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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

REVISED
OAKLAND CITY COUNCIL
ORDINANCE NO. 13618 O.M.S.

AN ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (O.M.C. 8.22.010 ET SEQ.) TO CREATE EFFICIENCY AND REDUCE APPEAL TIMES BY (1) AUTHORIZING A SINGLE APPEAL OFFICER TO HEAR SELECT APPEALS; (2) ESTABLISHING MORE STRINGENT ATTENDANCE REQUIREMENTS FOR BOARD MEMBERS; (3) LIMITING ORAL ARGUMENT TIME ON APPEALS; AND (4) REQUIRING PARTIES TO SERVE PETITIONS

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

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

WHEREAS, in order to minimize Rent Board and Appeal Panel meeting cancellations, it will be helpful to clarify attendance requirements for both regular and alternate Board members; and

WHEREAS, in order to resolve and prevent a backlog of cases, the use of an Appeal Panel for most appeals and a single hearing officer to resolve simple appeals should be encouraged; and

WHEREAS, extended oral argument time permitted under current law limits the number of appeals the Rent Board may consider in a single meeting; and

WHEREAS, requiring parties to serve petitions would reduce processing time for petitions and reduce administrative burdens on the Rent Program;

WHEREAS, the City Council wishes to speed up the processing of petitions by owners and tenants;

WHEREAS, the City Council wishes to allow the Rent Board to consider appeals more quickly in order to resolve and prevent a backlog of appeals; and

WHEREAS, this action is exempt under the California Environmental Quality Act ("CEQA") pursuant to, but not limited to the following CEQA Guidelines: §15378 (regulatory actions), § 15061 (b)(3) (no significant environmental impact), and § 15183 (actions consistent with the general plan); and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Modification of Section 8.22.040 of the Oakland Municipal Code. Section 8.22.040 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

8.22.040 - Composition and functions of the Board.

A. Composition.

1. **Members.** The Board shall consist of seven (7) regular members appointed pursuant to Section 601 of the City Charter. The Board shall be comprised of two (2) residential rental property owners, two (2) tenants, and three (3) persons who are neither tenants nor residential rental property owners. The Board shall also have six (6) alternate members, two (2) residential rental property owners, two (2) tenants and two (2) persons who 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 excessive absences except on account of illness or when absent from the city by permission of the Board, constitute cause for removal. Excessive absences for a regular member shall mean missing three regular meetings in a six-month period; and for alternative members shall mean not being available to attend more than half of Appeal Panel meetings in a six-month period 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 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 (3) years beginning on February 12 of each year and ending on February 11 three (3) years later. Board members shall be appointed to staggered terms so that only one-third ($\frac{1}{3}$) 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 (2) consecutive full terms as a board member, nor more than two (2) consecutive full 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,~~ or an Appeal Officer 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, or an Appeal Officer in accordance with O.M.C. 8.22.120.~~ 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 more than ten (10) 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. Appeal Panels may be comprised solely of Alternate Board Members, solely of Regular Board Members, or a combination of Regular Members and Alternate Members.

F. Appeal Officer

1. Staff may designate a single Appeal Officer to hear appeals designated in O.M.C. 8.22.120.B.2.
2. The Appeal Officer may be a Staff person not involved in the decision appealed, a contract person hired for this purpose, or a Board member who is neither a tenant nor a residential rental property owner.

SECTION 2. Modification of Section 8.22.090 of the Oakland Municipal Code. Section 8.22.090 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

8.22.090 - Petition and response to filing procedures.

A. Tenant Petitions.

1. Tenant may file a petition regarding any of the following:
 - a. A rent increase was given that is not based on the CPI rent adjustment, banking; and/or a final decision in an owner petition;
 - b. The owner set an initial rent in excess of the amount permitted pursuant to Section 8.22.080 (Rent increases following vacancies);

