

Chapter 8.22

RESIDENTIAL RENT ARBITRATION PROGRAM

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8.22.010 Findings and purpose.

The City Council finds that a shortage of decent, safe, affordable and sanitary residential rental housing continues to exist in the city which is evidenced by a low vacancy rate among such units throughout the city and a continually increasing demand for such housing. Many residents of the city pay a substantial amount of their monthly income for rent. The present shortage of rental housing units and the prevailing rent levels have a detrimental effect on the health, safety, and welfare of a substantial number of Oakland residents, particularly senior citizens, persons in low and moderate income households, and persons on fixed incomes who reside in the city. Further the welfare of all persons who live, work, or own property in the city depends in part on attracting persons who are willing to invest in residential rental property in the city. It is, therefore, necessary that such persons are not discouraged from making such investments in the city by any action of the City Council. An increasing number of tenants are being given thirty (30) day notices to quit without the landlord stating a cause for the eviction.

Among the purposes of this chapter are therefore: providing relief to residential tenants in the city by stabilizing rent increases for existing tenants; encouraging rehabilitation of rental units

whenever vacancies occur, encouraging investment in new residential rental property in the city; reducing the financial incentive to landlords to evict tenants without cause, and assuring efficient landlords both a fair return on their property and rental income sufficient to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities, and other costs of operation while the provisions of this chapter are in effect. (Ord. 12273 § 1 (part), 2000; Ord. 11758 § 1, 1994)

8.22.030 Definitions.

As used in this chapter:

“Annual permissible rent increase” means the maximum rent increase authorized by the City Council pursuant to Section 8.22.060(A) or (B)(1) that a landlord may charge within a twelve (12) month period without the tenant being allowed to petition the Board to contest the rent increase or the landlord petitioning the Board to be allowed to charge a greater rent increase as provided in this chapter.

“Board” and “Residential Rent Arbitration Board” means the Housing, Residential Rent and Relocation Board established by Ordinance No. 11954 C.M.S. as amended.

“Capital improvements” means 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.

“Debt service” means the monthly principal and interest payments on the deed(s) of trust secured by the property.

“Hearing Officer” means person(s) designated by the City Manager to render initial decisions in all rent arbitration disputes.

“Housing services” means 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.

“Landlord” means any owner or lessor of a covered rental unit that is leased or rented to another, and the representative, agent, or successor of such owner or lessor.

“Rent” means the total consideration demanded or

received by a landlord in exchange for the use or occupancy of a rental unit.

“Rental history” means the record of any consideration demanded or received for rent, as defined in this section, for a rental unit.

“Rental unit” or “covered rental unit” means any residential unit, including joint living and work quarters, and all housing services provided with such unit that is located in the city of Oakland and used or occupied by the payment of rent: provided, however, that the following dwelling units are not covered rental units for purposes of this chapter:

1. Dwelling units whose rents are controlled or regulated by any government unit, agency or authority;

2. 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;

3. 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;

4. Dwelling units in a nonprofit cooperative, owned, occupied, and controlled by a majority of the residents;

5. Buildings containing rental units which were newly constructed and received a certificate of occupancy on or after January 1, 1983;

6. Substantially rehabilitated buildings on which owners have spent a minimum of fifty (50) percent of the average basic cost for new construction as determined by the Chief Building Inspector.

“Rules and procedures” means those rules and procedures adopted by the Housing and Residential Rent and Relocation Board for implementation of this chapter.

“Security deposits” 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 a landlord 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.

“Tenant” means a person entitled, by written or oral agreement to the use or occupancy of any covered rental unit.

“Uninsured Repairs” means that 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. (Ord. 12273 § 1 (part), 2000; Ord. 12030 § 5, 1998; amended during 11/97 supplement; Ord. 11758 § 3, 1994)

8.22.040 Purpose, duties and functions of Board.

A. The Housing and Residential Rent and Relocation Board shall submit regular status reports to the City Council committee designated as liaison to the Board. The regular status reports must be submitted quarterly, or more frequently as directed by the Chairperson of the City Council committee to which the board or commission reports.

B. Status reports submitted in fulfillment of subsection A of this section must include a detailed description of operating and staffing needs, to be developed and maintained by the department responsible for staffing and administration of the Board.

C. Each year, the Board shall review the annual goals and objectives of the City Council. Review of City Council goals and objectives shall be undertaken to provide the Board the opportunity to better integrate the activities of the Board with the city’s overall goals and objectives.

D. City Council approval must be obtained prior to the creation of any standing committee of the Board. A proposal to create a standing committee of the Board must include information regarding the costs associated with staffing the standing committee, and the costs of complying with noticing and reporting requirements resulting from the establishment of any such standing committee of the Board.

