ 8.22.360A.4.

A notice that the tenant has willfully caused substantial damage must give the tenant at least 45 days after service of the notice to repair the damage or pay the landlord for the reasonable cost of repairing such damage.

~~Reg.~~ 8.22.360A.5.

Destroying the peace and quiet of other tenants at the property is conduct that substantially interferes with the peace, quiet, and enjoyment of other tenants at the property.

8.22.360A.6 Illegal Use of the Premises

a. For purposes of Subparagraph O.M.C. 8.22.360 A.6 a person who illegally sells a controlled substance upon the premises or uses the premises to further that purpose is deemed to have committed the illegal act on the premises, in accordance with California Code of Civil Procedure § 1161 (4).

b. Using the premises for an unlawful purpose is any conduct that constitutes using the premises for an unlawful purpose under Code of Civil Procedure § 1161 (4).

c. Where a unit has been cited for housing, building, or planning code violations, and the landlord is unwilling or unable to make the necessary repairs or corrections, the tenant will not be deemed to have "committed an illegal act on the premises" pursuant to this Regulation 8.22.360 A.6. Where a unit is being taken off the rental market due to housing, building, or planning code violations, the landlord must follow the procedures found in Regulation 8.22.360 A.10(b) herein to evict the tenant.

~~Reg. 8.22.360A.6.~~

~~a. For purposes of Subparagraph O.M.C. 8.22.360 A.6 a person who illegally sells a controlled substance upon the premises or uses the premises to further that purpose is deemed to have committed the illegal act on the premises, in accordance with California Code of Civil Procedure § 1161(4).~~

~~b. Using the premises for an unlawful purpose is any conduct that constitutes using the premises for an unlawful purpose under Code of Civil Procedure § 1161 (4).~~

~~Reg.~~ 8.22.360A.9.g.

This regulation addresses a tenant's claim of "protected status" as elderly, disabled, or catastrophically ill pursuant to Section 8.22.360 A.9.e. and how it may be contested by a landlord.

i. Statement With Supporting Evidence Of Protected Status. In order to present a claim for protected status, a tenant must give the landlord a statement claiming protected status along with evidence supporting the claim. The evidence must include a statement that the tenant has resided in the unit for more than five years. The supporting evidence must be of the tenant's age, or that the tenant has a disability that limits a major life activity, or that he or she has a

catastrophic illness. If the tenant produces evidence of protected status sufficient to establish a facial claim of protected status, the landlord has the burden of producing evidence to contradict the tenant's evidence. Below are examples of types of evidence concerning protected status that may be used to present a claim that a tenant is entitled to protected status:

(a) Elderly status: driver's license, DMV identity card, birth certificate, or other document in which the age or date of birth must be submitted under oath.

(b) Disabled status: Evidence that a tenant has a disability that limits a major life activity may be in the form of a statement from a treating physician or other appropriate health care provider authorized to provide treatment, such as a psychologist. A tenant may also submit evidence of a medical determination from another forum, such as Social Security or workers' compensation, so long as it includes the fact of that the tenant has a disability and its probable duration.

(c) Catastrophically ill status. Evidence of disabled status plus a statement from the tenant's primary care physician or other appropriate health care provider that the tenant has a life threatening illness. The evidence need not provide any information on the nature of the disability or catastrophic illness.

ii. Jurisdiction Over Challenges to Protected Status. Courts have concurrent jurisdiction with the Rent Program over landlord challenges to a tenant's claim to protected status.

(a). Court. A tenant may defend against an eviction by claiming protected status claim where the landlord seeks recovery of the unit for occupancy by the owner or the landlord's eligible relative.

(b). Rent Program.

1. A landlord and a tenant may agree at any time to have the Rent Program address a tenant's claim for protected status. Either the landlord or the tenant may petition the Rent Program at any time to seek resolution of the claim for protected status, but the Rent Program will not assume jurisdiction over the petition unless the other party agrees to Rent Program jurisdiction.

2. A landlord who is selling a property may request that a tenant state whether the tenant will claim protected status if the landlord's successor seeks to evict the tenant for occupancy by the owner or the owner's close relative.

(a). The owner may make this request under the conditions and procedures:

i. The building contains 6 or fewer rental units.

ii. The building contains more than 6 rental units and the unit the tenant occupies is unique. Unique means that no more than 5 percent of the units in the building are similar in size, location, and/or amenities.

iii. The landlord has an accepted offer from a purchaser and the offer is contingent upon the availability of a unit to owner-occupy.

iv. The landlord makes the request to the tenant on a form provided by the Rent Program verifying the appropriate information under penalty of perjury.

(b) The tenant must respond within 15 calendar days of service of the request. A tenant who fails to respond with the 15 calendar days is deemed to have waived any claim of entitlement to protected status as of the last date the response was due.

iii. Rent Program Hearings Contesting Protected Status.

(a) Procedure. Rent Program hearings contesting a tenant's disability or catastrophic illness are conducted in accordance with the procedures set forth in Rent Adjustment Program Regulation 8.22.090. Rent Program staff may establish any additional specialized procedures necessary for hearings under this section.

(b) Confidential Nature of Hearings. Evidence of a tenant's disability or illness is deemed confidential. Hearings, records of hearings, and decisions (except for whether the tenant has protected status) based on disability, or catastrophic illness will not be open to the public. Records of the decision will not be considered public records for purposes of the California Public Records Act (Cal. Government Code § 6250, et seq.). The landlord or his/her representative, agent, or attorney may not release any evidence or records or information contained in such evidence or records pertaining to the tenant's disability or illness to a person other than the parties or their representatives for the hearing. Rent Program staff may adopt supplementary rules to conduct hearings so as to protect the medical privacy of tenants while permitting parties to obtain necessary evidence.

(c) Tenant's Burden. The tenant has the burden of proving protected status.

(d) Health Care Examination.

~~(1.)~~ Landlord's Request. If the landlord reasonably determines that in order to respond the tenant's evidence of disability or illness a medical examination is necessary, the landlord may request the Rent Program order the tenant to obtain the opinion of a second health care provider, designated or approved by the landlord, concerning any information on which the tenant bases her/his claim for protected status. The examination will be at the landlord's own expense.

2. ~~(2)~~ Independent Examination. The landlord and tenant may agree to have an independent examination conducted by a health care provider agreed to by the parties or appointed by the Hearing Officer. The parties must agree that the results of the independent examination will be binding on the parties as to the tenant's status as disabled or catastrophically ill. The independent examination will be at the landlord's expense unless the parties agree otherwise.

3. ~~(3)~~ Limitation on Examination. Any health care examination under this subsection must be limited to the health related condition that the tenant claims is the basis for the disability or catastrophically ill status. The Hearing Officer may issue such orders or place such conditions on the examination as may be necessary to limit the examination to the tenant's condition at issue.

