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APPROVED AS TO FORM AND LEGALITY

*Oliver Luby*

CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. 13649 C.M.S.

**AN ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (OAKLAND MUNICIPAL CODE CHAPTER 8.22, ARTICLE 1) TO (1) ALLOW OWNERS TO PETITION FOR AN UNLIMITED RENT INCREASE WHEN A TENANT DOES NOT RESIDE IN THE UNIT AS THEIR PRINCIPAL RESIDENCE; (2) ALLOW SUBTENANTS TO PETITION TO CONTEST OVERCHARGES BY PRIMARY TENANTS; AND (3) MAKE CLEAN UP CHANGES**

**WHEREAS**, the City Council adopted Ordinance No. 13608 C.M.S. on July 21, 2020, which amended various laws, including the Residential Rent Adjustment Program Ordinance (Oakland Municipal Code (“OMC”) Section 8.22.010, et seq.) (“Rent Adjustment Ordinance”); and

**WHEREAS**, Section 8 of Ordinance No. 13608 C.M.S. requires the development of amendments to the Rent Adjustment Program Regulations for the purpose of conforming the regulations to changes made to the Rent Adjustment Ordinance and clarifying the operation of “Additional occupant” rent increases, including defining “principal residence” as used in the definition of “Base occupancy level” and providing a rent ceiling or maximum rent that a tenant may charge additional occupants not on the lease; and

**WHEREAS**, on February 11, 2021, the Housing, Residential Rent and Relocation Board (“HRRRB”) approved proposed amendments to the Rent Adjustment Program Regulations, including (1) changes consistent with Ordinance No. 13608 C.M.S., such as prohibiting overcharging of rent by primary tenants to subtenants and permitting subtenants to petition the Rent Adjustment Program to contest overcharges, (2) updates to Regulation 8.22.090 and Section 10.2.2 of Appendix A to reflect amendments to the Rent Adjustment Ordinance made by Ordinance No. 13618 C.M.S. and Ordinance No. 13516 C.M.S., respectively, and (3) permitting owners to petition for an unlimited rent increase when a tenant does not reside in a unit as their principal residence; and

**WHEREAS**, OMC Section 8.22.040.D.2 provides that the development or amendment of Rent Adjustment Program Regulations by the HRRRB are subject to the approval of the City Council; and

**WHEREAS**, two of the proposed amendments to the Rent Adjustment Program Regulations that were approved by the HRRRB create new petition processes with the Rent Adjustment Program, one for owners when a tenant does not reside in a unit as their principal residence and one for subtenants contesting overcharging of rent by primary tenants, which require amendments to the Rent Adjustment Ordinance to authorize such petitions;

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

**SECTION 1. Recitals:** The City Council of the City of Oakland hereby determines that the preceding recitals are true and correct and an integral part of the Council's decision to enact this legislation, and hereby adopts and incorporates them into this Ordinance.

**SECTION 2. Repeal and Reenactment of Section 8.22.070 of Oakland Municipal Code Chapter 8.22, Article I (Residential Rent Adjustment Program).** Oakland Municipal Code Section 8.22.070 is hereby repealed and reenacted with amendments as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

**8.22.070 - Rent adjustments for occupied covered units.**

This section applies to all rent adjustments for continuously occupied covered units. (Rent increases following vacancies of covered units are governed by Section 8.22.080). Any rent increase for a continuously occupied covered unit must comply with this section.

**A. One Rent Increase Each 12 Months; Exceptions and Limitations.**

**1. One Rent Increase Each Twelve (12) Months.**

- a. Except as provided in Paragraph b below, an Owner may increase the rent on a covered unit occupied continuously by the same tenant only once in a 12-month period. If an Owner filed an Owner's Rent Increase petition, the earliest any increase allowed in the Hearing Officer's decision may be effective is the date that a rent increase notice consistent with this Chapter and state law is served on the Tenant after the service date of the decision. Such rent increase cannot take effect earlier than the tenant's anniversary date if the Owner has already increased that tenant's rent within the preceding 12-month period.
- b. Upon the occurrence of any of the following, an Owner may increase the Rent on a Covered Unit occupied continuously by the same Tenant, even if rent has already been raised during the preceding twelve (12) months:
  - i. If the Owner restores housing services, rent may be restored to the original Rent from the level to which rent had been decreased after

a rent decrease awarded in a hearing decision by the RAP for housing services; and/or

- ii. If, as a result of an appeal to the Rent Board or a writ to the Superior Court, the final decision permits a Rent increase greater than that allowed in the Hearing Officer's decision, the Owner may notice such increase as of the date of the final decision.