E. It shall be the function and responsibility of the Housing and Residential Rent and Relocation Board to hear appeals from the decisions of the Hearing Officer(s) which the Board in its discretion determines are inconsistent with prior decisions of the Housing and Residential Rent and Relocation Board. The Board will also review all decisions involving new policy questions, and in cases where a Hearing Officer’s decision is reversed, the Board will report its findings to the Hearing Officer(s).

The Board can develop rules and procedures to

implement this chapter, which shall be approved by the City Council. (Ord. 12273 § 1 (part), 2000; amended during 11/97 supplement; Ord. 11872 § 1, 1996; Ord. 11758 § 3, 1994)

**8.22.050 Members of the Board—
Composition and appointment.**

A. To the extent practicable, appointments to the Housing and Residential Rent and Relocation Board shall be made in accordance with the city's affirmative action policies.

B. To the extent practicable, appointments to the Housing and Residential Rent and Relocation Board shall reflect the geographical diversity of the city.

C. In making appointments to the Housing and Residential Rent and Relocation Board, the Mayor shall accept for consideration recommendations for appointments offered by each Councilmember. Councilmembers must submit recommendations to the Mayor for consideration at least thirty (30) days prior to expiration of an existing Board member's term.

D. The Board shall consist of seven members appointed pursuant to Section 601 of the Charter, who shall serve without compensation.

E. Of the Board members appointed, two shall be landlords, two shall be tenants, and three shall be neutrals (neither landlords or tenants).

F. Four Board members shall constitute a quorum, and any decision by the Board shall require a majority of those members present. In the event of a tie vote, the Hearing Officer's decision is affirmed.

G. Staggered Terms. Commencing with the effective date of the ordinance codified in this section, Board members shall be appointed to staggered terms, such terms to commence upon the date of appointment, except that an appointment to fill a vacancy shall be for the unexpired portion of the term only.

H. Length of Terms. Except for the initial appointments made immediately following passage of the ordinance codified in this section which may be for lesser terms of two years or one year in order to establish staggered terms pursuant to subsection G of this section, all appointments shall be for a period of three years.

I. Limit on Consecutive Terms. Commencing with the effective date of the ordinance codified in

this section, no person shall be appointed to serve more than two consecutive terms as a member of the Housing and Residential Rent and Relocation Board. Members of the Housing and Residential Rent and Relocation Board sitting on the effective date of the ordinance codified in this section shall not be appointed to serve more than one additional consecutive term as a member of the Board.

J. A vacancy on the Board will exist whenever a Board member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the Council within ten days of appointment. In the event an appointment to fill a vacancy has not occurred by the conclusion of a Board member's term, that member may continue to serve as a member of the Board during the following term in a holdover period not to exceed one year to allow for the appointment of a Board member to serve the remainder of said following term.

K. Removal. To assure participation of Board members, attendance by the members of the Board to all regularly scheduled and special meetings of the Board shall be recorded, and such record shall be provided semiannually to the Office of the Mayor for review. A 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, shall constitute cause for removal. (Ord. 12273 § 1 (part), 2000; Ord. 12030 § 6, 1998; amended during 11/97 supplement; Ord. 11872 § 2, 1996; Ord. 11758 § 4, 1994)

8.22.060 Rent increase guidelines.

Rent increase guidelines.

A. Annual Permissible Rent Increases for Occupied Units. This chapter applies to any covered rental unit in the city beginning May 6, 1980. Except as provided in Section 8.22.060(B) and (C), no landlord may increase rents for occupied covered rental units in excess of the annual permissible rent increase set by the City Council. The City Council may review the rate annual permissible rent increase every twelve (12) months.

Except as provided for in Section 8.22.060(B) or as otherwise provided in this chapter or in the rules and procedures, a landlord may increase rents for

occupied covered rental units up to the annual permissible rent increase as provided for as follows:

1. May 6, 1980 through October 31, 1983, the annual rate was ten percent.
2. November 1, 1983 through September 30, 1986, the annual rate was eight percent.
3. October 1, 1986 through February 28, 1995, the annual rate was six percent.
4. Beginning March 1, 1995, the annual rate is three percent.

B. Setting Rents on Vacant Covered Rental Units.

1. Except as provided in Section 8.22.060(C)(4), at initial occupancy of a covered rental unit by a tenant where the immediate prior tenant vacated the covered rental unit after the landlord initiated the termination of the tenancy by use of a notice given pursuant to California Civil Code Section 1946, the annual permissible rent increase is zero percent for the new tenant or any other new tenant for the twenty-four (24) months following the vacancy by the immediate prior tenant.

