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## NOTICE OF CHANGES TO THE RENT ADJUSTMENT ORDINANCE

To Residential Property Owners and Tenants:

Oakland continues to experience a severe housing affordability crisis that threatens the health and welfare of its citizenry. In response, the City Council adopted several ordinances amending the Rent Adjustment Ordinance, and the Rent Board modified the Rent Adjustment Regulations. In addition on November 8, 2016, the voters passed Measure JJ, which further amends the Rent Adjustment and Just Cause for Eviction Ordinances.

The following is a summary of the significant changes:

### OWNER RENT INCREASE PETITION

Effective February 1, 2017, property owners must petition the Rent Adjustment Program (RAP) for any rent increase over the amount of the Consumer Price Index (CPI) allowable rent increase or one based on prior “banked” rent increases. O.M.C. Section 8.22.065 (A). This means that a property owner seeking to increase rents for capital improvements must first file a petition and have a decision on the petition before the property owner can notice a rent increase based on the capital improvements.

**Note:** The requirement for Owners to file petitions for rent increases was also approved by voters on November 8, 2016 (Measure JJ).

### RENT INCREASE NOTICES FOLLOWING OWNER PETITION:

1. When an Owner petitions for a rent increase, the owner can notice a rent increase based on the amount authorized by a Hearing Officer’s decision on the Owner’s petition either on the service date of the Hearing Officer’s decision or the tenant’s rent increase anniversary date, whichever is later. O.M.C. Section 8.22.070 (D) (2) (a).
2. With any rent increase notice based on an owner petition, the owner must provide a summary of the Rent Program’s decision. The Rent Program will provide this summary of the decision for the owner. O.M.C. Section 8.22.070 (H) (3).
3. If the tenant appeals and the rent increase amount is reduced, the tenant will owe rent back to the date of the notice in the lesser amount based on the appeal results. O.M.C. Section 8.22.070 (D) (2) (e). If the owner appeals and the rent increase is adjusted upwards, the landlord must issue a supplemental rent increase notice, however, the supplemental rent

increase notice is exempt from the one rent increase per year limitation. O.M.C. Section 8.22.070 (D) (2) (d).

## **REQUIREMENTS FOR NOTICE AT COMMENCEMENT OF TENANCY**

Notice at the Commencement of Tenancy. Effective September 20, 2016, at the beginning of a tenancy, the Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice) must be provided to all tenants in English, Spanish and Chinese. (This is not required with the RAP Notice served concurrent with rent increases; that notice must be given in the language in which the owner negotiated the terms of the rental agreement.) O.M.C. Section 8.22.060 (A) (2). Forms in the required languages are available on the Rent Program's website or at the Program office.

In addition, there are new requirements where the rent to a new tenant cannot be set at market. If an owner is not permitted to set the initial rent for a unit, (when the prior tenant was evicted for no fault by the tenant), the owner must give the new tenants notice of the rent in effect when the prior tenant vacated. Any increase above the prior amount may only be based on the CPI Rent Adjustment, Banking, and/or a final decision in an Owner's petition. These "enhanced" notice requirements apply following an owner giving the prior tenant a "no fault" eviction (owner move-in, rehabilitation, Ellis Act). O.M.C. Section 8.22.060 (A) (1) (d).

## **TENANT PETITION FILING**

1. Effective September 20, 2016, tenants have 90 days to file petitions contesting rent increases if the RAP Notice was served with the rent increase notice or 120 days if no RAP Notice was served with the rent increase notice. However, if the tenants were not served with a RAP Notice at the start of their tenancy, they have 90 days from the date they were first served with a RAP Notice to file a petition contesting any rent increase. O.M.C. Section 8.22.090 (A) (2).

2. Effective September 20, 2016, if the tenants were served with a RAP Notice at any time, they have 90 days from the date they are first given notice of the decrease (or first became aware of the decrease) to file petitions for decreased housing services for discrete changes (e.g., loss of parking space). For ongoing conditions, tenants can file a petition at any point but are limited to restitution for 90 days before their petition is filed. O.M.C. Section 8.22.090 (A) (3).

## **CAPITAL IMPROVEMENTS**

**Enhanced Notice for Capital Improvement Rent Increases:** Beginning February 1, 2017, when an owner notices a rent increase for capital improvements, the Enhanced Notice to Tenants for Capital Improvements is no longer required (because owners must file petitions to be granted capital improvement rent increases.) However, with a rent increase notice, an owner still will be required to provide a summary of the rent increase and a summary of any rent increases approved after a petition, The Rent Program will provide a summary of the decision on the petition for the property owner to attach to the rent increase notice.

**Imputed Financing:** Effective September 20, 2016, owners are entitled to claim the imputed cost of borrowing the money used for capital improvements. O.M.C. Section 8.22.020. This

imputed interest is based on a formula that the Rent Program will publish on its website quarterly.

**Gold Plating:** Effective September 20, 2016, owners may be denied capital improvement rent increases for all or part of unnecessarily expensive improvements that replace existing improvements of lesser cost, unless approved by the tenant. (e.g., a much more expensive refrigerator). In this case, the cost for the capital improvement will be the cost of an equivalent replacement. O.M.C. Section 8.22.020.

**Amortization Period:** For all capital improvements for which permits are first issued on or after February 1, 2017, the amortization period for capital improvements will be based on the useful life of the improvement as set forth in an amortization schedule. O.M.C. Section 8.22.020; Regulations Appendix Exhibit 1; Ordinance No. 13391 Section 4. All capital improvements with permits issued before February 1, 2017 will use the old formula (amortized over five years). Please refer to the Rent Adjustment Program website to see the amortization schedule.

