HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING
December 10, 2020
5:00 P.M.
Meeting Will Be Conducted Via Video Conference

AGENDA

PUBLIC PARTICIPATION
The public may observe and/or participate in this meeting many ways.

OBSERVE:
• To observe, the public may view the televised video conference by viewing KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99 and locating City of Oakland KTOP – Channel 10.

• To observe the meeting by video conference, please click on this link: You are invited to a Zoom webinar.
Topic: HOUSING, RESIDENTIAL RENT AND RELOCATION FULL BOARD MEETING December 10, 2020 5:00 PM
Please click the link below to join the webinar:
https://zoom.us/j/92054350716
Or iPhone one-tap :
US: +12532158782,,92054350716# or +13017158592,,92054350716#
Or Telephone:
Dial(for higher quality, dial a number based on your current location):
US: +1 253 215 8782 or +1 301 715 8592 or +1 312 626 6799 or +1 346 248 7799 or +1 669 900 6833 or +1 929 205 6099
Webinar ID: 920 5435 0716
International numbers available: https://zoom.us/u/abENdgkHjY

COMMENT:
There are two ways to submit public comments:

• To comment by Zoom video conference, click the "Raise Your Hand" button to request to speak when Public Comment is being taken on an eligible agenda item at the beginning of the meeting. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted. Instructions on how to "Raise Your Hand" is available at:
https://support.zoom.us/hc/en-us/articles/205566129-Raise-Hand-In-Webinar

• To comment by phone, please call on one of the above listed phone numbers. You will be prompted to "Raise Your Hand" by pressing "*9" to speak when Public Comment is taken. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted. Please unmute yourself by pressing *6.

If you have any questions, please email Bkong-brown@oaklandca.gov.

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. INFORMATION AND ANNOUNCEMENTS
    a. Member Updates
        - Board Letter to Mayor (R. Auguste)
    b. Program Updates
        - Moratorium Postcard
        - Moratorium FAQ and Info Sheet
        - COVID-19 Resources for Property Owners and Tenants
5. COMMITTEE REPORTS AND SCHEDULING
    a. Ad Hoc Committee Updates
        - Public Comments Related to TPO Regulations
        - Amendments to Just Cause for Eviction Ordinance
        - Rent Adjustment Program Regulations
        - Appendix A to Rent Adjustment Regulations
6. ADJOURNMENT

As a reminder, alternates in attendance (other than those replacing an absent board member) will not be able to take any action, such as with regard to the consent calendar.

Accessibility. To request disability-related accommodations or to request an ASL, Cantonese, Mandarin or Spanish interpreter, please email sshannon@oaklandca.gov or call (510) 238- 3715 or California relay service at 711 by 5:00 P.M. one day before the meeting.

*Staff appeal summaries will be available at the Rent Program website and the Clerk's office at least 72 hours prior to the meeting pursuant to O.M.C. 2.20.080.C and 2.20.090

Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español, Cantones, Mandarín o de lenguaje de señas (ASL) por favor envié un correo electrónico a sshannon@oaklandca.gov o llame al (510) 238-3715 o 711 por lo menos cinco días hábiles antes de la reunión.

需要殘障輔助設施, 手語, 西班牙語,
粵語或國語翻譯服務, 請在會議前五個工作天電郵 sshannon@oaklandca.gov
或致電 (510) 238-3715 或 711 California relay service.

City of Oakland

Memorandum

To: Office of the Mayor

From: Housing, Residential Rent and Relocation Board

Date: October 15, 2020

Re: Rent Board's Vote to Discontinue "Neutral" Membership Designation

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We write to inform you that on October, 8, 2020, the Housing, Residential Rent and Relocation Board voted to discontinue the practice of referring to those members who are neither tenants nor residential rental property owners as "neutral." These members will instead be known as "undesignated" members. The Board requests that, in conformity with this vote, the Office of the Mayor adopt a similar practice.

Generally, the Board intends to, when possible, refer to all members simply as "members," rather than by membership designations. In those circumstances where reference to specific membership designations is necessary (e.g. when confirming meeting quorum or referencing board vacancies), the Board intends to adopt the "undesignated" nomenclature as a replacement for "neutral."

The composition of the Housing, Residential Rent and Relocation Board is codified in Oakland Municipal Code § 8.22.040(A). This statute provides that that our Board is comprised of two "residential rental property owners," two "tenants," and three persons "who are neither tenants nor residential rental property owners." There is no reference to a "neutral" member in the Rent Adjustment Program's ordinance or regulations.

As representatives of the Rent Adjustment Program appeals, *all* members of our Board are tasked with approaching cases with fairness and impartiality. By definition, in these circumstances, each member of our Board (including tenants and residential rental property owners) must strive to be "neutral." We have adopted the policy described in this memorandum in the interest of furthering this goal.

We thank you for your attention and consideration to this matter. We are happy to provide additional information upon request.

CC: Rent Board Chair Robert Stone

Rent Adjustment Program Manager, Chanee Franklin Minor;

Deputy City Attorneys Kent Qian, Oliver Luby, and Ubaldo Fernandez

CALL US AT 510-238-3721

TEMPORARY MORATORIUM ON EVICTIONS AND RENT INCREASES

Enacted March 27, 2020

Expires at the end of the Local Emergency

The Ordinance prohibits:

- ☑ **Most Evictions**
- ☑ **Late Fees**
- ☑ **Rent Increases above CPI**

CITY OF OAKLAND

Rent Adjustment Program

Housing & Community Development Department

The tenant is still obligated to pay back rent owed during the local emergency.

Email us at rap@oaklandca.gov

THE MORATORIUM ALLOWS FOR "GOOD SAMARITAN" TEMPORARY RENT DECREASES:

A property owner and tenant may agree in writing to a temporary rent decrease. The owner has the right to return the rent to the original rate.

The moratorium remains in effect for the duration of the Local Emergency.

QUESTIONS? HOUSING COUNSELORS ARE HERE TO HELP YOU!

Call us at (510) 238-3721 or
Email, rap@oaklandca.gov

www.oaklandca.gov/rap

Se habla Español 我們講中文

CITY OF OAKLAND
Rent Adjustment Program
Housing & Community Development Department
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612

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Emergency Moratorium on Rent Increases and Evictions Frequently Asked Questions (FAQ)

What are the dates when the moratorium is in effect?
The Oakland City Council passed this moratorium on Friday, March 27, 2020, effective immediately. The moratorium will be in effect until the City Council lifts the local declaration of emergency due to COVID-19.

Are tenants required to notify the property owner in writing that they can't pay rent due to COVID-19?
No. While there is no requirement that tenants notify the Owner that they cannot pay rent due to COVID-19, the Rent Adjustment Program (RAP) encourages tenants to be as communicative as possible about an inability to pay rent due, and to keep accurate records and notes of the communication.

Are tenants required to provide proof to the property owner that their income was reduced because of COVID-19?
No. Under Oakland's Emergency Ordinance, a property owner cannot require a tenant to provide proof that their income is reduced because of COVID-19. However, there may be additional requirements from the State. RAP encourages property owners and tenants to work together during the moratorium.

Are tenants still required to pay rent during the moratorium?
Yes. While the tenant cannot be evicted for non-payment of rent due to loss of income related to the coronavirus pandemic, the emergency ordinance does not relieve a tenant of the obligation to pay back rent that was due during the moratorium.

What happens if the tenant's lease expires during the moratorium?
Termination of a lease is never just cause to evict a tenant. A diagnosis of coronavirus, the sale of a property, and foreclosure are also not grounds for evictions under the Just Cause for Eviction Ordinance.

What happens when the moratorium is over?
When the moratorium is over, Oakland laws on evictions and rent control still apply. Rent that has not been paid, is still due. While a property owner may not evict for unpaid rent due to a loss of income because of the coronavirus pandemic, a property owner may file a small claims action to recover the back rent owed.

How does the new state COVID-19 tenant relief law affect the moratorium?
The COVID-19 Tenant Relief Act of 2020 (AB 3088) will not significantly affect the moratorium. Oakland's eviction moratorium will continue to protect Oakland renters from evictions during the COVID-19 emergency. However, tenants living in units not covered by the eviction moratorium, i.e. non-Just Cause units, will have additional protections under AB 3088.

How does the CDC order affect the moratorium?
The CDC order does not apply in state or local areas with the same or greater level of protections. Because the Oakland's eviction moratorium provides more protections to tenants, the local moratorium will continue to protect Oakland renters from evictions during the COVID-19 emergency.

Emergency Moratorium on Rent Increases and Evictions

On March 9, 2020 the Oakland City Administrator issued a proclamation of Local Emergency, which was ratified by the Oakland City Council on March 12, 2020, due to the Novel Coronavirus COVID-19 pandemic. On March 27, 2020, the Oakland City Council adopted an ordinance imposing a moratorium on residential evictions and rent increases, and prohibiting late fees during the Local Emergency. The Ordinance also prohibits evictions based on nonpayment of rent that became due during the Local Emergency when the tenant suffered a substantial reduction of income or substantial increase of expenses due to COVID-19.

*The Emergency Moratorium on Rent Increases and Evictions **only** applies to tenancies regulated under the Oakland Just Cause for Eviction Ordinance and the Oakland Rent Adjustment Ordinance. **The following is a summary.** For complete information, please consult the full text of the Ordinance at https://bit.ly/2UQl52b. Commercial tenants with questions about the eviction moratorium should send an e-mail to busdev@oaklandca.gov.*

This emergency ordinance establishes moratoriums on:

Most Evictions
Most evictions are banned until the end of the Local Emergency. Evictions where the tenant poses an imminent threat to the health or safety of other occupants and Ellis Act evictions are exceptions.