2. In no event may rent for any covered unit increase in any 12-month period by more than 10 percent, or the amount permitted for Oakland rental units subject to California Civil Code 1947.12 (or successor provisions), whichever is lower, for any and all rent increases based on the CPI Rent Adjustment, as set out in O.M.C. 8.22.070B (CPI Rent Adjustment), and any justifications pursuant to O.M.C. 8.22.070C.2 (Rent Increases In Excess of CPI Rent Adjustment) except if required for the owner to obtain a fair return pursuant to O.M.C. 8.22.070C.1.d.
3. No series of rent increases in any five-year period can exceed 30 percent for any rent increases based on the CPI Rent Adjustment, as set out in, O.M.C. 8.22.070B (CPI Rent Adjustment) and any justifications pursuant to O.M.C. 8.22.070C.2 (Rent Increases In Excess of CPI Rent Adjustment) except for the following:
  - a. A series of rent increases composed solely of CPI Adjustments may exceed the 30 percent limitation;
  - b. Exceeding the 30 percent limitation is required for the owner to obtain a fair return pursuant to O.M.C. 8.22.070C.1.d.
4. If an owner is entitled to a rent increase or increases that cannot be taken because of the Rent increase limitations pursuant to Subsections 2. or 3. above, the owner may defer the start date of the increase to a future period, provided that in the rent increase notice that limits the owner's ability to take the increases, the owner must identify the justification and the amount or percentage of the deferred increase that may be applied in the future.

**B. CPI and Banking Rent Adjustments.**

1. Effective Date of this Section. An owner may first impose CPI Rent Adjustments pursuant to this section that take effect on or after July 1, 2002.
2. CPI and Banking Rent Adjustment Not Subject to Petition. A Tenant may not petition to contest a rent increase justified in an amount up to and including the CPI Rent Adjustment and/or any Banking Rent increase unless the tenant alleges one or more of the following:
  - a. The owner failed to provide the notice required at the commencement of tenancy and did not cure such failure (Section 8.22.060);
  - b. The owner failed to provide the notice required with a rent increase (Section 8.22.070 H);

- c. The owner decreased housing services;
  - d. The covered unit has uncured health, safety, fire, or building code violations pursuant to Section 8.22.070 D.76);
  - e. Any or all of a Banking Rent increase is not correctly calculated or the Owner is not eligible for a Banking Rent increase;
  - f. The Rent increase exceeds the limitations set out in Sections 8.22.070A.3 A.2 or A.3;
  - g. ~~The Rent increase is inoperative pursuant to Section 8.22.090D.7;~~
  - h. ~~The Owner has increased the rent once during the preceding twelve (12) month period without qualifying for an exception pursuant to Section 8.22.070.A.1.~~
3. Calculation of the CPI Rent Adjustment. Beginning in 2002, the CPI Rent Adjustment is the average of the percentage increase in the CPI—All items and the CPI—Less shelter for the twelve (12) month period starting on March 1 of each calendar year and ending on the last day of February of the following calendar year calculated to the nearest one tenth of one percent.
  4. Effective Date of CPI Rent Adjustments. An owner may notice a rent increase for a CPI Rent Adjustment so that the rent increase is effective during the period from July 1 following the Rent Adjustment Program's announcement of the annual CPI Rent Adjustment through June 30 of the next year. The rent increase notice must comply with state law and take effect on or after the tenant's anniversary date.
  5. Banking. In accordance with rules set out in the regulations, an owner may bank CPI rent adjustments and annual permissible rent adjustments previously authorized by this Chapter and notice a Banking Rent increase concurrent with a CPI Rent Adjustment.
  6. Schedule of Prior Annual Permissible Rent Adjustments. Former annual permissible rent adjustments available under the prior versions of this Chapter:
    - a. May 6, 1980 through October 31, 1983, the annual rate was ten percent.
    - b. November 1, 1983 through September 30, 1986, the annual rate was eight percent.
    - c. October 1, 1986 through February 28, 1995, the annual rate was six percent.
    - d. March 1, 1995 through June 30, 2002, the annual rate was three percent.
- C. Rent Increases in Excess of the CPI Rent Adjustment or Banking.