4. ~~(4)~~ Tenant Refusal to be Examined. At tenant's refusal to be examined at the landlord's request or to cooperate with such examination will defeat the tenant's claim of protected status, unless the tenant can prove her/his claim by clear and convincing evidence and the landlord's request for an examination is unreasonable.

iv. No Appeal to Rent Board for Disability or Catastrophically Ill Claims Unless Tenant Waives Privacy in Medical Records. Neither party may appeal the Hearing Officer's decision to the Rent Board unless the tenant is willing to waive any privacy or confidentiality to medical records or other confidential records pertaining to the tenant's disability or illness. Without such a waiver, a decision of the Hearing Officer is final as to the administrative processes of the City of Oakland and any party wishing to further contest the Hearing Officer's decision must seek judicial review.

v. Landlord or Landlord's Relative or Other Tenant for Claims Protected Status. A landlord may still evict a tenant with protected status where the landlord or the landlord's relative who will be occupying the unit has protected status, or where every other unit of the landlord is occupied by a tenant claiming protected status. In either of the aforementioned circumstances, any challenge to the landlord's right to evict a tenant with protected status would be addressed in an unlawful detainer or other court proceeding.

~~Reg 8.22.360A.6 Illegal Use of the Premises~~

~~a. For purposes of Subparagraph O.M.C. 8.22.360 A.6 a person who illegally sells a controlled substance upon the premises or uses the premises to further that purpose is deemed to have committed the illegal act on the premises, in accordance with California Code of Civil Procedure § 1161 (4).~~

~~b. Using the premises for an unlawful purpose is any conduct that constitutes using the premises for an unlawful purpose under Code of Civil Procedure § 1161 (4).~~

~~c. Where a unit has been cited for housing, building, or planning code violations, and the landlord is unwilling or unable to make the necessary repairs or corrections, the tenant will not be deemed to have "committed an illegal act on the premises" pursuant to this Regulation 8.22.360 A.6. Where a unit is being taken off the rental market due to housing, building, or planning code violations, the landlord must follow the procedures found in Regulation 8.22.360 A.10(b) herein to evict the tenant.~~

~~Reg~~ 8.22.360A.10 _____Eviction for Repairs or to Bring Unit in Compliance with Municipal Code or Other Laws Affecting Health and Safety of Tenants.

a. Petitioning to extend time for tenant vacancy.

i. Purpose. When a landlord seeks to recover possession of a unit to make repairs, the repairs must be completed in time to permit the tenant to reoccupy the unit after three months of vacancy. If more than three months of vacancy are required to complete the repairs, the landlord may petition the Rent Program to extend this time.

ii. Additional Notice Requirements. In addition to the other requirements for the notice terminating tenancy in the Just Cause Ordinance or by state law, the landlord must include the following information in a prominent place on the front of the notice:

A. If the tenant wishes to return to the rental unit, the tenant must provide the landlord with a forwarding address and telephone number or other contact information. A tenant who fails to provide this information may not be entitled to return to the rental unit.

B. Rent Program staff will issue a form notice for evictions brought pursuant to this Section.

iii. Time for Petitioning.

A. When the landlord knows before the notice to terminate tenancy is served on the tenant that the repairs cannot be completed within the three-month period, the landlord must file the petition with the Rent Program and serve the tenant with a copy of the petition to extend time with or before the notice to terminate tenancy.

B. When the landlord discovers, after serving the notice to terminate tenancy, that the work will require longer than 3 months, the landlord must file the petition within 15 days of first learning that the work will not be completed within 3 months.

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iv. Petition and response contents. Rent Program staff will issue form petitions and responses that will specify the required contents.

v. Priority. The nature and subject matter of the petition requires an expeditious decision on these petitions. The Rent Program will give priority to the hearing on the petition.

vi. Tenant Response. To expedite the landlord's petition, no formal response from the tenant will be required until the hearing. However, if the tenant wishes to submit any documentary evidence (including pictures) in response to the landlord's petition, the tenant must file such evidence with the Rent Program and send a copy to the landlord not less than 5 days prior to the hearing, unless the tenant can show the evidence was unavailable at that time.

vii. Conduct of Hearings. Rent Program hearings contesting the rent for an available vacant unit are conducted in accordance with the procedures set forth in Rent Adjustment Program Regulation 8.22.090.

viii. Appeals. The hearing officer's decision may be appealed to the Rent Board within the time frame set forth in O.M.C. 8.22.120 and in accordance with Rent Adjustment Program Regulations. Rent Program staff may assign the appeal to a panel of the Board to expedite it.

ix. Penalty. In addition to any other remedies a tenant may have, a landlord who fails to timely file a petition seeking an extension or unreasonably delays completing the repairs will forfeit one month of any rent increase based the repairs that necessitated the tenant's eviction for each month, or fraction thereof that the tenant's return is unreasonably delayed.

b. Removal of Unit(s) or Change of Use Required by Code Violation.

i. Purpose. The City of Oakland or other regulatory agency may require a Landlord to make repairs or corrections, or cease renting a unit or units in a building because the unit or building has been cited with a code violation. In such cases, often the landlord is unwilling to make such repairs or corrections, or the corrections cannot be made without taking the unit(s) or building off the market, converting the unit(s) or building to another use, or demolishing the unit(s). This Regulation 8.22.360A(10)(b) applies to foregoing circumstances. Before this Regulation 8.22.360A(10)(b) was enacted, landlords would often evict tenants citing Regulation 8.22.360A(6) herein, which applies to circumstances where a tenant has committed an illegal act on the premises, such as selling controlled substances. In those cases, while the eviction was through no fault of their own, tenants were only given three days notice to vacate, and the evictions were often reported to credit reporting agencies as being related to illegal uses of the premises. This Regulation 8.22.360A(10)(b) is intended to provide landlords with an appropriate mechanism for evicting a tenant where a unit is being taken off the residential rental market due to a code violation.

ii. All Units Withdrawn from the Rental Market. If the City of Oakland or other regulatory agency has cited the building with a code violation, and the landlord is unable or unwilling to make the necessary repairs or corrections, and all the residential units in the building are similarly affected and can be withdrawn from the residential rental market pursuant to the Ellis Act Ordinance (O.M.C. 8.22.400, et seq.), the Landlord must use the procedures and notice provisions of the Ellis Act Ordinance to take all the units off the market.

iii. Not All Units Withdrawn from the Rental Market. If the landlord withdraws a unit from the residential rental market due to a code violation cited by the City of Oakland or other regulatory agency, and other units in the building will remain on the residential rental

market, the landlord must use the procedures and notice provisions of this Regulation 8.22.360A(10)(b)(v) to take the affected unit off the market.

iv. Units Subject to an "Imminent Hazard" – 72-Hour Notice to Vacate. Where the City or other public agency has issued a 72-hour notice to vacate ("red-tagged") the unit or building, the provisions of the Just Cause Ordinance do not apply as this order to vacate is brought by the City or governmental entity and not the landlord.

v. Units or Buildings Wherein Corrections Cannot Be Made. If the Landlord determines that the corrections required to address the code violation(s) cannot be made to the unit or if the Landlord is unwilling to make the corrections and will cease renting the affected unit for residential purposes, the Landlord must do the following:

A. Follow the eviction process established in California Civil Code § 1946 and § 1946.1 providing for a 30-day or 60-day notice period.