Evictions for nonpayment of rent that became due during the Local Emergency
A property owner cannot evict a tenant for failure to pay rent during the Local Emergency if the rent was unpaid due to a substantial loss of income or an increase in expenses resulting from the coronavirus pandemic. This includes, but is not limited to the following:

- the tenant suffered a loss of employment or a reduction in hours;
- the tenant was unable to work because their children were out of school;
- the tenant was unable to work because they were sick with COVID-19 or caring for a household or family member who was sick with COVID19; or
- the tenant incurred substantial out of pocket medical expenses.

The tenant is still obligated to pay rent owed during the Local Emergency. The emergency moratorium on evictions does not relieve the tenant of liability for unpaid rent.

Residential Late Fees
For residential tenancies, no late fees may be imposed for unpaid rent that became due during the Local Emergency if the rent was late for reasons resulting from the COVID-19 pandemic.

Rent Increases
The moratorium prohibits rent increases above 2.7% (the Consumer Price Index, or CPI) unless required to provide a fair return. Property owners contemplating a rent increase during the Local Emergency should contact the Rent Program and speak with a housing counselor.

Additional Provisions

Good Samaritan Temporary Rent Decrease
A property owner and tenant may agree in writing to a temporary rent reduction without the owner losing the right to raise the rent back to the rate established before the temporary rent reductions. Owners must still comply with all noticing requirements for rent increases, unless the agreement specifically states when the rent will return to the original rent amount.

Notice Requirements
The emergency ordinance has very specific noticing requirements. For notices required for evictions and rent increases during the moratorium, please see the Ordinance for specific language.

Residential tenants and property owners may contact the Rent Adjustment Program with questions by calling (510) 238-3721 or sending an e-mail to RAP@oaklandca.gov. Rent Adjustment Program information is also online at https://www.oaklandca.gov/rap.

Housing Resources for Tenants and Property Owners During Covid-19

RENTER AND HOMEOWNER RELIEF

The City of Oakland has limited funds available for renter and homeowner relief through the Keep Oakland Housed (KOH) partnership of KOH nonprofit partners and other nonprofit organizations. This funding will provide one-time financial assistance to low-income renters and homeowners impacted by COVID-19. The application period opens September 1, 2020.

The KOH partnership will disperse funds to eligible applicants, with each nonprofit leading the application process for their organization.

Renter applicants may contact:

- Bay Area Community Services (BACS) | www.bayareacs.org
  Call: (510) 899-9289 | Text: (510) 759-4877 | Apply: housing.bayareacs.org
- Catholic Charities East Bay | www.cceb.org | (510) 768-3100

Homeowner applicants may contact:

- Housing and Economic Rights Advocates (HERA) | www.heraca.org | (510) 271-8443 x300

*Applicants must be current Oakland residents, a low-income individual or household, and at risk of losing their home. Please see the chart below to find the maximum income level based on your household size to qualify for help.

	Household Size							
	One Person	Two Person	Three Person	Four Person	Five Person	Six Person	Seven Person	Eight Person
Low Income	$73,100	$83,500	$94,000	$104,000	$112,800	$121,150	$129,500	$137,850

from the Keep Oakland Housed Website

Funding is extremely limited, and applications will be prioritized based on need, severity of Covid-19 impact, and funding availability.

LEGAL AID

For Tenants:

Centro Legal
Phone: 510-437-1554
Email: tenantsrights@centrolegal.org
Website: https://www.centrolegal.org/

East Bay Community Law Center (EBCLC)
Phone: (510) 548-4040 ext. 629
Website: https://ebclc.org/

Eviction Defense Center (EDC)
Phone: (510) 452-4541
Website https://www.evictiondefensecenteroakland.org/

For Property Owners:

Housing and Economics Rights Advocates (HERA)
Phone: 510-271-8433
Email: http://www.heraca.org/#contact
Website: http://heraca.org/

The East Bay Rental Housing Association
Phone: 510-893-9873
Email: membership@ebrha.com
Website: https://www.ebrha.com/

For more information on the Keep Oakland Housed Covid-19 Relief Financial Assistance program, contact the City of Oakland Housing and Community Development, Housing Resource Center at (510) 238-6182. You can also visit the Keep Oakland Housed website here.

The City of Oakland's Emergency Moratorium remains in place until the lifting of the Local Emergency Order by the City Council. For more information, visit the City's Emergency Moratorium website here.

ABOUT THE RENT ADJUSTMENT PROGRAM

The Oakland City Council adopted the Rent Adjustment Program Ordinance (OMC Chapter 8.22) in 1980. This ordinance sets the maximum annual rent increase based on the annual CPI increase and handles rent adjustments for claims of decreases in housing services and handles other rent-related matters. The purpose of this program is to foster fair housing for a diverse population of renters and enforce the Rent Adjustment Ordinance set out by the City of Oakland.

CONTACT US

*Due to the Shelter-in-Place Order issued on March 16, 2020, all in-person counseling and form drop-offs have been canceled. **Please read the information below carefully to find the best way to contact us.**

By Phone

Phone: (510) 238-3721 | Fax: (510) 238-6181
RAP staff members are available from Monday to Thursday, 9:30am to 4:30pm to answer any RAP or housing-related questions you might have. Calls are generally limited to 10 minutes per person.

By Email

Email (for all inquiries): rap@oaklandca.gov.

To contact the Hearings Unit, you can email them at hearingsunit@oaklandca.gov. If you are initiating a new petition or have a case pending and need to submit petition-related documents, you must email the Hearings Unit.

All eviction notices should be scanned and submitted via email to evictionnotices@oaklandca.gov.

By Mail

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

Address: 250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612

Due to the Shelter-in-Place Order, we are no longer accepting in-person petition applications and related materials in our office. All new petitions and petition-related documents can be submitted by mail to the address above.

All documents for Ellis Act cases must be mailed to 250 Frank Ogawa Plaza, Suite 5313, Oakland, CA 94612.

Online Petition Filing

We also offer an online portal where you can submit your petitions and all petition-related forms online. Click here to access the portal.

For a full list of documents, click here to access all tenant forms and here for all property owner forms.

JOIN THE EMAIL LIST

If you would like to receive emails about upcoming events or updates from the Rent Adjustment Program, please sign up! Please use the link below to add your name and email to our list for future updates.
https://www.surveymonkey.com/r/VDB6CLX

In It Together
Comments
7/14/20 TPO Ordinance Amendments

Article V – Tenant Protection Ordinance
8.22.620 - Definitions. As used in this Chapter, Article V:

"Tenant~~" has the same meaning as in the Just Cause for Eviction Ordinance (O~~.M.C. 8.22.340)means any renter, tenant, subtenant, lessee, or sublessee) of a rental unit, or any group of renters, tenants, subtenants, lessees, sublessees) of a rental unit, or any other person entitled to the use or occupancy of such rental unit, . This includes occupants of residential hotels against whom violations of California Civil Code Section 1940.1 have occurred.

Definition of Renters

We found the terms occupant, tenant, subtenant, roommate, and additional occupant are used interchangeably throughout the ordinance even though each term implies something different in the ordinance. Oakland's TPO requires terms and definitions used to describe people living in units to be clear and distinct because the TPO applies to each person living in a unit differently. We propose the following terms and definitions:

Tenant - A person who has the right to use and occupy a rental unit by the property owner or the property owner's agent through a lease or rental agreement and who actually resides in the unit. The tenant's right to exclusive enjoyment of the unit is granted in exchange for an agreed-upon amount of money, and is limited to a fixed time periodset forth in the lease.

Co-Tenant - means there is more than one tenant.

Master Tenant – The tenant responsible for paying the rent if the tenant has received approval to add sub-tenants to the unit.

Sub-Tenant - an occupant who has no agreement with the owner and pays rent to a master tenant.

Occupant – is not responsible for rent payments, is not signatory to the lease, and is the spouse, registered domestic partner, parent, grandparent, child, adopted child, foster child, or grandchild of an existing tenant, or the legal guardian of an existing tenant's child or grandchild who resides in the unit, or a caretaker/attendant as required for a reasonable accommodation for an occupant with a disability.
Roommate (this term is vague and should be eliminated)

8.22.640 - Tenant harassment.

13. Interfere with a Tenant's right to privacy. This includes, but is not limited to: video or audio recording that captures the interior of a Tenant's unit, entering or photographing portions of a Rental Unit that are beyond the scope of a lawful entry or inspection, unreasonable inquiry into a Tenant's relationship status or criminal history, and unreasonable restrictions on or inquiry into overnight guests;

1) The regulations should clearly state that during the course of a lawful entry the landlord may photograph conditions that require repair, can lead to mold, vermin, water damage, damage to interior unit finishes, damage to unit furnishings, or pose a health and safety risk.

2) Where lawful inspections are made to determine whether tenants have corrected lease violations, landlords may photograph violation areas to provide evidence under as required by Section 6 (8.22.360) Good Cause for Eviction subsection B(1).

3) Reasonable restrictions on visitors could include a maximum time limit on visits per quarter year by any one guest in order to prevent an occasional arrangement from becoming a permanent subtenancy.

4) Reasonable inquiry into tenant's guests could include resolution of complaints from other tenants or neighbors.

8.22.650 - General remedies.
B. Notice requirement for Tenants. Before a Tenant may file an a civil suit alleging a violation of subsection 8.22.640.A.1., 2., 3., 10., 11., 12., or 13., the affected Tenant must first notify the Owner or his or her designated agent regarding the -16- 2834132v14 problem. If the allegation is a violation of subsections 8.22.640.A.1., 2., 3.,11., or 12., the Tenant must allow fifteen (15) days for the Owner to correct the problem, unless the Owner notifies the Tenant that the repairs will take more than fifteen (15) days and provides for a reasonable time period for completion. If the repair takes more than fifteen (15) days, the Tenant may file the civil suit if the Owner does not take reasonable steps to commence addressing the problem or the Owner does not follow through to complete the repairs with reasonable diligence. However, no fifteen (15) day waiting period shall apply if the Owner's conduct is intentional and demonstrates a willful disregard for the comfort, safety or wellbeing of the Tenant(s).