## **EXEMPTIONS**

**Exemptions Based on Owner Occupancy:** Effective September 20, 2016, for an exemption based upon owner occupancy in a building of 3 units or less, the owner must reside in his or her unit for 2 years before it will be exempt. (This does not apply to owners who moved in on or before August 1, 2016.) O.M.C. Section 8.22.030 (D) (1).

**Substantial Rehabilitation:** Effective September 20, 2016, all exemptions for substantial rehabilitation must receive a certificate of exemption before the property will be exempt. For any claims of substantial rehabilitation for work completed on the unit before September 20, 2016, the owner **MUST** file a petition for a Certification of Exemption by June 30, 2017, or they will lose their right to the exemption. O.M.C. Section 8.22.030 (B) (2) (c).

## **BALLOT MEASURE JJ**

The changes instituted by the passage of Ballot Measure JJ are as follows:

1. Effective December 23, 2016, as to Oakland's **Just Cause for Eviction Ordinance**, the new construction exemption under this ordinance is limited to those buildings for which a certificate of occupancy was issued after December 31, 1995.

**Note:** This change **does not** apply to coverage under the Rent Adjustment Ordinance.

## **SUMMARY OF CONFORMING AMENDMENTS TO RENT ADJUSTMENT ORDINANCE**

### **A. When an Owner can notice a rent increase (Section 8.22.070 (D) (2) (a-e))**

1. When an Owner petitions for a rent increase, the Owner can notice a rent increase based on the amount authorized by a Hearing Officer's decision on the owner's petition either on the service date of the Hearing Officer's decision or the tenant's anniversary date, whichever is later;
2. If the tenant appeals and the rent increase amount is reduced, the tenant will owe rent back to the date of the notice in the lesser amount based on the appeal results; If the owner appeals and the rent increase is adjusted upwards, the landlord must issue a supplemental rent increase notice;

3. The supplemental rent increase notice is exempt from the one rent increase per year limitation.

**B. Summary of Hearing Decision (Section 8.22.070 (H) (3))**

- Hearing Officer must provide a summary of any decision to be attached to a rent increase notice to make clear the justification for the rent increase after owner petition.

**C. Enhanced Reporting Requirements (Section 8.22.060 (A) (1))**

- Enhanced reporting from the owner to tenant where the owner is not permitted to set the initial rent at the commencement of a tenancy will be required as follows:
  - Owners to provide additional information at the beginning of tenancy regarding the owner's right to set the initial rent and reporting rent levels;
  - Tenants who are given "no fault" evictions (owner move-in, rehabilitation, Ellis Act) will be affected by these noticing requirements.

**SUMMARY OF CONFORMING REGULATIONS**

**A. Streamlining the Appeal Process (Section 8.22.120)**

- Revise procedures at appeal hearings;
- Update process for issuing appeal decisions;
- Define grounds for appeal dismissals;
- Give appeal panels the same authority to rule on appeals as the full Rent Board.

**B. Providing RAP Notice in Multiple Languages (Section 8.22.060 (A) (1-3))**

- Owner will not be penalized for failing to comply with the requirement until the later of sixty (60) days after the RAP makes a general announcement of the requirement or all of the translations are available on the RAP website.
- 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 Spanish or Chinese and is not proficient in English; or
  - (b) The owner negotiated the terms of the rental agreement in Spanish or Chinese and failed to give the RAP notice in that language.

**C. Capital Improvements (Appendix A Ex. 1, Section 10.2; & Section 8.22.110 (F) (6))**

1. Capital Improvement amortization schedule

- Amortization of any capital improvement based on the useful life of the improvement;
- An amortization schedule based on an analysis developed by the City of Santa Monica and used in the administration of that City's rent program;
- Improvements would be amortized over 5, 10, 20 years based on the type of improvement;
- A consolidation of amortization schedule can be done for projects.

- The schedule will apply to capital improvements with permits issued on or after February 1, 2017. All capital improvements with permits issued before February 1, 2017 will use the old formula (amortized over five years).
2. **Gold-Plating/Over-Improving (Section 10.2.2 (c) of Appendix A)**
    - Gold plated improvements do not qualify as capital improvements for rent increase purposes;
    - The owner may only pass the cost of the substantially equivalent replacement of a specific improvement, not improvements that are over-improving units for the sake of inflating the rent.
  3. **CPI allowable rent increase and Capital Improvements**
    - CPI, banking, and capital improvements can be passed through together as a rent increase in the same petition.
  4. **Imputed Interest (Section 8.22.020)**
    - Capital improvement costs that may be passed through to tenants include 70% of actual costs, plus imputed financing.
    - Imputed interest means the average of the 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, to be taken as simple interest. The RAP will post the quarterly interest rates allowable.
- D. **Fair Return (Section 10.6 of Appendix A)**
1. **Maintenance of Net Operating Income (MNO) Calculations**
    - The base year shall be the calendar year 2014;
    - The NOI for a property shall be the gross income less property taxes, housing service costs, and the amortized cost of capital improvements;
  2. **Other Methodologies**
    - 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 consideration in their case, but need to present the MNOI calculation first

**The Modified Ordinance and Regulations will be posted at the RAP website at [www.oaklandnet.com](http://www.oaklandnet.com).**