B. Provide the information on the notice terminating tenancy required by O.M.C. 8.22.360A.10.c as follows:

1. A statement informing tenants as to any right to payment under the City of Oakland's Code Enforcement Relocation Ordinance (O.M.C. Chapter 15.60).
2. A short, simple statement describing the violations or attaching the report noticing the violations and that the landlord has decided that the landlord will cease using the unit for residential rental purposes and terminate the tenant's tenancy. This information on the notice terminating tenancy must be signed under penalty of perjury.
3. A statement that the termination of tenancy is brought in good faith, with honest intent, and without ulterior reasons, including but not limited to: retaliating against the tenant, facilitating repairs or permits necessary to retain the unit(s) as residential, or to re-rent the unit(s). This information on the notice terminating tenancy must be signed under penalty of perjury.
4. A statement that "If the needed repairs are completed on your unit, the landlord must offer you the opportunity to return to your unit with a rental agreement containing the same terms as your original rental agreement and with the same rent (although the landlord may be able to obtain a rent increase under the Oakland Residential Rent Program Ordinance (O.M.C. Chapter 8.22, Article 1). This statement only applies if your landlord restores your unit to the residential rental market."

C. File the notice terminating the tenancy with the Rent Program as required by O.M.C 8.22.

8.22.360A.8 – A.11

a. Scope of Regulations: These regulations are designed to clarify the requirements of Sections 8.22.360 (a)(8), (a)(9), (a)(10), and (a)(11) of the Oakland Municipal Code.

b. Certification requirement for eviction.

i. An owner who has evicted a tenant pursuant to Sections 8.22.360 (a)(8), (a)(9), or (a)(10) must submit to the Rent Board a completed certification (attached hereto as Exhibit A) within thirty (30) days of the ow ner's occupancy or eviction of the tenants.

A. Additional Reporting Requirements.

1. An owner who has evicted a tenant pursuant to Sections 8.22.360 (a)(8) or (a)(9) must submit to the Rent Board a completed certification (attached hereto as Exhibit B) confirming under penalty of perjury that he or she continues to reside in the unit as a principal residence. The owner must attach proof of residence in the unit, including but not limited to a copy of his or her valid California Driver's License or another government-issued form of identification. This certification must be provided to the Rent Board every twelve (12) months from the initial move-in date for thirty-six (36) months following the owner's repossession of the rental unit.

2. An owner who has evicted a tenant pursuant to Section 8.22.360 (a)(10) must file a completed certification (attached hereto as Exhibit C) to the Rent Board affirming under penalty of perjury that he or she offered the unit to the evicted tenant as required under (a)(10)(c)(ii). This notice must be filed within thirty (30) days of completing the needed repairs that led to the eviction.

~~i.~~ii. An owner who has evicted a tenant pursuant to Section 8.22.360 (a)(11) and California Government Code Section 7060 et seq. must comply with the existing certification requirements of Sections 8.22.430 and 822.460.

~~Reg~~ 8.22.360B.4. Notice to Cease Substantial Violation of Material Term of Tenancy.

a. The purpose of a "Notice to Cease" under O.M.C. 8.22.360 is to advise the tenant of specific conduct that, if repeated, not stopped, or not cured, may cause the tenant to be evicted.

b. A Notice to Cease must state:

i. The term of tenancy or Just Cause Ordinance that has been violated;
ii. With specificity the conduct that violates the term of the tenancy;
iii. The date(s) on which the conduct occurred, or if that date is not known to the landlord, the approximate date on which conduct occurred.
iv. If the conduct is repeated, not stopped, or not cured, that the landlord may initiate eviction proceedings against the tenant. If the violation can be cured, the date by which the violation must be cured or a notice of termination of tenancy may be given. The tenant must be given a reasonable opportunity to cure the violation.

c. Service of Notice to Cease.

-i. Service of the notice to cease may be accomplished by any means authorized by California Civil Code § 1946. California Civil Code §1946 permits service by any one of the following means, either:

(a) By delivering a copy to the tenant personally; or

(b) If he or she is absent from his or her place of residence, and from his or her usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his or her place of residence; or

(c) If such place of residence and business can not be ascertained, or a person of suitable age or discretion there can not be found, then by affixing a copy in a

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conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner; or

(d) By sending a copy by certified or registered mail addressed to the other party.

d. Effective Date of Notice to Cease.

i. A Notice to Cease is effective upon receipt if:

(a) The notice is personally delivered to the tenant;

(b) The notice is affixed to the property and a copy is personally delivered to a person residing there.

ii. A Notice to Cease is effective 5 days after the Notice is placed in the mails if:

(a) The notice is left with a person residing in the unit and mailed;

(b) The notice is delivered by certified or registered mail.

e. Notice to Terminate Tenancy. If the conduct described in the notice is repeated, not stopped, or not cured within the cure period, the Landlord may serve a notice pursuant to California Code of Civil Procedure § 1161.

f. Further Interpretation. The notice to cease required by this section is similar to provisions addressing notices of default found in commercial leases. These provisions in commercial leases give the tenant an opportunity to cure a default prior to being served with a notice to cure or quit or to terminate tenancy pursuant to California Code of Civil Procedure § 1161. Landlords and tenants may look to case law interpreting such provisions in commercial leases for further guidance on addressing issues that may arise under this section.

g. A Notice to Cease pursuant to Sections 8.22.360A 2, 4, 5 and 7 must give the tenant at least 7 days after service to cure the violation. If the violation presents an immediate and substantial danger to persons or the property the landlord may give the tenant a notice that the violation must be corrected within 24 hours after service of the notice.

h. Appendix A provides forms of notices to cease that are the preferred forms that landlords may use where notices to cease are required by Section 8.22.360. Nothing herein precludes the use of a different notice to cease form, so long as it provides the information required by law.

~~Regulation~~ 8.22.360B.6.b.

This regulation sets out the preferred language landlords must insert into notices terminating tenancy or notices to cure or quit regarding advice from the Rent Program. As preferred language, the language used is this regulation is "safe harbor" language that, if used by a landlord in applicable notices, cannot be challenged by the tenant as being not in compliance with the O.M.C. 8.22.360 B.6.b. Other language imparting the same information may also be acceptable.

i. The following statement must be included in notices terminating tenancy or notices to cure or quit regarding advice from the Rent Program. "Information regarding evictions is available from the City of Oakland's Rent Program. Parties seeking legal advice concerning evictions should consult with an attorney. The Rent Program is located at 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612, (510) 238-3501, website: www.oaklandnet.com. (as of January 2004)"

8.22.360C.1. ___Determining Rent for a Replacement Unit.