To assume willful disregard, (1) the tenant must inform the landlord of the current issue with no response in 5 days; and (2) the landlord has not responded to the tenant regarding significant repairs or other complaints (within the scope of the landlord) within 15 days in more than two instances in the prior six months. This presumption may be refutable by the landlord.

Residential Rent Adjustment Program
8.22.020 - Definitions.

"Additional occupant" means an occupant whose addition to the unit has increased the total number of occupants above the base occupancy level. The owner may petition to increase the rent by an amount up to 5% for each additional occupant above the base occupancy level. A

rent increase shall not be based on an additional occupant who is the spouse, registered domestic partner, parent, grandparent, child, adopted child, foster child, or grandchild of an existing tenant, or the legal guardian of an existing tenant's child or grandchild who resides in the unit, or a caretaker/attendant as required for a reasonable accommodation for an occupant with a disability. A rent increase granted under this Section shall be reversed if the number of occupants decreases.

1) Include a regulation with the following language to prohibit tenants from profiting from additional occupants:

Initial Rent Limitation for Additional Occupants. A tenant who lawfully adds occupants to her rental unit may charge no more rent upon initial occupancy of the additional occupant than that rent which the tenant is currently paying to the landlord. The tenant must disclose to the additional occupant the amount of rent paid to the property owner, and the tenant cannot charge the additional occupant(s) more than a proportional share of the total rent the tenant pays to the owner. Tenants found profiting from rent must pay RAP fees for the unit and City of Oakland business tax on profits made.

2) Please confirm that the Landlord's petition to the Rent Board to increase the rent by 5% for each additional occupant will receive expedited processing as requested by Councilmember Taylor.

3) Tenant must provide proof of family relation with additonal occupant.

4) Increasing the number of additional occupants beyond the base occupancy level increases the property's utility costs. How can the property owner recover costs for additonal occupants who are family?

8.22.090 – Petition and respnd to filing procedures A. Tenant Petitions
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.

To avoid abuse by the tenant and reduce the burden on landlords to prove otherwise, the regulations should establish a process requiring the tenant to file a petition to remove the 5% increase when the additional occupant is no longer residing in the unit and provide date of move-out. This petition should also be handled in an expeditious manner by the rent board.

"Base occupancy level" means the number of tenants occupying the covered unit as principal residence as of June 16, 2020, with the owner's knowledge, or allowed by the lease or rental agreement effective as of June 16, 2020, whichever is greater, except that, for units that had an initial rent established on or after June 17, 2020, "base occupancy level" means the number of tenants allowed by the lease or rental agreement entered into at the beginning of the current tenancy.

1) We propose the following regulation and definition of Principal Residence:

"Principal Residence" is a rented unit that is determined to be the primary residence of a tenant according to the preponderance of the following factors:

• Whether the unit is listed as the tenant's residence on any vehicle registration, driver's license, voter registration or with any other public agency
• Whether the tenant lists the rental unit as their domicile for purposes of filing tax returns
• Whether the tenant stays in the unit for a majority of days during the year
• Whether utilities are billed to and paid by the tenant at the unit
• Whether the tenant occupies a bedroom in the unit or studio containing all their personal possessions
• Whether the tenant has filed a homeowner's tax exemption for a different property
• Whether the unit is the place the tenant normally returns to as his or her home
• Whether there is credible testimony or evidence that the tenant actually occupies the rental unit as his or her "principal place of residence."

2) A tenant may only have one principal residence.

3) Develop a process for tenant to regularly verify their "principal residence" status, similar to that required by the "owner occupied" unit.

5) A tenant is not allowed to sublet or assign *the entire unit* to a new tenant or subtenant in violation of a lease, or to sublet the unit for tourist or transient use.

"Housing services" means all services provided by the owner related to the use or occupancy of a covered unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services, and any other benefits or privileges permitted the tenant by agreement, whether express or implied, including the right to have a specific number of occupants and the right to one-for-one replacement of roommates, regardless of any prohibition against subletting and/or assignment.

1) The term roommate is not defined in the ordinance. This term should be eliminated.

2) Landlords may specify lease services which are not provided to a tenant as part of the lease, such parking space, storage area, or other services to prevent misunderstandings of whether a service is implied as part of the tenant's lease. Some services may be specifically provided to other tenants based on their lease agreements rather than available to all tenants. "Implied services" are those basic to any residential lease, such as a warranty of habitability or legality of a unit.

3) How does staff calculate rent reductions based on loss of housing services?

4) Does the tenant qualify for a rent reduction if they fail to secure a creditworthy additional occupant?

Good Cause Required for Eviction Ordinance
Section 6 [8.22.360]

2b. Notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit based on the addition of occupants to the rental unit if the landlord has unreasonably refused a written request by the tenant to add such occupant(s) to the unit, so long as the maximum number of occupants does not exceed the lesser of the amounts allowed by Subsection (i) or (ii) of this Section 8.22.360A.2.b. If the landlord fails to respond in writing with a description of the reasons for the denial of the request within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord. A landlord's reasonable refusal of the tenant's written request may not be based on either of the following: (1) the proposed additional occupant's lack of creditworthiness, if that person will not be legally obligated to pay some or all of the rent to the landlord, or (2) the number of occupants allowed by the rental agreement or lease. With the exception of the restrictions stated in the preceding sentence, a landlord's reasonable refusal of the tenant's written request may be based on, but is not limited to, the ground that the landlord resides in the same unit as the tenant or the ground that the total number of occupants in a unit exceeds (or with the proposed additional occupant(s) would exceed) the lesser of (i) or (ii):

1) Please confirm the following interpretation based on City Council action on 4/21/20 and 7/14/20: Section 8.22.020 – Definitions in The Residential Rent Adjustment Ordinance amendment clarifies that "occupants" are family members as defined, who are not responsible for paying rent and cannot be reasonably refused unless the landlord lives in the unit or the addition of the occupant would exceed legal occupancy limits cited in 8.22.360 2.b.(i) and (ii).

2) Please confirm the following interpretation based on City Council action on 4/21/20 and 7/14/20: The landlord's reasonable denial may be based on the credit worthiness of an "additional occupant" who will be paying rent and is not family, a domestic partner, et al.

3) Tenant is required to notify owner of any additional occupant as material term of the lease.

4) We suggest the following definition of Reasonable Denial for screening the "additional occupant" who is responsible for paying rent.

- **The proposed "additional occupant" lacks creditworthiness.**
- **Where the landlord made a timely request for the proposed new occupant to complete the landlord's standard form application or to provide sufficient information to allow the landlord to conduct a typical background check and the new occupant does not comply within five calendar days of actual receipt by the tenant of the landlord's request.**

- **Where the landlord can establish that the proposed new occupant has intentionally misrepresented significant facts on the landlord's standard form application or provided significant misinformation to the landlord that interferes with the landlord's ability to conduct a typical background check.**

- **The proposed "additional occupant" compromises the safety or health of other occupants in the unit and property.**

- **An increase in the number of persons to reside in the unit after the "additional occupant" would place an unreasonable burden on the unit or the use and enjoyment of the unit by all occupants in the unit and property (i.e., use of bathroom facilities, common areas of the unit and the property); or exceed legal occupancy limits established by 8.22.360 2.b.(i) and (ii).**

- **The Owner's good faith reliance on information from third parties of the proposed additional occupants inappropriate conduct.**

- **The refusal of the proposed additional occupant or sub lessee to sign an agreement to comply with the landlord's rules and regulations during occupancy**

- **The owner lives in the unit to be occupied by a proposed "additional occupant"**

5) The use of the term occupant is confusing in this provision and would be easily understood by the public if the renter definitions we proposed earlier were used.

6) We support development of a lease addendum, similar to the City of Berkeley's, to track additional tenants.

In It Together
Comments
11/12/20 TPO Ordinance Amendments

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"Base occupancy level" means the number of tenants occupying the covered unit as principal residence as of June 16, 2020, with the owner's knowledge, or allowed by the lease or rental agreement effective as of June 16, 2020, whichever is greater, except that, for units that had an initial rent established on or after June 17, 2020, "base occupancy level" means the number of tenants allowed by the lease or rental agreement entered into at the beginning of the current tenancy. When there is a new lease or rental agreement solely as a result of adding one or more additional occupants to the lease or rental agreement, the "beginning of the current tenancy" refers to the tenancy existing prior to the new lease or rental agreement regarding the additional occupant(s).

WHAT IS THE CONTEXT FOR THE NEW LANGUAGE ADDED TO BASE OCCUPANCY?

Page 000014

"Master tenant" means a tenant who resides in a covered unit and, as an ~~landlord~~ occupant
~~who is not an owner of record of the property,~~charges rent to or receives rent from one or more subtenants in the covered unit.

Page 00014

"Principal Residence" means the one dwelling place where an individual primarily resides. Such occupancy does not require that the individual be physically present in the dwelling place at all times or continuously, but the dwelling place must be the individual's usual place of return. A Principal Residence is distinguishable ~~for~~ from one kept primarily for secondary residential occupancy, such as a pied-a-terre or vacation home, or non-residential use, such as storage or commercial use.…

Page 00030
10.7 Additional Occupants
As provided by O.M.C. 8.22.020, "Additional occupant," the addition of occupants above the base
occupancy level, as defined by the Rent Adjustment Ordinance, allows an owner to petition to increase
the rent by an amount up to 5% for each occupant above the base occupancy level. Such petitions must

be filed within ninety (90) days of approval, or deemed approval as provided by O.M.C. 8.22.360.A.2.b,
of the tenant's written request to add the occupant. No rent increase shall be granted for an additional
occupant who is the spouse, registered domestic partner, parent, grandparent, child, adopted child,
foster child, or grandchild of an existing tenant, or the legal guardian of an existing tenant's child or
grandchild who resides in the unit, or a caretaker/attendant as required for a reasonable accommodation for an occupant with a disability.

