

O a k l a n d T e n a n t s U n i o n
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8 December 2016

OTU Comments (Partial) on Proposed RAP Regulations
[An extensive review of RAP Ordinance & Regulations is provided under separate cover]

Oakland Tenants Union (OTU) welcomes the opportunity to review the proposed new Regulations prior to their approval by the Rent Board and adoption by City Council. These comments represent a sincere effort by OTU to fully understand the intent of the proposals, and to be better able to communicate information about recent changes to the Tenant community of Oakland. Moreover, OTU stands ready to provide further clarifications, if needed, or to answer any questions board members may have.

While the adopted revisions to the Rent Ordinance (and those embodied in Ballot Measure "JJ") make significant improvements to the present rent law, OTU strongly urges that at least the following revisions be made to the proposed Regulations:

8.22.020 Definitions

1. (Page 000147) In the definition of "Capital Improvements," the phrase "..., **plus** imputed interest ..." should be changed to "..., **including** imputed interest ...," as the 70% pass-through limitation also applies to imputed interest
2. (Page 000148) As proposed, the computation of "imputed interest" states: "... plus an additional one and one-half percent ..." Why is an additional 1.5% added to the amount of interest being passed-through to the Tenant ?

8.22.090. Petition and Response Filing Procedures

3. (Page 000155 – B.) A new item should be added to permit Tenants to file a petition against an Owner's automatic CPI rent increase that includes alleged "banking," if Tenant has proof that the alleged "banking" is not warranted or justified.
4. (Page 000156 – C.) A new item should be added to the requirements (a., b., c., d., e.) for an "Owner's petition" to certify: "Proof that the Owner has paid or satisfied all administrative and/or civil penalties (if any)."

8.22.110 Hearing Procedure

5. (Page 000160 -- D) As presently proposed: "... other than speakers of... English must provide their own translators." This statement differs from the actual language of the Ordinance (Page 000197-98 ... O Sect 8.22.185, A.), which states that, services will be made available, upon request, "subject to the City's ability to provide such services."

8.22.120 Appeals

6. (Page 000162 – (new A., 4)) Currently, as specified in Section 8.22.110, F., if a Hearing decision results in large over- or under-payment by Tenant or Owner, the Hearing Officer is authorized to designate the method of refund or repayment in the Hearing Decision. It can also occur that large over- or under-payments may result from

"Appeal Decisions," however, in the case of an Appeal Decision, there is no procedure for designating a schedule for refund or repayment. A new item should be inserted at Section 8.22.120, A., (4) to permit such an "Appeal Decision" to be remanded to the Hearing Officer for the purpose of specifying a refund or repayment plan.

7. (Page 000164 – F., 5.) As proposed, the "opposing party is restricted to serving new documentary evidence ONLY 5 days before the Appeal Hearing." Presently 7 days is permitted. OTU urges that "7 days" for submittal of documentary evidence is reasonable, has worked well, and should not be reduced to 5 days.

8. (Page 000164 – G., 2., c.) Because many current "draft decisions" have required changes when returned for Rent Board confirmation, OTU recommends a procedure that permits the Rent Board chair to sign or initial the draft decision, after allowing 3 days for Board members to communicate any noticed corrections to the chair.

8.22.500 Rent Program Service Fee

9. (Page 000173 – B.) OTU strongly opposes the change to define the "Rental Service Fee" as rent. OTU urges that the "Rental Service Fee" remain a "debt to the Owner." If the "fee" is defined as rent, then a tenant could be evicted for being late, withholding, or non-payment of the "fee amount," which is a very small sum. The Owner always has the option of deducting the fee from Tenant's rent deposit.

Additional Issues of Concern

Alternate Members of Rent Board

Terms and Holdover. As changed and as presently worded, this section could permit an appointee to serve a total of 16 years on the Rent Board (2-3 year terms as member, plus 1 member holdover year + 2-3 year terms as alternate, plus 1 alternate holdover year for a total of 14 years. This far exceeds any other citizen board or commission. OTU does not believe that City Council intended to create 14 year terms for the Rent Board. Somehow, without a vote, an addition to reduce the excessive possible terms was left out of the final wording. OTU strongly urges the Rent Board to deliberate this provision, and to submit a more reasonable proposal to City Council as soon as the Board's schedule permits.