2. For purposes of Section 8.22.060(B)(1), the zero percent annual permissible rent increase applies to the last rent charged to and paid by the vacating immediate prior tenant.

C. Standards for Rent Increases in Excess of the Annual Permissible Rent Increase.

I. Any rent increase which exceeds the annual permissible rent increase for an occupied covered rental unit or a covered rental unit vacated under grounds set out in Section 8.22.060(B)(1) must be justified on one or more of the following grounds:

- a. Capital improvement costs;
- b. Uninsured repair costs;
- c. Increase in housing service costs;
- d. Past history of rent increases;
- e. Debt service costs;
- f. Any other factors the Hearing Officer and the Board deem relevant.

2. The amount of rent increase allowable for the items listed in Section 8.22.060(C)(1)(a)—(f) (hereafter the “standards”), shall be subject to the limitations set forth in the rules and procedures and shall be computed as follows, If the derived percentage allowable for the standards is in excess of the annual permissible rent increase, the higher percentage shall be used to compute the allowable rent increase. If the derived percentage allowable for the standards does not exceed the annual permissible

rent increase, the annual permissible rent increase shall be used to compute the allowable rent increase. The derived percentage allowable for the standards shall not be added to the annual permissible rent increase.

3. Except as provided in Section 8.22.060(C)(4), for an occupied covered rental unit a landlord may give the tenant rent increases in excess of the annual permissible rent increase subject to the tenant’s right to submit a petition contesting the increase pursuant to Section 8.22.080, or the landlord may petition for approval of such rent increases pursuant to Section 8.22.080.

4. For a covered rental unit where the most recent prior tenant vacated pursuant to Section 8.22.060(B)(1), when, within the first twenty-four (24) months of such vacancy, the landlord seeks to increase the rent above the last rent charged to the immediate prior tenant, the landlord must petition and obtain final approval for any rent increase based on the standards set out in Section 8.22.060(C)(1) prior to:

- a. Charging such increased rent to a new tenant before the new tenant occupies the rental unit; or
- b. Issuing a notice to increase the rent after a tenant occupies the covered rental unit.

5. A reduction in housing services is considered an increase in rent

D. Banking. If a landlord chooses not to increase his or her rent in excess of the annual permissible rent increase, he or she reserves the right to carry over (i.e., bank) the remaining allowable percentage increase(s) to succeeding twelve (12) month periods, subject to the limitations set forth in the rules and procedures.

E. Notice. The landlord of any covered rental unit that is subject to any part of this Chapter 8.22 is required to comply with the following noticing and posting requirements:

1. On or before the date of commencement of a tenancy, a landlord must notify a tenant in writing of the existence and scope of this Chapter 8.22 and of the tenant’s rights to petition against rent increases. The notice shall be in the form prescribed in the rules and procedures and shall include a provision stating whether the immediate prior tenant vacated the covered rental unit after having been given a notice to terminate pursuant to California Civil Code Section 1946. With respect to a tenancy existing on or before December 13, 1994, a landlord is required to have

provided the notice required by Ordinance 11758 C.M.S. to all such tenants not later than June 13, 1995.

2. At the commencement of the new tenancy wherein the immediate prior tenant vacated pursuant to Section 8.22.060(B)(1) the notice given pursuant to Section 8.22.060(E)(1) must include copy of the notice given to the immediate prior tenant preceding such tenant's vacancy that terminated such tenant's tenancy.

3. Where the most recent prior tenancy was terminated pursuant to Section 8.22.060(B)(1), the landlord must suitably post the rent charged and paid by the most recent prior tenant in a prominent location in the covered rental unit if the covered rental unit is vacant when being shown or, if the covered rental unit is not vacant when being shown, provide the information in writing to all prospective tenants automatically and without their request.

4. In addition, concurrent with any notice to a tenant of a change in any of the terms of tenancy, including an increase in rent, a landlord must give each tenant notice of the existence and scope of this Chapter 8.22 and of the tenant's rights to petition against rent increases in excess of the annual permissible rent increase.

5. A landlord must demonstrate, in advance of a hearing on any rent increase petition, that the landlord has given applicable notices to all tenants in the building under dispute. If a landlord fails to so demonstrate, then the landlord's petition or response to a tenant petition must be dismissed.