Tenant is required to notify owner within 15 days of occupancy of any additional occupant as material term of the lease.

Such rent increases must be reversed by the Owner if the additional occupancy level decreases,
beginning with the most recently granted increase. Once a tenant provides written notice to the Owner
of a decrease in the additional occupancy level and lists all current occupants, the Owner must provide
written notice within fifteen (15) days to the tenant of the applicable reduced rent, effective as of the
next regular rent due date occurring no sooner than thirty (30) days after the tenant's written notice.

LEASE ADDENDUM FOR PURPOSE OF FUTURE COSTA-HAWKINS RENT INCREASE (California Civil Code Section 1954.53 et. seq,)

I, _____ (tenant) hereby acknowledge that I am moving into _____ (property), effective _____(date).

I acknowledge that I am not an original tenant as defined by ~~Berkeley~~ Oakland Rent Board Regulation 1013 and California Civil Code Section 1954.53 because I am replacing a vacating tenant and/or I was not a party to the original rental agreement and did not begin my tenancy fewer than thirty days thereafter.

I understand that the landlord may increase the rent and create a new rental agreement/lease with new and different terms when the last original tenant permanently vacates the unit.

I also understand that the landlord may accept rent payments directly from me as part of my tenancy and that this acceptance alone does not constitute a waiver of the landlord's right to increase the rent pursuant to ~~Berkeley~~ Oakland Rent Board Regulation 1013 and California Civil Code Section 1954.53 when the last original tenant permanently vacates.

I further understand that the landlord does not waive his/her right to establish a new rent and lease/rental agreement unless s/he has received written notice of tenancy termination from the last original tenant and thereafter accepts rent before serving notice of a new rent.

Dated: _____ Landlord/Agent: _____

Dated: _____ Tenant: _____

November 12, 2020

Oakland Rent Adjustment Program
250 Frank Ogawa Plaza, Suite 5313
Oakland, CA 94612

Re: Tenant Rights Community Response to Proposed Regulations

Dear Rent Adjustment Program Members:

We, tenant rights organizations, tenant unions, and legal services organizations that represent tenants in Oakland write regarding the currently proposed regulations for the Just Cause For Eviction Ordinance and Rent Adjustment Program. These regulations are important to us because they involve issues that we have personally faced or that tenants who we assist have dealt with. The regulations can help Oakland tenants remain in our homes, or to leave us more likely to face eviction and unfair rent increases.

We appreciate the proposed regulations that have been published. We also see a number of changes that are not yet in the proposed regulations that we think are crucial to protect tenants. We have all unfortunately dealt with harassing behavior designed to harm tenants and cause us to move us out of our homes, often so landlords can reset the rent without limit. Our changes are suggested with the idea that reasonable regulations will apply mainly to stop those bad actors.

These are our suggestions. A full list of changes are attached as Attachment A.

I. Change the Reasons that Landlords can Reject Additional or Replacement Tenants.

Prior to the new ordinance changes, Oakland tenants already had a right to one-to-one replacement of departing roommates under the Just Cause Ordinance. In practice, this right was difficult to enforce. Some landlords have used purposefully stringent criteria and processes in one-for-one replacement of departing tenants. This is a tactic to prevent tenants from replacing their roommates, so that the entire household just moves out instead. It also harms departing tenants, who can remain liable for rent long after they have moved out.

We believe that the current proposed criteria still leave ample legal room for landlords to retaliate against tenants by refusing to accept new roommates, or to use application criteria that may be discriminatory or unfair. Our proposed changes are enclosed.

II. Don't Add a New Process that Encourages Landlords to Raise the Rent

The new proposed regulations also contain a new petition process, which is not in the Rent Ordinance, for a landlord to seek a rent increase based on the grounds that the original occupant no longer resides in the unit.

We don't believe that the Rent Adjustment Program should add a new process to allow landlords to raise the rent where not required by state law. We also object to a new petition process that encourages landlords to spy on their tenants. We have seen tenants whose landlords catalogued everyone who went into and out of their units or used security cameras to track their movements. While these tactics should be illegal under the new Tenant Protection Ordinance, this new petition process might allow landlords to engage in this behavior while claiming that they are only collecting evidence for their petition.

III. Other Suggestions

In addition to these two important points, we have other process suggestions for the new regulations that we believe will lead to more fair and efficient procedures. Those suggestions are also attached.

IV. Conclusion

We value the work that has gone into the currently drafted proposed regulations. We also appreciate your understanding that more changes are needed in order to protect tenants from bad faith behavior. And we look forward to telling you more about why tenants need these changes at the next Rent Adjustment Program meeting.

Sincerely,

Alliance of Californians for Community Empowerment (ACCE) – Anti-Displacement Chapter

Bay Area Legal Aid

Causa Justa :: Just Cause

Centro Legal de la Raza

East Bay Community Law Center

Eviction Defense Center

JDW Tenants Union

Oakland Tenants Union

People's Tenants Union

SMC Tenants Council

ATTACHMENT A

Our additions to the currently proposed regulations are double-underlined, and removals are in strikethrough. Comments are bolded.

Amendments to Just Cause for Eviction Regulations (MEASURE EE, CODIFIED IN THE OAKLAND MUNICIPAL CODE at 8.22.300, et seq.)

8.22.360 - Good Cause Required for Eviction.

8.22.360.A.2.

…

d. Reasonable and Unreasonable Refusal of Tenant's Written Request to Sublet or Add

i. A Landlord may reasonably deny a Tenant's request to sublease, to replace a departing tenant, or to add an additional occupant in some circumstances including but not limited to:

(1) where the Landlord resides in the same rental unit as the Tenant;

(2) where the unit is restricted as affordable housing as defined by O.M.C. Section 15.72.030 and the request to add an occupant is deemed incomplete and inadequate due to failure to provide all documentation required for qualification of such occupant and the household, after the occupant's addition, under the rules restricting the housing;

(3) where the total number of occupants in the unit exceeds (or with the proposed additional occupant(s) would exceed) the lesser of:

(i) two persons in a studio unit, three persons in a one-bedroom unit, four persons in a two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four-bedroom unit; or

(ii) the maximum number permitted in the unit under state law and/or other local codes as the Building, Fire, Housing and Planning Codes;

(4) where the proposed occupant will be legally obligated to pay some or all of the rent to the Landlord and the Landlord can establish the proposed additional occupant's lack of creditworthiness, so long as the Landlord does not use more stringent criteria or processes with the proposed occupant that they or their predecessor used with any of the original or subsequent occupants;

> **Comment: We added in clarifying language to make this consistent with the below requirement that a landlord cannot use more stringent criteria with new occupants than they used with other occupants.**

~~(5) where the Landlord has made a written request, which is within five (5) days of receipt of the Tenant's request, for the proposed occupant to complete the Landlord's standard form application or provide sufficient information to allow the Landlord to conduct a typical background check and the proposed occupant does not comply within five (5) days of receipt of the Landlord's request~~;

Comment: We do not believe this section is necessary at all. It puts unnecessary time deadlines on this process. If the applicant does not submit their application, the landlord need not approve it. If the applicant does submit an application, even if it is weeks after the request to complete an application, the applicant should receive consideration. A landlord is not prejudiced by an applicant's delay.

(6) where the Landlord can establish that the proposed occupant has intentionally misrepresented significant facts on the Landlord's standard form application or provided significant misinformation that interferes with the Landlord's ability to conduct a background check. Where the proposed occupant's background check returns other names that were not disclosed, it shall not be considered misrepresentation or misinformation. Minor discrepancies on credit reports or tenant screening reports shall not be considered misrepresentation or misinformation;

Comment: This edit will make sure, among other things, that transgender and gender non-conforming people will not have their applications rejected because of non-matching names. Tenants with Spanish, Latinx, and other language surnames also often have multiple surnames that can be confused on official documents.

(7) where the Landlord can establish through substantial evidence that the proposed occupant presents a direct threat to the health, safety or security of other residents of the property, ~~or to the property itself~~;

Comment: We worry that this section will be used as a way to discriminate against or unlawfully retaliate against a tenant. For example, this section may be a proxy to bring in the criminal history of a proposed occupant where not otherwise allowed or to stereotype certain ethnicities. Our change makes it clear that a landlord must have evidence for this claim. We also removed the section related to property as this standard seems too vague to be useful.

(8) where the tenant refuses to identify the proposed occupant. This will not prevent the proposed occupant from future consideration as an authorized occupant if identified later on.

Comment: This section is intended to make sure that occupants are not permanently barred from consideration before they have had a chance to apply.

ii. A Landlord's denial of a Tenant's written request to replace a departing tenant or add an additional occupant shall be considered unreasonable in some circumstances, including but not limited to the following:

(1) denial based on the criminal history of the proposed occupant, if the original tenancy is not exempt from the Fair Chance Access to Housing Ordinance (O.M.C. 8.25.010 et seq or successor provisions)~~, including for~~. This section shall also apply to proposed occupants who do not qualify as Applicants under the Fair Chance Access to Housing Ordinance, who also may not be denied on the basis of criminal history;

> **Comment: This addition is intended to clarify which occupants qualify for this protection.**

(2) denial based on requirements or processes that are more stringent than those imposed by the Landlord or any predecessor on any other applicant~~s~~, including on the existing Tenant at the inception of the tenancy. More stringent criteria or processes shall include (1) criteria or processes that were not previously applied to all prior applicants and (2) higher cutoff scores on numerical values used as selection criteria, among other things;

> **Comment: We added language to clarify that this section applies to the criteria and processes applied throughout the tenancy, even if the landlord has changed, so that a new landlord who buys a property is not able to impose new conditions on the tenants. Also, the inclusion of the word 'processes' makes sure this section applies not only to the criteria a landlord purports to use, but how those criteria are actually used.**

(3) denial based on the Tenant's refusal to agree to an extended lease term or other changes in the terms of tenancy;

(4) denial based on the proposed occupant's lack of creditworthiness, including income, if the occupant will not be legally obligated to pay some or all of the rent to the Landlord

> (i) This subsection shall not apply where the submission of such information is required by federal state, or local law, or by regulatory agreement with a government agency;
>
> **Comment: We added clarifying language to explain an occupant who does not pay rent to the landlord cannot be made to provide income information to the landlord. We also added in an exemption where necessary for affordable housing providers.**

(5) denial based on the Tenant's refusal to provide a copy of the subtenancy agreement to the Landlord.

iii. When a request to add an occupant who will be legally obligated to pay some or all of the rent to the Landlord is denied based on the proposed occupant's lack of creditworthiness, ~~a new request to add the same occupant as a subtenant may be~~

~~submitted~~ the applicant will automatically be considered for approval as a subtenant, if the applicant indicates that they will accept such a position. Such new requests made for individuals without legal obligation to pay some or all of the rent to the Landlord may not be reasonably denied based on the proposed individual's lack of creditworthiness.