The Just Cause for Eviction Ordinance requires a landlord to offer a replacement unit (if one is vacant) to a tenant being evicted for occupancy by the owner or the owner's relative (O.M.C. 8.22.360 A.9.), or for the rehabilitation of the tenant's unit (O.M.C. 8.22.360 A.10). This regulation addresses how to set the rent for the replacement unit in the event the landlord and tenant are not able to agree on the rent.

a. When the Rent Program Can Determine Rent For The Replacement Unit. The Rent Program can determine the amount of the rent for the vacant unit when the unit is not subject to vacancy decontrol under the Costa Hawkins Rental Housing Act (California Civil Code § 1954.50, et seq.) or is exempt from the Rent Adjustment Ordinance by the ordinance itself or by or Costa-Hawkins. If the landlord contends that the replacement unit was vacancy decontrolled under Costa-Hawkins or is exempt, the landlord must produce the evidence showing that the replacement unit is vacancy decontrolled or exempt. The tenant may then contest the landlord's evidence.

b. Landlord Offering Tenant Replacement Unit. A landlord seeking to evict a tenant for owner/relative occupancy or rehabilitation of the tenant's unit must give the tenant a notice of any units that are or will become available prior to the tenant vacating the tenant's unit. If no vacant units are available the landlord must provide written notice so stating. The notice must include the following:

i. The date the replacement unit will be vacant and available for occupancy;
ii. The landlord's proposed rent for the replacement unit.
iii. The location and size of the replacement unit.
iv. Whether the replacement unit is vacancy decontrolled or exempt.

c. Notice to Tenant of Available Vacant Unit. This notice must be served on the tenant:

i. At the time of giving the notice to terminate tenancy if the unit is vacant or the landlord anticipates that it will become vacant prior to the tenant's vacating.
ii. Within 5 days of the landlord's knowledge that a unit may be vacated.

d. Inspection of Vacant Units. The landlord must make reasonable efforts to make any vacant units available for inspection by the tenant.

e. Criteria for Setting Rent for Replacement Unit. If the landlord does not prove the vacant unit is vacancy decontrolled or exempt, then the rent for the replacement unit will be set according to the following criteria:

i. Rent for the tenant's current unit.
ii. The condition of the tenant's unit versus the replacement unit.
iii. The size and number and types of rooms.
iv. Other amenities, such as view, floor, location, furnishings.

f. Petitions For Determining Rent For Replacement Unit.

i. Petitioning. A tenant being evicted for occupancy by the landlord or the landlord's relative, or for major repair of the unit may contest a landlord's proposed rent for a replacement unit (including a determination of the exempt or vacancy decontrol status of the replacement unit), by filing a petition on a form prescribed by the Rent Adjustment Program.

ii. Time for Petitioning. The tenant may file the petition prior to occupying the replacement unit, but must file the petition not later than 60 days after the tenant first starts to occupy the available vacant unit.

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iii. Priority. The Rent Program will make efforts to prioritize the hearing on the petition.

iv. Landlord Response. To expedite the tenant's petition, no formal response from the landlord will be required until the hearing.

v. Conduct of Hearings. Rent Program hearings contesting the rent for an available vacant unit are conducted in accordance with the procedures set forth in Rent Adjustment Program Regulation 8.22.090.

vi. Appeals. The hearing officer's decision may be appealed to the Rent Board within the time frame set forth in O.M.C. 8.22.120 and in accordance with Rent Adjustment Program Regulations. Rent Program staff may assign the appeal to a panel of the Board to expedite it.

8.22.370

~~O.M.C.~~ 8.22.370A. Remedies for violation of eviction controls.

1. This regulation addresses the standard that a tenant who prevails in an unlawful detainer action must meet in order to recover against the landlord who brought the unlawful detainer action. In order to recover actual damages against the landlord, the tenant must show that the landlord did not have a reasonable basis for bringing the unlawful detainer action. A landlord lacks a reasonable basis for bringing an unlawful detainer when the landlord's dominant motive for bringing the eviction was not the stated reason for bringing the eviction or the landlord lacked good faith in bringing the unlawful detainer. See O.M.C. 8.22.350 B2. The mere fact that the landlord did not prevail is not sufficient for recovery of damages. In order to recover punitive damages in such an action, the tenant must prove, in accordance with California Civil Code § 3294 "by clear and convincing evidence that the [landlord] has been guilty of oppression, fraud, or malice."

2. This regulation addresses the liability standards when someone assists a landlord who wrongfully endeavors to recover possession or recovers possession of a rental unit covered by the Just Cause Ordinance. For liability to attach to a person assisting a landlord acting wrongfully, the person knew or, with the exercise of reasonable diligence, should have known that the landlord's conduct was wrongful.

3. This regulation addresses the circumstance where a landlord pursues an eviction based on a notice from the City of Oakland informing the landlord that the tenant is alleged to be engaging in, permitting, or using the premises to further certain illegal activities. When a landlord pursues evicting a tenant based on such a notice from the City, the landlord is deemed to be acting in good faith in bringing the eviction action and is not engaged in wrongful conduct except under the following circumstances:

a. The Owner knew or should have known that that there was contrary or exculpatory evidence tending to show that the City's evidence is not sufficient to warrant the Tenant's eviction;

b. The City did not consider the additional evidence prior to issuing its notice to the Owner; and

c. The Owner did not seek reconsideration of the City's issuing the notice for the Tenant's eviction pursuant to O.M.C 8.23.100 F.2.e.ii based on the additional evidence.

4. This regulation addresses the circumstance where a landlord brings an unlawful detainer to recover possession for owner/relative occupancy and the tenant defends the eviction based on protected status under O.M.C. 8.22.360 A.9. The landlord's conduct in bringing the unlawful detainer is deemed to be acting in good faith in bringing the eviction action and is not engaged in wrongful conduct under the following circumstances:

a. The tenant had not previously given a notice claiming protected status sufficiently in advance of the landlord's serving the tenant with the unlawful detainer complaint for the landlord to have contested the tenant's protect status claim with the Rent Program.

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b. The tenant claims protected status as a defense to the unlawful detainer;

c. The landlord contests the tenant's protected status claim reasonably and in good faith;

d. The landlord fails to dismiss the case within a reasonable time after the landlord has had the opportunity for full discovery of the facts concerning the tenant's protected status claim and the tenant's protected status claim is supported by clear and convincing evidence.

~~Reg.~~ 8.22.380 Non-Waiverability.

Nothing in the Ordinance is intended to prevent or interfere with parties entering into knowing, voluntary agreements for valuable consideration to settle disputes regarding possession of rental units. Any provision in a rental agreement or any amendment thereto which waives or modifies any provision of the Ordinance is contrary to public policy and void.

8.22.340 - Definitions

"Eviction" includes endeavoring to recover possession, issuing a notice terminating tenancy, or recovering possession of a rental unit.

"Endeavoring to recover possession" of a rental unit includes, but is not limited to, any verbal or written communication that would cause a reasonable tenant to believe that the landlord will bring a formal notice or action to recover possession of the rental unit, or any conduct that would cause a reasonable tenant to be constructively evicted from a rental unit.