6. The board shall develop the form of notices that meet the requirements of this Section 8.22.060(E) and to develop reasonable rules to protect the privacy of tenants. (Ord. 12273 § I (part), 2000: Ord. 11758 § 6, 1994)

8.22.070 Staff.

The positions of Hearing Officer and Secretary to the Housing and Residential Rent and Relocation Board shall be established. Staffing shall be provided through the Office of the City Manager.

A. Hearing Officer. The Hearing Officer(s) shall hear all disputes between landlords and tenants regarding rent increases, arbitrate these disputes pursuant to the guidelines set forth in this chapter, and render an initial decision which may be appealed by either party to the Housing and Residential Rent and Relocation Board. All cases

involving policy considerations not covered in the rules and procedures shall be referred to the Board by the Hearing Officer with recommendations.

B. Secretary to the Board. The Secretary to the Board should process all petitions for review submitted by landlords and/or tenants, set Board hearings and perform the general administrative duties assigned to the Secretary by the Board. (Ord. 12273 § 1 (part) 2000: amended during 11/97 supplement; Ord. 11758 § 7, 1994)

8.22.080 Hearing process.

The Hearing Officer shall hear matters to determine whether a rent increase complies with the provisions of Section 8.22.060 upon receipt of a petition for review submitted by a landlord and/or a tenant; provided, the following conditions are met:

A. The petition, made under penalty of perjury, alleges a rent increase which exceeds the amount authorized by Section 8.22.060.

B. Each petition shall be accompanied by a fifteen dollar (\$15.00) filing fee. In the event the Secretary consolidates hearings, as authorized hereinafter, a filing fee of fifteen dollars (\$15.00) plus ten dollars (\$10.00) for each additional unit shall be required.

C. The petition is filed within thirty (30) calendar days after receipt of a notice of a proposed rent increase or thirty (30) calendar days after receipt of a notice as described in Section 8.22.060(E), Notice, whichever is most recent. To be eligible to file a petition, a tenant's rent must be current.

D. The Secretary shall notify the opposing party to the petition for review that he or she has fourteen (14) calendar days to respond to the petition. To be eligible to file a response to a petition, a landlord must hold a current city business license.

E. The Secretary shall notify the landlord and tenant in writing of the time and place set for hearing. Disputes involving more than one unit in any single building may be consolidated for hearing by the Secretary if the Secretary determines consolidation to be in the best interest of the parties.

F. The Hearing Officer shall have the goal of hearing the matter within thirty (30) calendar days of the filing of the original petition. In those instances where the goal cannot be achieved, the Hearing Officer shall assure that the landlord and tenant both receive notification of the reason(s) for the delay each thirty (30) day period following the filing of the original petition.

G. The Hearing Officer shall render his or her decision not more than seven working days after the conclusion of the hearing and all parties shall be notified in writing.

H. Any proposed rent increase that exceeds the amount authorized by Section 8.22.060(A) or (B) is not operative until the decision of the Hearing Officer has been made.

I. Either party may appeal the Hearing Officer's decision within seven working days after receipt of the notice of decision by filing with the Secretary to the Board, a written notice of such appeal setting forth the ground therefor. Each appeal petition shall be accompanied by a fifteen-dollar (\$15.00) filing fee plus ten dollars (\$10.00) for each additional unit in consolidation cases. The Secretary to the Board shall set the matter for hearing and cause notice thereof to be given to appellant not less than five days prior to such hearing.

J. The Board shall have a goal of hearing the appeal within thirty (30) calendar days of filing the notice of appeal. In those instances where the goal cannot be achieved, the Board shall assure that the landlord and tenant receive notification of the reasons for the delay each thirty (30) day period following the filing of the appeal. (Ord. 12273 § 1 (part), 2000: Ord. 11758 § 8, 1994)

8.22.090 Conduct of Board hearings.

The following procedures shall apply to all hearings of the Board:

A. All hearings conducted by the Board shall be public and tape cassette recorded.

B. Any party to a hearing may be assisted by an attorney or any person so designated by the party.

C. Any relevant evidence may be submitted by any party and shall be submitted under oath.

D. In the event that either party fails to appear at the designated hearing, the Board may hear and review such evidence as may be presented and render a decision.

E. The Board must render its decision employing the standards set forth in Section 8.22.060.

F. No rent adjustment above the limit set forth in Section 8.22.060(A) or (B) shall be granted unless supported by a preponderance of the evidence submitted at the hearing.

G. The conclusions and findings of the Board shall be final and there shall be no appeal rights to the City Council. The Board's action does not pre-

clude review by a court of competent jurisdiction. (Ord. 12273 § 1 (part), 2000: Ord. 11758 § 9, 1994)

8.22.100 Evictions and eviction notices.

A. A landlord may not recover possession of a rental unit in retaliation against a tenant for exercising his or her rights pursuant to this chapter. If a landlord attempts to recover a rental unit from the date of the original filing of a petition to within six months after the notice of final decision, such recovery will be rebuttably presumed to be in retaliation against the tenant for the exercise of his or her rights pursuant to this chapter.