Comment: We agree with allowing applicants to apply as subtenants if they are not approved as tenants, but believe the consideration should be automatic if requested by the applicant.

(6) denial based on the Tenant's refusal to provide information or participate in processes that are outside of the reasonable scope of the application process;

Comment: This addition would protect applicants who are asked inappropriate questions from having to answer them or risk denial of their application.

(7) denial based on the Tenant's participation in a lawsuit as a Plaintiff;

Comment: This addition would protect applicants who filed lawsuits in the past from being unlawfully denied because of their political participation.

(8) denial based on the Tenant's prior acts of tenant organizing, participating in or belonging to a tenant rights organization, requesting repairs, contesting rent increases, filing a complaint with a government agency, or other exercise of legal rights under the law as a tenant;

Comment: This addition would prevent retaliation against applicants who exercised their legal rights under the law.

(9) denial based on information about whether the Tenant received an eviction notice, or whether an eviction lawsuit was ever filed against the Tenant, if no unlawful detainer judgment exists against the tenant that is unmasked under California Code of Civil Procedure Section 1161.2;

Comment: This addition would prevent the circumvention of Code of Civil Procedure 1161.2 by asking questions about masked unlawful detainer cases. This ensures that landlords are still able to run 'eviction checks' on tenants but cannot discriminate against tenants who were not lawfully evicted.

(10) denial based on an inability to pay rent, utilities, or other rental debt that accrued between March 1, 2020 and the end of the City of Oakland state of emergency due to the COVID-19 pandemic;

Comment: This addition would prevent tenants who were unable to make all rent payments during the COVID-19 pandemic from being excluded from new housing.

(11) If an occupant has resided at the premises for 6 months or more, the occupant will be presumed to be an acceptable occupant in all areas other than creditworthiness, unless the Landlord affirmatively demonstrates otherwise;

Comment: This addition would protect tenants from facing eviction in places they have lived for long periods of time without incident.

iv. Where a landlord endeavors to recover possession of a rental unit as a result of alleged unlawful subletting of the rental unit by the tenant under OMC 8.22.360(A)(2)(a), if the landlord fails to respond in writing with a description of the reasons for the denial of the request within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord;

Comment: This standardizes this requirement so it applies both to one-for-one replacement of departing tenants as well as additional occupants.

…

Amendments to Rent Adjustment Program Regulations

…

8.22.025 SUBLEASES.

B. Petitions

Subtenants in covered units may petition the Rent Adjustment Program to contest overcharges in violation of this section, as if the master tenant were the Owner. Such petitions are not subject to the timing requirements of OMC 8.22.090.A.2. Any restitution awards for subtenant overcharges are limited to the period of ~~three years~~ one year preceding the filing of the subtenant's petition, except that no restitution shall be awarded for any period prior to [effective date – when approved by City Council]. This section shall not apply to agreements between master tenants and subtenants that terminated prior to [effective date – when approved by City Council].

Comment: While we believe that this new process is necessary, we want to avoid unintended consequences for all tenants in a unit by having it apply retroactively for too long a period.

8.22.070 RENT ADJUSTMENTS FOR OCCUPIED COVERED UNITS.

B. Justifications for a Rent Increase in Excess of the CPI Rent Adjustment

Regulations regarding the justifications for a Rent increase in excess of the CPI Rent Adjustment are attached as Appendix A to these Regulations. The justifications are: banking; capital improvement costs; uninsured repair costs; increased housing service costs; additional occupant as defined by OMC 8.22.020; ~~Tenant does not reside in the unit~~

~~as their principal residence~~; and the rent increase is necessary to meet constitutional or fair return requirements.

Comment: We do not believe that the Rent Adjustment Program should create a new process that could remove rent control from existing tenancies.

8.22.090 PETITION AND RESPONSE FILING PROCEDURES.

…

B. Tenant Petition and Response Requirements

1. A Tenant petition or response to an Owner petition is not considered filed until the following has been submitted:

d. Proof of service by first-class mail or in person of the tenant petition or response and any supporting documents on the owner. This requirement may be waived to permit service electronically or by other means upon the agreement of the owner.

Comment: We think it would be helpful for the parties to be able to serve each other electronically if they so agree.

C. Owner Petition and Response Requirements

1. An Owner's petition or response to a petition is not considered filed until the following has been submitted:

…

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.~~ This requirement may be modified to permit service electronically or by other means upon the agreement of the tenant.

Comment: We do not believe that landlord petition attachments should be exempt from the service requirements applied to all other documents. Often these attachments are necessary for tenants to respond to a petition. Any delay in receiving them can cut down on a tenant's response time, limiting their ability to timely respond.

Additionally, we believe it would be helpful for the parties to be able to serve each other electronically if they so agree.

G. Administrative Decisions

For rent increase petitions based on one or more additional occupants, if there is no genuine dispute regarding any material fact, the petition may be decided as a matter of law, and the tenant waives their right to a hearing in writing on a form provided by the Rent Adjustment Program, the Hearing Officer shall issue a decision without a hearing.

…

APPENDIX A

10.7 Additional Occupants

As provided by O.M.C. 8.22.020, "Additional occupant," the addition of occupants above the base occupancy level, as defined by the Rent Adjustment Ordinance, allows an owner to petition to increase the rent by an amount up to 5% for each occupant above the base occupancy level. Such petitions must be filed within ninety (90) days of approval, or deemed approval as provided by O.M.C. 8.22.360.A.2.b, of the tenant's written request to add the occupant. No rent increase shall be granted for an additional occupant who is the spouse, registered domestic partner, parent, grandparent, child, adopted child, foster child, or grandchild of an existing tenant, or the legal guardian of an existing tenant's child or grandchild who resides in the unit, or a caretaker/attendant as required for a reasonable accommodation for an occupant with a disability.

Such rent increases must be reversed by the Owner if the additional occupancy level decreases, beginning with the most recently granted increase. Once a tenant provides written notice to the Owner of a decrease in the additional occupancy level and lists all current occupants, the Owner must provide written notice within fifteen (15) days to the tenant of the applicable reduced rent, effective as of the next regular rent due date ~~occurring no sooner than thirty (30) days after the tenant's written notice~~.

> **Comment: We see no reason not to have the rent decrease take effect as of the next date rent is due, rather than one month later.**

…

~~**10.8 Tenant Not Residing in Unit as Prinicipal Residence**~~

~~An Owner who seeks to impose a rent increase without limitation because the Tenant is not residing in the unit as their principal residence must petition for approval of the unrestricted rent increase based on a determination made pursuant to a hearing that the Tenant does not reside in the unit as their principal residence as of the date the petition is filed.~~

> **Comment: We propose removing this section in accordance with our comments above.**

EBRHA
EAST BAY RENTAL
HOUSING ASSOCIATION

November 24, 2020

(VIA EMAIL)

Oakland Rent Adjustment Program and HRRRB
250 Frank H. Ogawa Plaza, Suite 5313
Oakland CA, 94612

Re: Tenant Protection, Just Cause, Rent Ordinance Amendments

Dear Oakland Rent Adjustment Program and HRRRB,

As a follow up to our July 17, 2020 letter to the City Council regarding council changes to the Tenant Protection, Just Cause and Rent Ordinance Amendments ("TPO Changes").

We have reviewed the HRRRB's Amendments to Rent Adjustment Program Regulations and EBRHA supports:

Section 8.22.020 DEFINITIONS: "Principal Residence" language as well as Section 8.22.025 SUBLEASES A. Maximum Rent for Subtenants. We thank HRRRB, the Rent Adjustment Program and the Council for recognizing this as it fosters a healthy rental housing market for residents and housing providers alike.

As EBRHA noted in our letter dated July 17, 2020 (including a transcript of the June 29, 2020 CED meeting discussion), CED discussed that their support for the TPO Changes would include a Primary Resident requirement. As a reference, we've included our July 17, 2020 letter attached to this letter which also includes the transcript of a lengthy discussion on the importance of Primary Residency requirements by Councilmember Taylor and Chanee Franklin Minor.

In accordance with Section 8.22.025 SUBLEASES, HRRRB has also proposed a Lease Addendum for Replacement Occupants under Costa-Hawkins titled "Lease Addendum for Purpose of Costa-Hawkins Rent Increase". EBRHA supports the inclusion of this form.

However, we propose adding some language to the Lease Addendum so all parties are duly notified of the prorated rent payments between the additional or replacement roommates. Without such a form, there is no way the additional or replacement roommates will know that there is a limit on the proportion of rent they are supposed to pay.