1. For Rent increases based on grounds other than the CPI Rent Adjustment or Banking, an Owner must first petition the Rent Program and receive approval for the Rent increase before the Rent increase can be imposed. A Rent increase in excess of the CPI Rent Adjustment or a Banking increase must be justified on one or more of the following grounds:
    - a. Capital improvement costs, including financing of capital improvement costs;
    - b. Uninsured repair costs;
    - c. Increased housing service costs;
    - d. The rent increase is necessary to meet constitutional or fair return requirements;
    - e. The rent increase is imposed for an additional occupant, as defined by Section 8.22.020;
    - f. The unlimited rent increase is imposed because the Tenant is not residing in the unit as their principal residence.
  2. The amount of rent increase allowable for the grounds listed in Section 8.22.070 C.2 are subject to the limitations set forth in the regulations.
- D. Rent Increase Notices and Operative Dates for Rent Increases.
1. CPI and Banking Increases not subject to a Petition. Rent increase notices for CPI and Banking Rent increases that are not the subject of a Petition shall be operative in accordance with this Chapter and State law.
  2. Owner Petitions.
    - a. An Owner may notice a Rent increase based on a petition after the service date of the decision subject to the limitation of one Rent Increase each twelve (12) months (the effective date of the Rent increase).
    - b. Except for any portion of the petitioned-for Rent increase that is based on a CPI Rent or Banking Rent Increase, a Tenant is not required to pay the Rent increase until there is a final decision on the petition pursuant to Section 8.22.070 D.5 (the operative date of the Rent increase). However if the Tenant chooses not to pay the Rent increase, the Tenant owes the increased Rent starting from the effective date of the Rent increase if the final decision upholds the Hearing Officer's decision.
    - c. In a decision by the board or an appeals panel, the decision may (or may direct staff to) calculate the amount due and determine a repayment schedule consistent with the rent board regulations for the Tenant to pay any back Rent due or for the Tenant to receive any rent credits if the Tenant paid a Rent increase that is not upheld on appeal.

However, a Hearing Officer shall calculate the amount due if there is a factual dispute regarding such amount.

- d. If a final decision permits a greater Rent increase than the amount permitted in the Hearing Officer's decision, the Owner may issue another Rent increase notice up to the amount allowed in the final decision, and such additional notice is not subject to the limitation of no more than one Rent increase with in twelve (12) month period.
  - e. If the final decision permits a smaller Rent increase than the amount permitted in the Hearing Officer's decision, the Tenant need only pay the Rent increase based on the amount of the final decision.
3. Tenant Petitions.
- a. While a tenant petition is pending, a tenant must pay when due, pursuant to the rent increase notice, the amount of the rent increase that is equal to the CPI Rent Adjustment unless:
    - i. The tenant's petition claims decreased housing services; or
    - ii. The owner failed to separately state in the rent increase the amount that equals the CPI Rent Adjustment pursuant to Section 8.22.070 H.
  - b. The amount of any noticed rent increase above the CPI Rent Adjustment and Banking that is the subject of a petition is not operative until the decision is final.
4. When a party appeals the decision of a hearing officer, the tenant must continue to pay the amount of the rent adjustment due during the period prior to the issuance of the decision and the remaining amount of the noticed rent increase is not operative until the board has issued its written decision.
5. Final decision. The decision on a petition is final when any one of the following events have occurred:
- a. A hearing officer decision has been issued and the time for appeal has passed without an appeal being filed;
  - b. An appeal decision is issued and the time to file a writ of administrative mandamus has passed without a writ being filed; or
  - c. When a court issues a final decision, including any further court appeals, on any writ of administrative mandamus contesting a Rent Board appeal decision.
6. No part of any noticed rent increase is operative during the period after the tenant has filed a petition and the applicable covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations as defined by Section 17920.3 of the California Health and Safety Code, excluding any, violation caused by a disaster or where the owner proves the violation was solely

caused by the willful conduct of the tenant. In order for such rent increase to be operative the owner must provide proof that the cited violation has been abated. The owner must then issue a new rent increase notice pursuant to California Civil Code Section 827. The rent increase will be operative in accordance with Section 827. However, if an Owner files a petition for a Rent increase, the Tenant must include the allegation of code violations in the response to the petition for this subsection to be considered.