- c. A rent increase notice failed to comply with the requirements of Subsection 8.22.070H;
 - d. The owner failed to give the tenant a notice in compliance with Section 8.22.060 and State law;
 - e. The owner decreased housing services to the tenant;
 - f. 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.6;
 - g. 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.
 - h. The owner noticed a rent increase that exceeds the annual limit as provided in Section 8.22.070A2 or that exceeds the rent increase limit of thirty (30) percent in five years.
 - i. The petition is permitted by the Just Cause for Eviction Ordinance (Measure EE) O.M.C. 8.22.300 or its regulations.
 - j. The petition is permitted by the Ellis Act Ordinance, O.M.C. 8.22.400, or its regulations.
 - k. The tenant contests an exemption from this O.M.C. 8.22, Article I or Article II.
 - l. The tenant claims the owner has received reimbursements for any portion of cost or financing of capital improvements after a capital improvement rent increase has been approved, and has not prorated and refunded such reimbursement.
 - m. After a rent increase imposed for an additional occupant as defined by Section 8.22.020, the owner fails to reduce the rent following a decrease in occupancy.
2. For a petition contesting a rent increase, the petition must be filed as follows:
- 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 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 the 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 services:

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. 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.6.

e. Proof of service by first-class mail or in person of the tenant petition or response and any supporting documents on the owner.

5. 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.
 - f. Proof of service by first-class mail or in person of the owner petition or response and any supporting documents on the tenants of all units affected by the petition. Supporting documents that exceed twenty-five (25) pages are exempt from the service requirement, provided that: (1) the owner petition form must be served by first-class mail or in person; (2) the petition or attachment to the petition must indicate that additional documents are or will be available at the Rent Adjustment Program; and (3) the owner must provide a paper copy of supporting documents to the tenant or the tenant's representative within ten (10) days if a tenant requests a paper copy in the tenant's response.
2. An owner must file a response to a tenant's petition within thirty (30) days of the service of the notice ~~by the rent adjustment program that a tenant petition was filed.~~

SECTION 3. Modification of Section 8.22.120 of the Oakland Municipal Code. Section 8.22.120 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

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. Assignment of Appeals

1. Staff shall assign to the Board appeals that involve an Owner's petition seeking a certificate of exemption, a claim of exemption in response to a Tenant's petition, or other important decisions as determined by Staff.

2. Staff may assign to an Appeal Officer appeals that consist only of issues that meet all of the following criteria: (1) routine, (2) procedural, and (3) non-substantive. Examples include issues such as where the only issue on appeal is whether good cause exists for failing to appear at a hearing or failure to meet deadlines such as a petition deadline, a response deadline, or deadline to submit evidence. The Regulations may specify other appeals that may be assigned to an Appeal Officer.
3. Except cases required to be heard by the Board under O.M.C. 8.22.120.B.1, all other cases may be assigned by Staff to either the Board or an Appeal Panel.

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

1. ~~The Board or Appeal Panel~~Appeal Body 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~~Appeal Body 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~~Appeal Body determines that an evidentiary hearing is required. If the ~~Board or Appeal Panel~~Appeal Body deems an evidentiary hearing necessary, the case will be continued and the ~~Board or Appeal Panel~~Appeal Body 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~~Appeal Body 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.~~
5. The total argument time for each party is limited to threesix (6) minutes, unless the regulations allow for more time. The Appeal Body or the chair of the Appeal Body may also modify the time limit in an individual appeal.

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

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

SECTION 4. Directions to Rent Board. The Rent 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.

SECTION 5. CEQA Compliance. This action is exempt under the California Environmental Quality Act ("CEQA") pursuant to, but not limited to the following CEQA Guidelines: §15378 (regulatory actions), § 15061 (b)(3) (no significant environmental impact), and § 15183 (actions consistent with the general plan).

SECTION 6. 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 7. 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.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST:

Candace Paul Teegs For
ASHA REED

Acting City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation:

October 29, 2020

Introduction Date

OCT 06 2020

NOTICE AND DIGEST

AN ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (O.M.C. 8.22.010 ET SEQ.) TO CREATE EFFICIENCY AND REDUCE APPEAL TIMES BY (1) AUTHORIZING A SINGLE APPEAL OFFICER TO HEAR SELECT APPEALS; (2) ESTABLISHING MORE STRINGENT ATTENDANCE REQUIREMENTS FOR BOARD MEMBERS; (3) LIMITING ORAL ARGUMENT TIME ON APPEALS; AND (4) REQUIRING PARTIES TO SERVE PETITIONS

This Ordinance amends the Rent Adjustment Ordinance to create efficiency and reduce appeal times by (1) authorizing a single appeal officer to hear select appeals; (2) establishing more stringent attendance requirements for board members; (3) limiting oral argument time on appeals; and (4) requiring parties to serve petitions