The language of Section 8.22.025 is as follows:

"Where one or more master tenants reside with one or more subtenants in a covered unit, the maximum rent that a master tenant may charge a subtenant is no more than the proportional share of the total current rent paid to the owner by the tenants for the housing and housing services to which the subtenant is entitled under the sublease. The allowable proportional share of total rent may be calculated based upon the square footage shared with and/or occupied exclusively by the subtenant; or an amount substantially proportional to the space occupied by and/or shared with the subtenant (e.g. three persons splitting the entire rent in thirds) or any other method that allocates the rent such that the subtenant pays no more to the master tenant than the master tenant pays to the Owner for the housing and housing services to which the subtenant is entitled under the sublease. In establishing the proper initial base rent that the subtenant is charged, additional housing services (such as utilities) provided by, or any special obligations of, the master tenant, or evidence of the relative amenities or value of rooms, may be considered by the parties or the Rent Adjustment Program when deemed appropriate. Any methodology that shifts the rental burden such that the subtenant(s) pays substantially more than their square footage portion, or substantially more than the proportional share of the total rent paid to the Owner, shall be rebuttably presumed to be in excess of the lawful limitation."

We therefore respectfully request the following information be added to this form to ensure consistency with the noted language:

Rent Paid by Tenant 1: Name: _____ $_____

Rent Paid by Tenant 2: Name: _____ $_____

Rent Paid by Subtenant 1: Name: _____ $_____

Rent Paid by Subtenant 2: Name: _____ $_____

Total Rent Paid: $_____

Tenant Signature_____ Date:_____

Tenant Signature_____ Date:_____

Subtenant Signature_____ Date:_____

Subtenant Signature_____ Date:_____

Owner _____Date:_____

Lastly, although not specifically related to the TPO changes, the City has withheld an owner's ability to recoup banked increases during the eviction moratorium. EBRHA respectfully requests that the 10-year limitation on Rent Banking should be tolled during the City's mandated elimination of any banked rent increases during the Eviction Moratorium. It is not fair to

owners who have skipped rent increases in the past to be forever penalized by losing their ability to recoup them. We look forward to your implementation of this extension.

ABOUT EBRHA:

The East Bay Rental Housing Association ("*EBRHA*") is a full-service nonprofit organization dedicated to promoting fair, safe, and well maintained residential rental housing that is compliant with local ordinances and state/federal laws. The majority of our membership are small family and typically elderly rental housing providers across Alameda and Contra Costa counties with a majority of our members in the City of Oakland. These rental housing providers are critical to solving the housing shortage in the City of Oakland.

WHY IT'S IMPORTANT TO RECEIVE EBRHA'S EARLY INPUT ON LEGISLATION:

As a significant service to our members, EBRHA responds to thousands of phone calls and emails each month to help both member and non-member owners and tenants navigate the complex labyrinth of laws and ordinances that apply to rental housing. We are one of the few organizations that has deep knowledge and broad perspective on the impact that housing ordinances have on the community. We also are in a unique position to aid local cities in the implementation of new laws and policies through educating rental housing providers.

Accordingly, we request that EBRHA be sought as a critical resource by the City Attorney and the City Council to provide input on the development of housing legislation by the City of Oakland. We ask that we be consulted, notified or otherwise advised of all new housing legislation or changes to existing regulation at the inception, not merely offered token participation in public discussion on the eve of passage of complex new regulations as has become common-practice in recent times. EBRHA has reviewed the proposed legislation and offers specific comments in the attached table.

Thank you for your consideration, we look forward to working with the City to create additional safe and affordable housing for our community.

Sincerely,

EAST BAY RENTAL HOUSING ASSOCIATION

By: _____

Luke Blacklidge
VP, EBRHA

Cc: LaTonda Simmons, Chanee Franklin Minor, Shola Olatoye, Barbara Parker, Laura Lane, Libby Schaaf, City Councilmembers

July 17, 2020

(VIA EMAIL)

Oakland City Council
Community and Economic Development Committee
1 Frank H. Ogawa Plaza
Oakland CA, 94612

Re: Tenant Protection, Just Cause, Rent Ordinance Amendments

Dear Councilmembers,

EBRHA are very concerned about the lack of a Primary Residency requirement for rent controlled units in Oakland. During the discussion of the Tenant Protection/Rent Control/Just Cause Ordinance Amendments at the June 29, 2020 CED and also at the July 14, 2020 Council Meeting, the concern was brought up regarding long term tenants transferring their rent controlled units to friends or family, which is something that could easily happen without a Primary Residency requirement. Councilmember Taylor conducted a lengthy discussion on this topic at the CED meeting, yet the intent of his amendments are not fully included in the current ordinance draft. We've identified three (3) areas that were discussed and voted on as amendments in the CED meeting, yet we don't believe the current ordinance addresses these.

1. **Primary Residency**

Both the City of Berkeley and San Francisco have regulations requiring tenants to have a primary residency requirement (we've included each of their regulations in Appendix B and C respectively). In fact, the City of Berkeley's stated reasoning for a primary residency requirement is written in their Regulations 524 and 525 as follows:

"Rent control boards around the State have found that some tenants who originally rented a rent-controlled unit as their home no longer use the unit as their primary residence. A tenant's use of a rent-controlled unit other than as a primary residence is contrary to the law's intent and purpose and may exacerbate a city's housing shortage."

The Primary Residence definition is required to help prevent the following use case example:

Consider the example that was used in the Council discussion, where a mother brings in her daughter as an additional tenant. Since the mother, as the original tenant, was in the unit by

herself, the base occupancy is one (1). By adding her daughter, she increases the occupancy level by one (1). But the mother could subsequently move out and yet still claim to be living in the unit part time (even if showing up 1 weekend a year). There is no requirement under Oakland's Ordinance that a tenant keep their rent-controlled unit as their Primary Residence, so even part-time occupancy is still considered occupancy. This scenario would effectively transfer the rent-controlled unit to the daughter because, even if the mother moved elsewhere, she can always claim she lives in the unit part time.

When this issue was brought up at the June 29, 2020 CED by Councilmember Taylor (see Appendix A for a detailed transcript), there was discussion that it was not the intent of the Rent Ordinance to allow tenants to be protected by rent control while keeping multiple residences. Even Chanee Franklin Minor said the Rent Board would draft language in the Regulations to prevent this from happening.

But, in the final language provided to Council in Section 8 of the proposed Ordinance, the Primary Residency language ONLY refers to the "base occupancy level" in determining whether the owner can get a 5% increase due to the additional occupant. It DOES NOT require that all tenants maintain their rent-controlled unit as a Primary Residence in order to maintain the reduced rent.

This is a very important distinction and therefore does not address the intent of Councilmember Taylor's nor Chanee Franklin Minor's concerns with the current Ordinance that are detailed in the CED discussion transcript in Appendix A.

2. **Prohibition of a master tenant from profiting on a rent controlled unit**

At the CED meeting there were promises made to draft language to prohibit a master tenant from profiting by charging subtenants or replacement tenants more rent that their proportional space or more rent than they are paying to the rental owner. This language was also not fully addressed in the legislation currently before the Council.

3. **Ensure the Section 8 (2) "Reasonable Refusal" language** addresses the "*establish a definition of reasonable tenant screening"* as approved by the CED.

Below is a copy of the Legislative History of Councilmember Taylor's amendments approved in the June 29, 2019 CED meeting:

6/29/20 *Special Community & Economic Development Committee

Approved as Amended the Recommendation of Staff, and Forward to the * Concurrent Meeting of the Oakland Redevelopment Successor Agency and the City Council

The Committee approved recommendations as amended to include the following revisions;

1. Add to Section 8.22.360.A.2.b: Nothing in this subsection authorizes an occupancy that would result in either transient habitation commercial activity as defined O.M.C. Section 17.10.440 or semi-transient commercial activity as defined by O.M.C Section 17.10.120

2. Establish a maximum late fee of 3%

3. Direct the City Administrator to conduct an equity analysis of the Tenant Protection Ordinance to be completed by June 30, 2021 that includes the impact to tenants and property owners

4. Direct the City Administrator to work with staff and the Rent Board to develop supporting regulations that: Establish the definition of "primary residence" and establish primary residence as an eligibility requirement for the Tenant Protection Ordinance, create a lease addendum to track additional residents, establish a definition of reasonable tenant screening and establish a rent ceiling/ maximum rent that can be charged by tenant(s) to other residents to inhibit profiting from TPO ordinance provision

5. Page 12, Item 13: Add "the criminal history of the tenant," where not superseded by federal or state statutes.

6. Page 19, Section 8.22.020 Definitions: Add to "adopted child" and "foster child" as standard occupants

The incomplete portion of Councilmember Taylor's amendment is presented Page 4, Section 8 (1) (b) and shown below:

SECTION 8: **Direction to the City Administrator.** Within 90 days of adoption of this Ordinance, the City Administrator shall work with the Rent Adjustment Board to (1) develop amendments to the Rent Adjustment regulations that (a) conform the regulations to the changes hereby made to the Ordinance and (b) clarify the operation of rent increases for "Additional occupant(s)" under Section 8.22.020, 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 (2) develop regulations for the Just Cause for Eviction Ordinance to clarify "reasonable refusal" as used in subsection 8.22.360.A.2.b. The City Administrator shall create a lease addendum form to be provided by the Rent Adjustment Program for use by property owners to track additional residents. In addition, by June 30, 2021, the City Administrator shall conduct an equity analysis of the Tenant Protection Ordinance, including the impacts on tenants and property owners, and provide a report of the findings to City Council's Community & Economic Development Committee.

EBRHA PROPOSED CHANGES:

1. Language to Address #1: **Primary Residency:**

In addition to directing the City Administrator to work with the Rent Board on implementing Regulations consistent with the CED discussion as presented in Appendix A, EBRHA proposes that the Council update Ordinance Section 8 (1) (b) with the specific language as approved by the CED as follows:

(b) clarify the operation of rent increases for "Additional occupant(s)" under Section 8.22.020, including *establishing the definition of "primary residence" and establish primary residence as an eligibility requirement* ~~defining "principal residence" as used in the definition of "Base occupancy level"~~

We propose that the Council also include the following language in the Residential Rent Control Ordinance:

Section 8.22.070 c.1 Rent Increases in Excess of the CPI Rent Adjustment or Banking:

e. A dwelling unit where the authorized tenant(s) are no longer using the unit as their Primary Residence and therefore is no longer considered a "tenant in occupancy."