B. Section 1942.5 of the California Civil Code also precludes the landlord from retaliating against a tenant for exercising his or her rights pursuant to this Chapter 8.22.

C. A landlord shall not evict a tenant pursuant to California Civil Code Section 1946 in order to rehabilitate a covered rental unit without first obtaining a city building permit, when required, to do the proposed work on the premises.

D. It is a violation of this Chapter 8.22, for a landlord to evict a tenant pursuant to California Civil Code Section 1946 and increase the rent for the new tenant above the annual permissible rent increase pursuant to Section 8.22.060(B)(1) except as provided in Section 8.22.060(C)(4), or gain an exemption for a covered rental unit. A tenant who alleges that his or her landlord has a pattern or practice of evicting other tenants in the building to substantially raise rents above those permitted by this chapter shall have standing to appear before the Housing and Residential Rent and Relocation Board. If the Board finds that the tenant's allegations are true, the tenant shall be entitled to a six-month rebuttable presumption that an unlawful detainer action brought against him or her by the landlord is unlawful.

E. Whenever a landlord initiates the termination of the tenancy by use of a notice given pursuant to California Civil Code Section 1946, the landlord must include a statement of the covered rental unit's current rent in the notice to that tenant, file such notice with the Board within ten days of serving the notice of the tenant, and provide a copy of the notice to the new tenant as set out in Section 8.22.060(E)(2).

F. A landlord's failure to provide the information required by Section 8.22.100(E) in the notice to the noticed tenant shall be a defense to any eviction

brought under the circumstances set out in Section 8.22.100(E). (Ord. 12273 § 1 (part), 2000: amended during 11/97 supplement; Ord. 11758 §10, 1994)

8.22.110 Remedies.

A. An aggrieved party may bring an action for injunctive relief or damages, or both, in court of competent jurisdiction for any violation of the provisions of this chapter.

B. Failure of a party to abide by an order or decision of a Hearing Officer and/or the Housing and Residential Rent and Relocation Board shall be deemed a violation of this chapter and shall be punishable as an infraction unless otherwise provided in this code.

C. Each party violating this chapter shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued, or permitted by such person and shall be punishable accordingly.

D. Such violations may be redressed by civil action brought by the City Attorney or the landlord, tenant, or his or her representative.

E. Any person convicted of an infraction under the provisions of this chapter shall be punishable upon the first conviction of a fine of not more than one hundred dollars (\$100.00), and for a second conviction within a period of one year by a fine of not more than two hundred dollars (\$200.00), and for a third of any subsequent conviction within a one-year period by a fine of not more than five hundred dollars (\$500.00). However, a violation beyond the third conviction within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor, and the penalty for a conviction of the same shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six months or both.

F. In addition to the punishment provided by law, a violator is liable for such costs, expenses, and disbursements paid or incurred by the city in abatement and prosecution of the violation.

G. Pursuant to Section 836.5 of the California Penal Code, the Deputy City Manager or his or her authorized representatives are authorized to enforce this chapter and arrest violators thereof.

H. The City Manager shall have the power to

designate by written order that particular officers or employees shall be authorized to enforce particular provisions of this chapter in addition to those officers enumerated in subsection G of this section. Officers or employees so designated shall have the authority to arrest persons who violate any of said provisions. (Ord. 12273 § 1 (part), 2000: amended during 11/97 supplement; Ord. 11758 § 10.1, 1994)

8.22.120 Severability.

This chapter shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end the provisions of this chapter are declared to be severable and are intended to have independent validity. (Ord. 12273 § 1 (part), 2000: Ord. 11758 § 11, 1994)

8.22.130 Nonwaiverability.

Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this chapter is waived or modified, is against public policy and void. (Ord. 12273 § 1 (part), 2000: Ord. 11758 § 12, 1994)

8.22.140 Applicability—Effective date of chapter.

The ordinance codified in this chapter shall take effect according to the Oakland City Charter, Section 216. Unless otherwise specifically provided for herein, this chapter applies to petitions filed on or after the effective date of the ordinance codified in this section. This chapter is not retroactive except for those portions that clarify existing intent and does not apply to petitions filed prior to the effective date of the ordinance codified in this section. (Ord. 12273 § 1 (part), 2000: Ord. 11758 § 14, 1994)

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