8.22.360B.8 Owner Certifications For Certain Evictions

a. Scope of Regulations: These regulations in this section are designed to provide reporting requirements to better assure compliance with Sections 8.22.360A.8, A.9, and A.10 of the Oakland Municipal Code.

b. Certifications to Rent Program required for eviction or tenant vacating O.M.C. Sections 8.22.360A.8 or A.9.

i. Initial certification following vacancy by tenant. An Owner who evicts a tenant pursuant to O.M.C. Sections 8.22.360 A.8 or A.9 or where a tenant vacates following a notice or other communication stating the Landlord's intent to seek recovery of possession of the unit under any of these O.M.C. Sections must submit to the Rent Program a completed certification within thirty (30) days of the tenant's vacation of the unit.

ii. Certification following occupancy. Within 30 days of the Owner or the Owner's qualifying relative's commencing occupancy of the unit as a principal residence, the Owner must file a certificate attesting to the occupancy in addition to any evidence of occupancy as required by the certificate.

iii. Continued occupancy certification. Following an Owner or qualifying relative occupying a unit pursuant to Sections 8.22.360A.9 the Owner must submit a certification that the Owner or the Owner's qualifying relative continues to reside or not reside in the unit as a principal residence. The Owner must attach proof of residence in the unit, a copy of a valid California Driver's License or other government-issued form of identification. This certification must be provided every twelve (12) months from the initial move-in date for thirty-six (36) months following that move-in date.

c. Certifications to Rent Program required for eviction or tenant vacating pursuant to O.M.C. Section 8.22.360A.10.

i. Initial certification following vacancy by tenant. An Owner who evicts a tenant pursuant to Section 8.22.360A.10 or where a tenant vacates following a notice or other communication

stating the Landlord's intent to seek recovery of possession of the unit under this O.M.C. Section must submit a certification within thirty (30) days following the Tenant's vacation of the unit. This certification must include the amount of the Tenant's rent on the date the Tenant vacated.

ii. Completion of work. Within thirty (30) days following completion of the work that required the Tenant to vacate, the Owner must file a certification that the Owner reoffered the unit to the Tenant.

d. Certifications upon re-rental.

i. A landlord re-renting a unit to the former Tenant or a new Tenant following an eviction or tenant voluntarily vacating under O.M.C. Sections 8.22.360A.8, A.9, and A.10 must certify the Rent amount within thirty (30) days of occupancy.

e. Forms and information required as part of certifications.

i. All certifications must be on forms developed by Rent Program Staff. Certifications not on these forms will not be accepted.

ii. The certifications shall be filed under penalty of perjury.

iii. Staff is authorized to request supplemental information consistent with the purpose of each of these certifications.

f. Notification of failure to file.

i. Staff may, but is not required to, notify an Owner that a required filing was not made.

ii. Staff's not providing notification to an Owner of the Owner's failure to file does not excuse the Owner from filing, nor from any penalties from failing to file.

g. Notification to new Owner and filing change of Ownership.

i. Whenever a unit or the property in which the unit is located changes ownership, the former Owner is required to notify the new Owner of the certification requirements.

ii. Whenever a unit or the property in which the unit is located changes ownership, the former Owner is required to notify the Rent Program of the change in ownership and the contact information for the new Owner.

h. Penalties for Failing to File Certification.

i. Owners who timely fail to file any certification or notice may be assessed administrative citation pursuant to O.M.C Chap. 1.12.

ii. An Owner who fails to timely file on more than one occasion or who fails to file after notice, may be assessed a civil penalty pursuant to O.M.C Chap. 1.08.

iii. The foregoing remedies are cumulative and not exclusive of any other remedies the City or an affected Tenant may have.

RENT ADJUSTMENT BOARD REGULATIONS
APPENDIX A
EXCERPTS FROM OAKLAND CITY COUNCIL RESOLUTION NO. 71518
(SUPERSEDED)
RESIDENTIAL RENT ARBITRATION BOARD RULES AND REGULATIONS SECTIONS
2.0 AND 10.0 (all other section omitted, pages 1, 5-13, 21 omitted)

2.0 DEFINITIONS

2.1 **Base Rent:** The monthly rental rate before the latest proposed increase
2.2 **Current Rent**: To keep current means that the tenant is paid up to date on rental payments at the base rental rate.
2.3 **Landlord:** For the purpose of these rules, the term "landlord" will be synonymous with owner or lessor of real property that is leased or rented to another and the representative, agent, or successor of such owner or lessor.
2.4 **Manager**: A manager is a paid (either salary or a reduced rental rate) representative of the landlord.
2.5 **Petitioner:** A petitioner is the party (landlord or tenant) who first files an action under the ordinance.
2.6 **Respondent**: A respondent is the party (landlord or tenant) who responds to the petitioner.
2.7 **Priority 1 Condition**: The City of Oakland Housing Code Enforcement Inspectors determine housing conditions(s)/repair(s) as a "Priority 1" condition when housing condition (s)/repair(s) are identified as a major hazardous or inhabitable condition(s). A "Priority 1" condition must be abated immediately by correction, removal or disconnection. A Notice to Abate will always be issued.
2.8 **Priority 2 Condition**: The City of Oakland Housing Code Enforcement Inspectors determine housing condition(s)/repair(s) as a Priority condition when housing condition (s)/repair(s) are identified as major hazardous or inhabitable condition(s) that may be deferred by an agreement with the Housing Code enforcement Section.

2.9 The following describe five major hazard conditions classified as Priorities 1 & 2:

I. MECHANICAL

Priority 1
A. Unvented heaters
B. No combustion chamber, fire or vent hazard
C. Water heaters in sleeping rooms, bathrooms
D. Open gas lines, open flame heaters

Priority 2
A. Damaged gas appliance
B. Flame impingement, soot
C. Crimped gas line, rubber gas connections
D. Dampers in gas heater vent pipes, no separation or clearance, through or near combustible surfaces
E. Water heater on garage floor

II. PLUMBING

Priority 1
A. Sewage overflow on surface

Priority 2
A. Open sewers or waste lines
B. Unsanitary, inoperative fixtures; leaking toilets
C. T & P systems, newly or improperly installed

ATTACHMENT E

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III. ELECTRICAL

Priority 1

A. Bare wiring, open splices, unprotected knife switches, exposed energized electrical parts
B. Evidence of overheated conductors including extension cords
C. Extension cords under rugs

Priority 2

A. Stapled cord wiring; extension cords
B. Open junction boxes, switches, outlets
C. Over-fused circuits
D. Improperly added wiring

IV. STRUCTURAL

Priority 1

A. Absence of handrail, loose, weakly-supported handrail
B. Broken glass, posing potential immediate injury
C. Hazardous stairs
D. Collapsing structural members

Priority 2

A. Garage wall separation
B. Uneven walks, floors, tripping hazards
C. Loose or insufficient supporting structural members
D. Cracked glass, leaky roofs, missing doors (exterior) and windows
E. Exit, egress requirements; fire safety

Note: Floor separation and stairway enclosures in multi-story handled on a case basis.

V. OTHER

Priority 1

A. Wet garbage
B. Open wells or unattended swimming pools
C. Abandoned refrigerators
D. Items considered by field person to be immediate hazards

Priority 2

A. Broken-down fences or retaining walls
B. High, dry weeds, next to combustible surfaces
C. Significant quantity of debris
D. Abandoned vehicles

Questions concerning permits, repairs and compliance schedules should be referred to code enforcement office of the City of Oakland -- (510) 238-3381.

10.0 JUSTIFICATION FOR ADDITIONAL RENT INCREASES

10.1 Increased Housing Service Costs: Increased Housing Service Costs are services provided by the landlord related to the use or occupancy of a rental unit, including, but not limited to, insurance, repairs, replacement maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service and employee services. Any repair cost that is the result of deferred maintenance, as defined in Appendix A, Section 10.2.2, cannot be considered a repair for calculation of Increased Housing Service Costs.