Once including subsection (e) above, a definition of "Tenant in Occupancy" must be added to Section 8.22.020 Definitions (we propose the text below which is from the San Francisco Ordinance and included in Appendix C):

Tenant in Occupancy:

A tenant in occupancy is a person who actually resides in the rental unit as his or her "principal place of residence" and who is entitled by written or oral agreement, subtenancy approved by the landlord, or by sufferance, to occupy the unit to the exclusion of others. Occupancy does not require that the individual be physically present in the unit at all times or continuously, but the unit must be the tenant's usual place of return. When considering whether a tenant occupies a rental unit as his or her "principal place of residence," the Rent Board considers the totality of the circumstances, including, but not limited to the following elements:

(1) whether the subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including Federal, State and local taxing authorities;

(2) whether utilities are billed to and paid by the individual at the subject premises;

(3) whether all of the individual's personal possessions have been moved into the subject premises;

(4) whether a homeowner's tax exemption for the individual has been filed for a different property;

(5) whether the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, or other reasonable temporary periods of absence; and/or

(6) whether there is credible testimony from individuals with personal knowledge, or other credible evidence, that the tenant actually occupies the rental unit as his or her principal place of residence.

A compilation of these elements lends greater credibility to the finding of "principal place of residence" whereas the presence of only one element may not support such a finding. A tenant can occupy two or more reasonably proximate rental units in the same building as his or her principal place of residence.

2. Language To Address #2: **Prohibition of a master tenant from profiting on a rent controlled unit**

The CED Committee directed staff to develop language to stop master tenants from profiting by overcharging rent to their subtenants or replacement roommates. Again, in our opinion, the text included in the Legislative History was not entirely addressed in the amendments included in Section 8 of the Ordinance. EBRHA proposes that the Council update Ordinance Section 8 (1) (b) with the specific language as approved by the CED as follows:

and establish ~~providing~~ a rent ceiling or maximum rent that a tenant may charge additional occupants not on the lease to inhibit profiting from a rent controlled unit, and

We propose the Council include the following language in the Residential Rent Control Ordinance and direct the City Administrator to include in their published regulations. (The text below is taken from the San Francisco Rent Regulation Rules https://sfrb.org/topic-no-154-limits-rent-charged-master-tenants :

Initial Rent Limitation for Subtenants. *A tenant who subleases his or her rental unit may charge no more rent upon initial occupancy of the subtenant or subtenants than that rent which the tenant is currently paying to the landlord.*

A master tenant must disclose the rent paid to the property owner to a sub-tenant and the master tenant cannot charge any subtenant more than a proportional share of the total rent the master tenant pays to the owner.

With the above two recommended changes, the complete proposed changes to Ordinance SECTION 8 would be as follows to make it consistent with what Councilmember Taylor proposed in the CED would be as follows:

SECTION 8: **Direction to the City Administrator.** Within 90 days of adoption of this Ordinance, the City Administrator shall work with the Rent Adjustment Board to (1) develop amendments to the Rent Adjustment regulations that (a) conform the regulations to the changes hereby made to the Ordinance and (b) clarify the operation of rent increases for "Additional occupant(s)" under Section 8.22.020, including *establishing the definition of "primary residence" and establish primary residence as an eligibility requirement* ~~defining "principal residence" as used in the definition of "Base occupancy level"~~ and establish ~~providing~~ a rent ceiling or maximum rent that a tenant may charge additional occupants not on the lease to inhibit profiting from a rent controlled unit, and (2) develop regulations for the Just Cause for Eviction Ordinance to clarify "reasonable refusal" as used in subsection 8.22.360.A.2.b. The City Administrator shall create a lease addendum form to be provided by the Rent Adjustment Program for use by property owners to track additional residents. In addition, by June 30, 2021, the City Administrator shall conduct an equity analysis of the Tenant Protection Ordinance, including the impacts on tenants and property owners, and provide a report of the findings to City Council's Community & Economic Development Committee.

3. Clarification of issue #3. **Does Reasonable refusal equate to establishing a definition of reasonable tenant screening**

We also request the Council ensure that "reasonable refusal" in SECTION 8 (2) addresses Councilmember Taylor's CED amendment to "*establish a definition of reasonable tenant screening"*

Lastly, we recommend the Council Direct the City Administrator work with staff and the Rent Board **AND Housing Providers, including EBRHA,** to develop supporting regulations for all Residential Rent, Just Cause and Tenant Protection going forward.

ABOUT EBRHA:

The East Bay Rental Housing Association ("*EBRHA*") is a full-service nonprofit organization dedicated to promoting fair, safe, and well maintained residential rental housing that is compliant with local ordinances and state/federal laws. The majority of our membership are small family and typically elderly rental housing providers across Alameda and Contra Costa counties with a majority of our members in the City of Oakland. These rental housing providers are critical to solving the housing shortage in the City of Oakland.

WHY IT'S IMPORTANT TO RECEIVE EBRHA'S EARLY INPUT ON LEGISLATION:

As a significant service to our members, EBRHA responds to thousands of phone calls and emails each month to help both member and non-member owners and tenants navigate the complex labyrinth of laws and ordinances that apply to rental housing. We are one of the few organizations that has deep knowledge and broad perspective on the impact that housing ordinances have on the community. We also are in a unique position to aid local cities in the implementation of new laws and policies through educating rental housing providers.

Accordingly, we request that EBRHA be sought as a critical resource by the City Attorney and the City Council to provide input on the development of housing legislation by the City of Oakland. We ask that we be consulted, notified or otherwise advised of all new housing legislation or changes to existing regulation at the inception, not merely offered token participation in public discussion on the eve of passage of complex new regulations as has become common-practice in recent times. EBRHA has reviewed the proposed legislation and offers specific comments in the attached table.

Thank you for your consideration, we look forward to working with the City to create additional safe and affordable housing for our community.

Sincerely,

EAST BAY RENTAL HOUSING ASSOCIATION

By: _____

Taylor Hines
Government Policy Committee Chair

Cc: LaTonda Simmons, Chanee Franklin Minor, Shola Olatoye, Barbara Parker, Laura Lane, Libby Schaaf

APPENDIX A
Partial Transcript of the June 26, 2020 CED Meeting
Councilmember Taylor Questions on Primary Residency

Beginning at Meeting Time Stamp: 2:50:45

Complete text of the CED meeting after Laura Lane's summary of the Ordinance:

Councilmember Taylor had a long discussion with Chanee Franklin Minor and Laura Lane regarding primary residence and subletting:

Taylor: Great, Thank you Miss Lane. I'm not seeing any hands in the queue. I have a few questions that I'd like to ask officially on the record based on a couple of questions that we've heard from the public. The question around the right to stay after the original tenant moves. So in the example that you described where you were the tenant, your adult daughter moves in, isn't paying rent because she was unemployed at the time and You leave. Does your daughter still have a right to the tenancy or does that open up the property for the landlord to basically attract new tenants?

Laura Lane: Under state law, if the original occupant vacates, the landlord can increase the rent and get a vacancy increase. So, she would not be entitled to retain my rent control tenancy if I left and she remained. Does that answer your question?

Minor: I really would like to add that this is the biggest concern that we hear from property owners when they come for housing counseling on this issue. And primarily, this is what I heard in Berkeley. In Berkeley, this has been the law for a long time. The big issue is rent control and being able to get the increased rent. So, while the tenant does have the right to stay, they don't have the right to stay at the old rent. A lot of concern is that they are inheriting this unit at very low rent or something like that. That's not the case. Under Costa Hawkins, the property owner will have the right to increase the rent once the original occupant leaves. And one way we can make this really clear in Oakland is that, if you pass these amendments, the Rent Board is charged with promulgating regs. And I think it will really clear up a lot of concern if they define primary residents, original occupancy and make it very clear that the property owner will be entitled, once the original tenant leaves, to raise the rent. Additionally, I would add that there's a form we can do and this was best practice in Berkeley and it will really help if this law is changed here. The rent board can create a lease addendum and that addendum would be a form that property owners can use to track these revolving tenancies. One of the speakers mentioned that they were really worried that, if a new person moved in, for insurance, how are they really tracking all these folks. And the lease addendum, that really clearly stated that the person is not an original tenant and it stated that you are an addition and when the original tenant leaves, I can raise you rent to market, that really helps, and that's something that the rent program can create and the regulations are something that the rent board can promulgate.

Taylor. Great. Thank you for that Miss Minor. That was one question; you didn't address the question about the landlord review of the incoming tenant application that a credit check is allowed and I think there was the definition of what's a reasonable review Miss Lane. Is there a definition of that that can be referenced or is that something that can be addressed on a case by case basis?
Minor: That's also something that the Rent Board, that would be appropriate in the regulations. The Rent Board could clearly define that issue. The only reason why it doesn't make sense for the authors to create all those definitions here is because they really are addressed best in the regulations and the Rent Board can promulgate that as well and really clearly define what can be looked at and what can't.

Taylor: For the sake of the public, can you describe what you anticipate, relative to the regulations being produced and timing of that relative to the passage of this ordinance?

Minor: The rent board will start meeting probably at the end of next month, it's up to the board if they will take an August break, but they can start working on this, definitely in September as a board. I think that is the best measure for it because they will be able to get public comments and there is a lot of public participation that can take place with the drafting of the regulations when the board is doing that work as part of their meetings.

Taylor: Thank you and is it necessary to include the legislation, in the ordinance, a directive to the City Administrator or the Rent Board to produce this? How does that get formalized?

Minor: I think this is more appropriate for the City Attorney.

Lane: I don't think it's necessary to include a directive, the Tenant Protection Ordinance already provides that the City Administrator can issue regulations on the Tenant Protection Ordinance.