Appeal Panel Decisions

OTU is also concerned that **Appeal Panel decisions** are not publically recorded. OTU strongly urges that Rent Board minutes add a new section, titled: "Decisions of Appeal Panels." As this section would only notice that Appeal Hearings had been held, and decisions issued, no consent or discussion by the Rent Board would be involved, however a needed public record would be created.

Relocation Payments for Evictions that are "Not the Fault of the Tenant"

OTU is disappointed that a section on relocation compensation for "not the fault of tenant" evictions (the present "Ellis Act" schedule) -- which were a significant part of council deliberations -- were removed from the Ballot Measure during the final vote on the intent that the section would be transferred to the new Council Ordinance. In the final wording, however, the section on relocation compensation mistakenly does not appear. This omission leaves a big "gap" in Tenant protection that is greatly harmful. OTU strongly urges the Rent Board to schedule this deliberation, and to recommend the Ellis Act relocation provisions or equitable compensation proposal to City Council as soon as the Board's schedule permits.



December 12th, 2016

To: Oakland Rent Board Staff and Commissioners
From: Jill Broadhurst, East Bay Rental Housing Association
Re: Proposed RAP regulations

Please find EBRHA's position on the process and procedures set to be effective February 1, 2017. Please review the comments and feel free to email or call with any questions. EBRHA believes that certain pieces of the ordinance are not clearly defined. We are asking for clarity in certain definitions, as well as a balanced approach to streamlining the petition process.

8.22.010 Definitions

- Capital Improvement Amortization Schedule-Please remove: 10% increase cap per year, 30% increase cap over 5 years. Please change the current 70% of useful life to 100%, and the current window of 2 years to file the capital improvement pass-through should be removed as well. These specifics were left in from the 70% over 5 year formula, now that we are going to useful life, these specifics should be removed. The new formula allows for no incentive or realistic bank financing option that will allow the owner to pay for this upgrade or replacement.
- Fair rate of return definition- EBRHA does not agree with this definition, this current definition will promise no return and ask that staff rework the formula.
- Substantial Rehabilitation: City of Oakland permit and planning should issue the official construction cost charts to the rent board for reference and clarity. This exhibit should be the determining factor on whether substantial rehabilitation is granted based on the said formula.

8.22.090 Petition and Response Filing Procedures

- With this new system of pre-petitioning, more than ever, it makes sense to have the capital improvement increase be granted and established as soon as the decision has been issued by the hearing officer. As it currently stands, the owner has to wait for the annual anniversary to then pass on the increase. With the city now determining the timing of the decision, it seems only judicious, in the matter of due process that the increase be granted immediately upon the hearing officer making their decision. This is currently what the City of San Francisco does in their pre-petitioning process.



8.22.500 Rent Board Program Service Fee

- The fee should be considered rent and tenant should not be allowed to file or respond to a petition unless they pay the RAP Service Fee on time, per the rental property owners noticing. The ordinance should be specific with an enforcement mechanism supported by the city. This update could be noticed as an additional bullet point on the City of Oakland RAP form.

8.22.090 Petition and Response Filing Procedures

- B1. Tenant Petition and Response Requirements
 - All addresses should be cross-checked with RAP fee database, if wrong address was given by tenant, an immediate waiver is granted to the owner for an extension.
 - Tenant must include proof of contacting the owner on any outstanding service issues, as well as allowed a time to cure of no more than 15 days, depending on the circumstance, before filing a petition.
 - For reductions in rent due to conditions cited by the tenant: hearing office must provide a solid formula for granting said deduction and provide a definition that mimics reduction in services (vs a maintenance issue that was not addressed with proper notice).
 - Tenant must provide a cancelled check/money order or statement that rent is current, sworn testimony is not sufficient. If the rent board is asking the owner to provide evidence on paid rent board fee, business tax, etc., so must the tenant comply with proof of his financial obligations being met.
 - City of Oakland should provide an example checklist of maintenance vs reduction in housing services along with tenant petition form, clarifying reasons to file for a reduction in rent. They must meet the criteria in order to proceed.

8.22.110 Hearing Procedure

- If there is a math miscalculation by hearing officer, thru an appeal by the property owner, the petition will be fast-tracked and the decision will be made administratively within 15 days.
- The base rent for all petition decisions must be stated by the hearing officer in the answer, as well what item is being granted as a capital improvement increase. If the case also involves banking, those approved increases should also be referenced for clarity.