10.1.1 In determining whether there has been an increase in housing service costs, consider the annual operating expenses for the previous two years. (For example: if the rent increase is proposed in

1993, the difference in housing service costs between 1991 and 1992 will be considered.) The average housing service cost percentage (%) increase per month per unit shall be derived by dividing this difference by twelve (12) months, then by the number of units in the building and finally by the average gross operating income per month per unit (which is determined by dividing the gross monthly operating income by the number of units). Once the percentage increase is determined the percentage amount must exceed the allowable rental increase deemed by City Council. The total determined percentage amount is the actual percentage amount allowed for a rental increase.

10.1.2 Any major or unusual housing service costs (i.e., a major repair which does not occur every year) shall be considered a capital improvement. However, any repair cost that is not eligible as a capital improvement because it is deferred maintenance pursuant to Appendix A, Section 10.2.2, may not be considered a repair for purposes of calculating Increased Housing Service Costs.

10.1.3 Any item which has a useful life of one year or less, or which is not considered to be a capital improvement, will be considered a housing service cost (i.e., maintenance and repair).

10.1.4 Individual housing service cost items will not be considered for special consideration. For example, PG&E increased costs will not be considered separately from other housing service costs.

10.1.5 Documentation (i.e., bills, receipts, and/or canceled checks) must be presented for all costs which are being used for justification of the proposed rent increase.

10.1.6 Landlords are allowed up to 8% of the gross operating income of unspecified expenses (i.e., maintenance, repairs, legal and management fees, etc.) under housing service costs unless verified documentation in the form of receipts and/or canceled checks justify a greater percentage.

10.1.7 If a landlord chooses to use 8% of his/her income for unspecified expenses, it must be applied to both years being considered under housing service cost (for example, 8% cannot be applied to 1980 and not 1981).

10.1.8 A decrease in housing service costs (i.e., any items originally included as housing service costs such as water, garbage, etc.) is considered to be an increase in rent and will be calculated as such (i.e., the average cost of the service eliminated will be considered as a percentage of the rent). If a landlord adds service (i.e., cable TV, etc.) without increasing rent or covers costs previously paid by a tenant, this is considered to be a rent decrease and will be calculated as such.

10.1.9 The transfer of utility costs to the tenant by the landlord is not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs .

10.1.10 When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of PG&E. The best way to remedy the bill is to install individual meters. If this is too expensive, then the property owner should pay the utility bill himself/herself and build the cost into the rent.

10.2 Capital Improvement Costs: Capital Improvement Costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements primarily must benefit the tenant rather than the landlord.

10.2.1 Credit for capital improvements will only be given for those improvements which have been completed and paid for within the twenty-four (24) month period prior to the date ~~of the proposed rent increase~~the petition for a rent increase based on the improvements is filed.

10.2.2 Eligible capital improvements include, but are not limited to, the following items:

1. Those improvements which primarily benefit the tenant rather than the landlord. (For example, the remodeling of a lobby would be eligible as a capital improvement, while the construction of a sign advertising the rental complex would not be eligible). However, the complete painting of the exterior of a building, and the complete interior painting of internal dwelling units are eligible capital improvement costs.

2. In order for equipment to be eligible as a capital improvement cost, such equipment must be permanently fixed in place or relatively immobile (for example, draperies, blinds, carpet, sinks, bathtubs, stoves, refrigerators, and kitchen cabinets are eligible capital improvements. Hot plates, toasters, throw rugs, and hibachis would not be eligible as capital improvements).

3. Except as set forth in subsection 4, repairs completed in order to comply with the Oakland Housing Code may be considered capital improvements.

4. The following may not be considered as capital improvements:

a. Repairs for code violations may not be considered capital improvements if the Tenant proves the following:

i. That a repair was performed to correct a Priority 1 or 2 Condition that was not created by the Tenant, which may be demonstrated by any of the following:

(a) the condition was cited by a City Building Services Inspector as a Priority 1 or 2 Condition;

(b) the Tenant produces factual evidence to show that had the property or unit been inspected by a City Building Services Inspector, the Inspector would have determined the condition to be a Priority 1 or 2 Condition, but the Hearing Officer may determine that in order to decide if a condition is a Priority 1 or 2 Condition expert testimony is required, in which case the Hearing Officer may require such testimony.

ii. That the tenant

(a) informed the Owner of the condition in writing;

(b) otherwise proves that the landlord knew of the conditions, or

(c) proves that there were exceptional circumstances that prohibited the tenant from submitting needed repairs in writing; and

iii. That the Owner failed to repair the condition within a reasonable time after the Tenant informed Owner of the condition or the Owner otherwise knew of the condition.

iv. A reasonable time is determined as follows:

(a) If the condition was cited by a City Building Services Inspector and the Inspector required the repairs to be performed within a particular time frame, or any extension thereof, the time frame set out by the Inspector is deemed a reasonable time; or

(b) Ninety (90) days after the Owner received notice of the condition or otherwise learned of the condition is presumed a reasonable time unless either of the following apply:

(1) the violation remained unabated for ninety (90) days after the date of notice to the Owner and the Owner demonstrates timely, good faith efforts to correct the violation within the ninety the (90) days but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause; or

(2) the Tenant demonstrated that the violation was an immediate threat to the health and safety of occupants of the property, [in which case] fifteen (15) business days is presumed a reasonable time unless:

(i) the Tenant proves a shorter time is reasonable based on the hazardous nature of the condition, and the ease of correction, or

(ii) the Owner demonstrates timely, good faith efforts to correct the violation within the fifteen (15) business days after notice but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause.

(c) If an Owner is required to get a building or other City permit to perform the work, or is required to get approval from a government agency before commencing work on the premises, the Owner's attempt to get the required permit or approval within the timelines set out in (i) and (ii) above shall be deemed evidence of good faith and the Owner shall not be penalized for delays attributable to the action of the approving government agency.

b. Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.

i. Among the factors that may be considered in determining if the landlord knew or should reasonably have known of the problem that caused the damage:

(a) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?

(b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?

(c) Did the landlord conduct routine inspections of the property?

(d) Did the tenant permit the landlord to inspect the interior of the unit?

ii. Examples:

(a) A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak causes ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the repair. In this case, replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.

(b) A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord or landlord's agents either had not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition, and tenant complaints.

iii. Burden of Proof

(a) The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair.

(b) Once a tenant meets the burden to prove the landlord knew or should have reasonably known, the burden shifts to the landlord to prove that the landlord exercised reasonable diligence in making timely repairs after the landlord knew or should have known of the problem.

c. "Gold-plating" or "Over-improvements"

i. Examples:

(a) A landlord replaces a Kenmore stove with a Wolf range. In such a case, the landlord may only pass on the cost of the substantially equivalent replacement.

(b) A landlord replaces a standard bathtub with a jacuzzi bathtub. In such a case, the landlord may only pass on the cost of the substantially equivalent replacement.

ii. Burden of Proof

(a)The tenant has the initial burden to prove that the improvement is greater in character or quality than existing improvements.

(b) Once a tenant meets the burden to prove that the improvement is greater in character or quality than existing improvements, the burden shifts to the landlord to prove that the tenant approved the improvement in writing, the improvement brought the unit up to current building or housing codes, or the improvement did not cost more than a substantially equivalent replacement.