- E. An owner cannot increase the rent for a covered unit except by following the procedures set out in this Chapter (including the Just Cause for Eviction Ordinance (O.M.C. Chapter 8.22, Article II) and the Ellis Act Ordinance (O.M.C. Chapter 8.22, Article III)) or where Costa-Hawkins allows an owner to set the initial rent for a new tenant without restriction.
- F. Decreased housing services. A decrease in housing services is considered an increase in rent. A tenant may petition for an adjustment in rent based on a decrease in housing services under standards in the regulations. The tenant's petition must specify the housing services decreased. Where a rent or a rent increase has been reduced for decreased housing services, the rent or rent increase may be restored in accordance with procedures set out in the regulations when the housing services are reinstated.
- G. Pass-through of Fee. An owner may pass-through one half of the fee to a tenant in accordance with Section 8.22.500G. The allowed fee pass-through shall not be added to the rent to calculate the CPI Rent Adjustment or any other rent adjustment and shall not be considered a rent increase.
- H. Notice Required to Increase Rent or Change Other Terms of Tenancy.
  - 1. All Rent Increase Notices. As part of any notice to increase rent or change any terms of tenancy, an owner must include:
    - a. Notice of the existence of this Chapter; and
    - b. The tenant's right to petition against any rent increase in excess of the CPI Rent Adjustment unless such rent increase is pursuant to an approved Petition.
  - 2. Notices for Rent Increases Based on the CPI Rent Adjustment or Banking. As part of a notice to increase Rent based on the CPI Rent Adjustment or Banking, an Owner must include:
    - a. The amount of the CPI Rent Adjustment; and
    - b. The amount of any Banking increase.
  - 3. Notices for Rent Increases Based on Owner Petition. As part of a notice to increase rent based on an owner petition, an owner must include a summary of the decision in the form provided by the Rent Adjustment Program pursuant to the following:

- a. The Rent Adjustment Program will provide a summary of any decision, including an appeal decision or final decision with the decision or final decision, which the Owner shall include in a notice of rent increase.
  - b. The Rent Adjustment Program may provide optional, "safe harbor" forms for required notices, unless the ordinance or regulations require use of a specified form.
4. A notice to increase rent must include the information required by Subsection 8.22.070H.1. using the language and in a form prescribed by the Rent Adjustment Program.
  5. A rent increase is not permitted unless the notice meets the requirements of California Civil Code Section 827.
  6. A rent increase is not permitted unless the notice required by this section is provided to the tenant. An owner's failure to provide the notice required by this section invalidates the rent increase or change of terms of tenancy. This remedy is not the exclusive remedy for a violation of this provision.
- I. An owner may terminate the tenancy for nonpayment of rent (California Code of Civil Procedure § 1161(2) (unlawful detainer)) of a tenant who fails to pay the portion of a rent increase that is equal to the CPI Rent Adjustment when the tenant is required to do so by this subsection. In addition to any other defenses to the termination of tenancy the tenant may have, a tenant may defend such termination of tenancy on the basis that:
    1. The owner did not comply with the notice requirements for a rent increase; or
    2. The tenant's petition was based on decreased housing services.

**SECTION 3. Repeal and Reenactment of Section 8.22.090 of Oakland Municipal Code Chapter 8.22, Article I (Residential Rent Adjustment Program).**

Oakland Municipal Code Section 8.22.090 is hereby repealed and reenacted with amendments 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 and Responses.**

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 8.22.070 A.2. or that exceeds the rent increase limit of thirty percent (30%) in five (5) 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.
- n. A primary tenant overcharges a subtenant in violation of the regulations. Only a subtenant may file a petition for this reason.

- 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's~~ petition, a tenant, including a subtenant contesting overcharges by a primary 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.; and
  - e. Proof of service by first-class mail or in person of the tenant petition or response and any supporting documents on the opposing party (owner, subtenant, or primary tenant).
5. A tenant must file a response to an owner's or subtenant's petition within thirty (30) days of service of the owner-petition.

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; and
  - 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 tenant petition.
3. Section 8.22.090 B shall not apply to primary tenant responses to subtenant petitions.

**SECTION 4. 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 5. 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 6. CEQA Compliance.** This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to sections of the CEQA Guidelines, taken together and each as a separate and independent basis, including but not limited to: Section 15378 (regulatory actions), Section 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), and Section 15061(b)(3) (no significant environmental impact). The legislation contains no provisions modifying the physical design, development, or construction of residential or nonresidential structures. Accordingly, it can be seen with certainty that there is no possibility that it: (1) may have a significant effect on the environment and/or (2) would result in any physical changes to the environment.

IN COUNCIL, OAKLAND, CALIFORNIA,

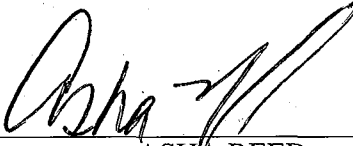
**MAY 18 2021**

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND  
PRESIDENT FORTUNATO BAS - 8

NOES – 0  
ABSENT – 0  
ABSTENTION – 0

ATTEST:



ASHA REED

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

Introduction Date

**MAY 04 2021**

Date of Attestation:

**May 20, 2021**