~~c~~d. Use of a landlord's personal appliances, furniture, etc., or those items inherited or borrowed are not eligible for consideration as capital improvements.

~~d~~e. Normal routine maintenance and repair of the rental until and the building is not a capital improvement cost, but a housing service cost. (For example: while the replacement of old screens with new screens would be a capital improvement).

10.2.3 Rent Increases for Capital Improvement costs are calculated according to the following rules:

1. For mixed-use structures, only the percent of residential square footage will be applied in the calculations. The same principle shall apply to landlord-occupied dwellings (i.e., exclusion of landlord's unit).

2. Items defined as capital improvements ~~will be given a useful life period of five (5) years or sixty (60) months~~ shall be amortized over the useful life of the improvement as set out in the Amortization Schedule attached as Exhibit 1 to these regulations and the total costs shall be amortized over that time period, unless the Rent increase using this amortization would excess ten percent (10%)

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of the existing Rent for a particular unit. Whenever a Capital Improvement Rent increase alone or with any other Rent increases noticed at the same time for a particular Unit exceeds ten percent (10%) or thirty percent (30%) in five years, if the Owner elects to recover the portion of the Capital Improvement that causes the Rent Increase to exceed ten percent (10%) or thirty percent (30%), the excess can only be recovered by extending the Capital Improvement's amortization period in yearly increments sufficient to cover the excess, and complying with any requirements to notice the Tenant of the extended amortization period with the initial Capital Improvement increase. When a Rent increase that includes a Capital Improvement increase does not exceed ten percent (10%) or thirty percent (30%), the amortization period remains five (5) years. The dollar amount of the rent increase justified by Capital Improvements shall be removed from the allowable rent in the sixty-first month or at the end of the extended amortization period.

3. A monthly Rent increase for a Capital Improvement is determined as follows:

a. A maximum of seventy percent (70%) of the total cost for the Capital Improvement (including ~~financing~~imputed interest calculated pursuant to the formula set forth in Regulation 8.22.020) may be passed through to the Tenant;

b. The amount of the Capital Improvement calculated in a. above is then divided equally among the Units that benefit from the Capital Improvement;

c. The monthly Rent increase is the amount of the Capital Improvement that may be passed through as determined above, divided by the number of months the Capital Improvement is amortized over for the particular Unit.

4. If a unit is occupied by an agent of the landlord, this unit must be included when determining the average cost per unit. (For example, if a building has ten (10) units, and one is occupied by a nonpaying manager, any capital improvement would have to divided by ten (10), not nine (9), in determining the average rent increase). This policy applies to all calculations in the financial statement which involve average per unit figures.

5. Undocumented labor costs provided by the landlord cannot exceed 25% of the cost of materials.

6. Equipment otherwise eligible as a Capital Improvement will not be considered if a "use fee" is charged (i.e., coin-operated washers and dryers).

~~7. If the Capital Improvements are finished with a loan to make capital improvements which term exceeds five (5) years (sixty (60) months), the following formula for the allowable increase is: monthly loan payment divided by number of units.~~

7<u>8</u>. Where a landlord is reimbursed for Capital Improvements (i.e., insurance, court-awarded damages, subsidies, etc.), this reimbursement must be deducted from such Capital Improvements before costs are amortized and allocated among the units.

10.2.4 In some cases, it is difficult to separate costs between rental units; common vs. rental areas; commercial vs. residential areas; or housing service costs vs. Capital Improvements. In these cases, the Hearing Officer will make a determination on a case-by-case basis.

10.2.5 Interest on Failure to Reduce Capital Improvement Increase After End of Amortization Period.

1. If an Owner fails to reduce a Capital Improvement Rent increase in the month following the end of the amortization period for such improvement and the Tenant pays any portion of such Rent increase after the end of the amortization period, the Tenant may recover interest on the amount overpaid.

2. The applicable rate of interest for overpaid Capital Improvements shall be the rate specified by law for judgments pursuant to California Constitution, Article XV and any legislation adopted there to and shall be calculated at simple interest.

10.3 Uninsured Repair Costs: Uninsured Repair Costs are costs for work done by a landlord or tenant to a rental unit or to the common area of the property or structure containing a rental unit which is performed to secure compliance with any state or local law as to repair damage resulting from, fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds

10.3.1 Uninsured Repair Costs are those costs incurred as a result of natural causes and casualty claims; it does not include improvement work or code correction work. Improvements work or code correction work will be considered either capital improvements or housing services, depending on the nature of the improvement.

10.3.2 Increases justified by Uninsured Repair Costs will be calculated as Capital Improvement costs.

10.4 Debt Service Costs: Debt Service Costs are the monthly principal and interest payments on the deed(s) of trust secured by the property.

Debt Service for newly-acquired units has been eliminated as a justification for new rent increases in excess of the CPI, effective April 1, 2014. This restriction will not apply to any property on which the rental property owner can demonstrate that the owner made a bona-fide, arms-length offer to purchase on or before April 1, 2014, the effective date of this amendment. The regulations previously in effect regarding debt service are attached to these Regulations as Exhibit 2.

~~10.4.1 An increase in rent based on debt service costs will only be considered in those cases where the total income is insufficient to cover the combined housing service and debt service costs after a rental increase as specified in Section 5 of the Ordinance. The maximum increase allowed under this formula shall be that increase that results in a rental income equal to the total housing service costs plus the allowable debt service costs.~~

~~10.4.2 No more than 95% of the eligible debt service can be passed on to tenants. The eligible debt service is the actual principal and interest.~~

~~10.4.3 If the property has been owned by the current landlord and the immediate previous landlord for a combined period of less than twelve (12) months, no consideration will be given for debt service.~~

~~10.4.4 If a property has changed title through probate and has been sold to a new owner, debt service will be allowed. However, if the property has changed title and is inherited by a family member, there will be no consideration for debt service unless due to hardship.~~

~~10.4.5 If the rents have been raised prior to a new landlord taking title, or if rents have been raised in excess of the percentage allowed by the Ordinance in previous 12-month periods without tenants having been notified pursuant to Section 5(d) of the Ordinance, the debt service will be calculated as follows:~~

~~1. Base rents will be considered as the rents in effect prior to the first rent increase in the immediate previous 12-month period.~~

~~2. The new landlord's housing service costs and debt service will be considered. The negative cash flow will be calculated by deducting the sum of the housing service costs plus 95% of the debt service from the adjusted operating income amount.~~

~~3. The percentage of rent increase justified will then be applied to the base rents (i.e., the rent prior to the first rent increase in the 12-month period, as allowed by Section 5 of the Ordinance).~~

~~10.4.6 Refinancing and second mortgages, except those second mortgages obtained in connection with the acquisition of the property, will not be considered as a basis for a rent increase under the debt service category. Notwithstanding this provision, such refinancing or second mortgage will be considered as basis for a rent increase when the equity derived from such refinancing or second mortgage is invested in the building under consideration in a manner which directly benefits the tenant (i.e., capital improvements or housing services such as maintenance and repairs) or if the refinancing was a requirement of the original purchase.~~

~~10.4.7 As in housing service costs, a new landlord is allowed up to 8% of the gross operating income for unspecified expenses.~~

10.5 Rent History/"Banking"

10.5.1 If a landlord chooses to increase rents less than the annual CPI Adjustment [formerly Annual Permissible Increase] permitted by the Ordinance, any remaining CPI Rent Adjustment may be carried over to succeeding twelve (12) month periods ("Banked"). However, the total of CPI Adjustments imposed in any one Rent increase, including the current CPI Rent Adjustment, may not exceed three times the allowable CPI Rent Adjustment on the effective date of the Rent Increase notice.

10.5.2 Banked CPI Rent Adjustments may be used together with other Rent justifications, except Increased Housing Service Costs, Debt Service and Fair Return, because these justifications replace the current year's CPI increase.

10.5.3 In no event may any banked CPI Rent Adjustment be implemented more than ten years after it accrues.

10.6 "Fair Return"

10.6.1 Owners are entitled to the opportunity to receive a fair return. Ordinarily, a fair return will be measured by maintaining the net operating income (NOI) produced by the property in a base year, subject to CPI related adjustments. Permissible rent increases will be adjusted upon a showing that the NOI in the comparison year is not equal to the base year NOI.

10.6.2 Maintenance of Net Operating Income (MNOI) Calculations

1. The base year shall be the calendar year 2014.
   a. New owners are expected to obtain relevant records from prior owners.
   b. Hearing officers are authorized to use a different base date, however, if an owner can demonstrate that relevant records were unavailable (e.g., in a

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foreclosure sale) or that use of base year 2014 will otherwise result in injustice.

2. The NOI for a property shall be the gross income less the following: property taxes, housing service costs, and the amortized cost of capital improvements. Gross income shall be the total of gross rents lawfully collectible from a property at 100% occupancy, plus any other consideration received or receivable for, or in connection with, the use or occupancy of rental units and housing services. Gross rents collectible shall include the imputed rental value of owner-occupied units.

3. When an expense amount for a particular year is not a reasonable projection of ongoing or future expenditures for that item, said expense shall be averaged with the expense level for that item for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses.

10.6.3 Owners may present methodologies alternative to MNOI for assessing their fair return if they believe that an MNOI analysis will not adequately address the fair return considerations in their case. To pursue an alternative methodology, owners must first show that they cannot get a fair return under an MNOI analysis. They must specifically state in the petition the factual and legal bases for the claim, including any calculations.

Exhibit 1
Amortization Schedule

Exhibit 1

Amortization Schedule

Example Capital Improvement Amortization Schedule (Based upon City of Santa Monica)

Improvement	Years
Air Conditioners	10
Appliances	
Refrigerator	5
Stove	5
Garbage Disposal	5
Water Heater	5
Dishwasher	5
Microwave Oven	5
Washer/Dryer	5
Fans	5
Cabinets	10
Carpentry	10
Counters	10
Doors	10
Knobs	5
Screen Doors	5
Earthquake Expenses	
Architectural and Engineering Fees	5
Emergency Services	
Clean Up	5
Fencing and Security	5
Management	5

Improvement	Years
Heating	
Central	10
Gas	10
Electric	10
Solar	10
Insulation	10
Landscaping	
Planting	10
Sprinklers	10
Tree Replacement	10
Lighting	
Interior	10
Exterior	10
Locks	5
Mailboxes	10
Meters	10
Plumbing	
Fixtures	10
Pipe Replacement	10
Re-Pipe Entire Building	20
Shower Doors	5
Painting	

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Tenant Assistance	5
Structural Repair and Retrofitting	
Foundation Repair	10
Foundation Replacement	20
Foundation Bolting	20
Iron or Steel Work	20
Masonry-Chimney Repair	20
Shear Wall Installation	10
Electrical Wiring	10
Elevator	20
Fencing and Security	
Chain	10
Block	10
Wood	10
Fire Alarm System	10
Fire Sprinkler System	20
Fire Escape	10
Flooring/Floor Covering	
Hardwood	10
Tile and Linoleum	5
Carpet	5
Carpet Pad	5
Subfloor	10
Fumigation	
Tenting	5
Furniture	5
Interior	5
Exterior	5
Paving	
Asphalt	10
Cement	10
Decking	10
Plastering	10
Pumps	
Sump	10
Railing	10
Roofing	
Shingle/Asphalt	10
Built-Up, Tar and Gravel	10
Tile and Linoleum	10
Gutters/Downspots	10
Security	
Entry Telephone Intercom	10
Gates/Doors	10
Fencing	10
Alarms	10
Sidewalks/Walkways	10
Stairs	10
Stucco	10
Tilework	10
Wallpaper	5
Window Coverings	5

Automatic Garage Door Openers	10	Drapes	5
Gates		Shades	5
Chain Link	10	Screens	5
Wrought Iron	10	Awnings	5
Wood	10	Blinds/Miniblinds	5
Glass		Shutters	5
Windows	5		
Doors	5		
Mirrors	5		

Exhibit 2
Debt Service: Old Regulations

10.4 Debt Service Costs: Debt Service Costs are the monthly principal and interest payments on the deed(s) of trust secured by the property.

10.4.1 An increase in rent based on debt service costs will only be considered in those cases where the total income is insufficient to cover the combined housing service and debt service costs after a rental increase as specified in Section 5 of the Ordinance. The maximum increase allowed under this formula shall be that increase that results in a rental income equal to the total housing service costs plus the allowable debt service costs.

10.4.2 No more than 95% of the eligible debt service can be passed on to tenants. The eligible debt service is the actual principal and interest.

10.4.3 If the property has been owned by the current landlord and the immediate previous landlord for a combined period of less than twelve (12) months, no consideration will be given for debt service.

10.4.4 If a property has changed title through probate and has been sold to a new owner, debt service will be allowed. However, if the property has changed title and is inherited by a family member, there will be no consideration for debt service unless due to hardship.

10.4.5 If the rents have been raised prior to a new landlord taking title, or if rents have been raised in excess of the percentage allowed by the Ordinance in previous 12- month periods without tenants having been notified pursuant to Section 5(d) of the Ordinance, the debt service will be calculated as follows:

1. Base rents will be considered as the rents in effect prior to the first rent increase in the immediate previous 12-month period.
2. The new landlord's housing service costs and debt service will be considered. The negative cash flow will be calculated by deducting the sum of the housing service costs plus 95% of the debt service from the adjusted operating income amount.
3. The percentage of rent increase justified will then be applied to the base rents (i.e., the rent prior to the first rent increase in the 12-month period, as allowed by Section 5 of the Ordinance).

10.4.6 Refinancing and second mortgages, except those second mortgages obtained in connection with the acquisition of the property, will not be considered as a basis for a rent increase under the debt service category. Notwithstanding this provision, such refinancing or second mortgage will be considered as basis for a rent increase when the equity derived from such refinancing or second mortgage is invested in the building under consideration in a manner which directly benefits the tenant (i.e., capital improvements or housing services such as maintenance and repairs) or if the refinancing was a requirement of the original purchase.

10.4.7 As in housing service costs, a new landlord is allowed up to 8% of the gross operating income for unspecified expenses.

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