Taylor: Yes, I think what we've been talking about are some specific details that are in the regulations that we want to make sure are included that have not been included in the past. Like the definition of Primary Residence for Rent Control, I think creating the definition of what is reasonable, creating the lease addendum.

Minor: It's actually the Rent Board that would promulgate these regulations since they are in charge of promulgating anything that is under the Rent Ordinance and Just Cause and that is their charge regardless. So, I think it's really up to you if you want us to state that in the wording of the proposal in front of you. With the lease addendum, certainly, if you want to add that, to direct the City Administrator to create the form, then I think that is absolutely an option, that you can do right now.

Taylor: Great, Ok. Thank you for that. I only have like three more. On the aspect of Subletting, can someone address that? I know some of the speakers mentioned the potential for the main tenant, the primary tenant to essentially run a revolving door operation and potentially even make money off of it.

Minor: That's actually another issue that would be absolutely perfect for regulation. One, you would state that the tenant cannot charge rent above a rent ceiling and the rent ceiling is the amount that is charged for the whole unit. So there's a way that you can say, if you're paying $500 for a unit, you can also say that each bedroom has to be proportionate to the piece of, I'm sorry I'm having a hard time explaining it, but you can portion it out that you can't charge a disproportionate rate per room then it sits in the unit and additionally you cannot charge above a rent ceiling. For example, a tenant can't make a profit for that. But it does say, there's a substantial body of law that doesn't exist. There's regulations that don't currently exist because you would also have to define Master Tenant, there's several pieces of that. So it's certainly something that can, and I would recommend should be done, even if you didn't pass these ordinances, I think that it's important. You also, with subletting, I think, what one commenter mentioned was the issue of someone not living there and making a profit and renting out an apartment. That's not what Rent Control is for. Rent Control is to preserve tenancies that are currently living in the unit. So, one option again, would be to create a definition of primary residence. That you only benefit from Rent Control if it's your primary residence and defining what that means. That would really address some of the property owners concerns that were brought up today. That is an issue the rent board is planning on taking a much more active regulatory role when they reconvene because they've gotten rid of their backlog, so they don't have to focus on the cases as much and they can start focusing on the regs.

Taylor: Great, that is great news. I certainly appreciate your knowledge and insight relative to striking the right balance between the competing needs that we're working through.

Kalb: On this point, I apologize for not taking this point, ensuring that the tenant does not take advantage of Airbnb of the tenant 8.22.360 a. B.

….the meeting continued on with other topics.

Emphasis added.

End of Transcript

https://www.cityofberkeley.info/Rent_Stabilization_Board/Home/Regulation_Chapters_1-6.aspx#524

524. Tenant in Occupancy.

(A) In accordance with the purposes of the Rent Stabilization Ordinance, to address the city of Berkeley's Housing Crisis, the rent ceiling limitations of Berkeley Municipal Code Section 13.76.110 and Section 13.76.120 apply only to a rental unit that is occupied by a "tenant in occupancy," which is an individual who otherwise meets the definition of tenant set forth in Berkeley Municipal Code Section 13.76.040.I and who occupies the unit as his or her primary residence. Rental units that are kept primarily for secondary residential occupancy, such as a pied-a-terre or vacation home, or primarily for non-residential use, such as storage, commercial, or office use, are not subject to the rent ceiling limitations of Berkeley Municipal Code Sections 13.76.110 and 13.76.120.
(B) Occupancy as a primary residence does not require that the individual be physically present in the unit at all times or continuously, but the unit must be the tenant's usual place of return. Evidence that a unit is the individual's "primary residence" includes, but is not limited to, the following elements:
(1) the individual carries on basic living activities at the subject premises for extended periods;
(2) the individual does not maintain another dwelling or, if the individual does maintain another dwelling, the amount of time that the individual spends at each dwelling place;
(3) the subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including Federal, State and local taxing authorities;
(4) utilities are billed to and paid by the individual at the subject premises;
(5) all of the individual's personal possessions have been moved into the subject premises;
(6) a homeowner's tax exemption for the individual has not been filed for a different property;
(7) the individual is enrolled as a student or is a member of the faculty at an institution of higher education in the San Francisco Bay Area;
(8) the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, Peace Corps service, academic sabbatical, travel necessitated by employment or education, or other reasonable temporary periods of absence.
(C) A tenant who is enrolled as a student or is a member of the faculty or staff at an accredited institution of higher education in the San Francisco Bay Area may qualify as a tenant in occupancy notwithstanding his or her having another residence to which he or she will ultimately return.
(D) If an individual rents two units in the same building and resides in one of the units as a primary residence, the second unit shall qualify as a tenant in occupancy unit if it is used primarily for residential storage of the personal property of the individual.
[Effective Date: 05/22/03]

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525. Procedure for Challenging Tenant in Occupancy Status.

(A) The landlord of any rental unit who seeks a determination that the unit is not being occupied by a tenant in occupancy may file a petition on a form provided by the Board. The petition shall include a brief explanation of the basis for the petition, including a statement that the unit is not

occupied by any subtenants. (See Regulation 1013 (O) and California Civil Code Section 1954.53 (d) et. seq. for the status of units occupied by subtenants, where the original occupant(s) no longer permanently reside(s) in the unit.) Proof that the petition has been served on all tenants claiming a right to possession of the unit shall be submitted with the petition. Service shall be by personal service or service by mail to the unit and any other address provided to the owner by the tenant in writing. Concurrent with or anytime after the filing of the petition, the landlord may give legal notice of a rent increase that exceeds the limitations of Berkeley Municipal Code Section 13.76.110 and Section 13.76.120, however, the noticed increase shall remain inoperative until a decision is rendered on the landlord's petition.
(B) Petitions filed under this section shall be expedited so that a hearing on the petition is held within 30 days of filing and a decision rendered within 30 days of the hearing. The parties shall be given at least 15 days notice of the hearing.
(C) Except as provided in subsection (B), proceedings on petitions filed under this section shall be conducted according to all provisions of Chapter 12, Subchapter B. A determination that a tenant is not a tenant in occupancy must be supported by a preponderance of the evidence presented to the hearing examiner. If the owner makes a prima facie showing that the unit is not continuously occupied by the individual as a residence, the burden of proving that the unit is the usual place of return and not a secondary residence or used primarily for commercial, office, or storage, except as provided in Section 524 (D), shall shift to the tenant. If the hearing examiner determines that the tenant is not a tenant in occupancy, any rent increase noticed by the landlord shall become effective on the date specified in the notice or the date on which rent is next due following service of the hearing examiner's decision, whichever is later.
[Effective Date: 05/22/03]

https://sfrb.org/topic-no-328-121-tenant-occupancy-petitions#:~:text=In%20Occupancy%20Petitions-,Topic%20No.,occupancy%20of%20the%20rental%20unit.

Topic No. 328: 1.21 Tenant In Occupancy Petitions

A landlord is permitted to impose an unlimited rent increase pursuant to Rules and Regulations Section 1.21 when there is no tenant in occupancy of the rental unit. The landlord must first file a petition at the Rent Board seeking a determination that there is no tenant in occupancy prior to issuing a notice of rent increase on such grounds. The notice can be served only after the petition is filed, or the landlord can wait until after the Rent Board issues a decision. If the notice is served before the petition is filed, the notice is void and cannot be the basis for a lawful rent increase. If the notice is properly served after the petition is filed, the rent increase will be inoperative until the Rent Board issues a decision determining that there is no tenant in occupancy. However, if the petition is granted, any sums owing will be retroactive to the effective date of a valid notice of increase.

A tenant in occupancy is a person who actually resides in the rental unit as his or her "principal place of residence" and who is entitled by written or oral agreement, subtenancy approved by the landlord, or by sufferance, to occupy the unit to the exclusion of others. Occupancy does not require that the individual be physically present in the unit at all times or continuously, but the unit must be the tenant's usual place of return. When considering whether a tenant occupies a rental unit as his or her "principal place of residence," the Rent Board considers the totality of the circumstances, including, but not limited to the following elements:

(1) whether the subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including Federal, State and local taxing authorities;

(2) whether utilities are billed to and paid by the individual at the subject premises;

(3) whether all of the individual's personal possessions have been moved into the subject premises;

(4) whether a homeowner's tax exemption for the individual has been filed for a different property;

(5) whether the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, or other reasonable temporary periods of absence; and/or

(6) whether there is credible testimony from individuals with personal knowledge, or other credible evidence, that the tenant actually occupies the rental unit as his or her principal place of residence.

A compilation of these elements lends greater credibility to the finding of "principal place of residence" whereas the presence of only one element may not support such a finding. A tenant can occupy two or more reasonably proximate rental units in the same building as his or her principal place of residence.

Section 1.21 is not applicable if any co-tenant or approved subtenant meets the definition of "tenant" in the Rent Ordinance and resides in the unit as his/her principal place of residence. In such situations an unlimited rent increase will not be approved even if the unit is not the original tenant's principal place of residence. In such instances, the landlord may be able to increase the rent under the Costa-Hawkins Rental Housing Act and/or Rules and Regulations Section 6.14.

A Section 1.21 Petition must be filed on a form supplied by the Rent Board, and must be accompanied by a statement that there is no other tenant in occupancy of the unit and an explanation of why the landlord believes that the subject unit is not the tenant's principal place of residence. To receive a copy of the Section 1.21 Petition form, you can fax it to yourself through our Fax Back system by calling (415)252-4660 or visit our website at www.sfrb.org. The form is also available at our office.

June 2006

Date: 11/27/2020

Good Morning!

Hope you all had a wonderful Thanksgiving and that your families are in good health.

My family have been Landlords in Oakland since 1958. We have always tried to provide safe clean housing for our Tenants.

We have not raised the rent in 3 years as we try to keep things affordable for our Seniors.

I understand this Virus had taken a death grip on our Nation. However the Bills must be paid and Contractors need to Repair and Maintain Buildings.

I have one tenant who owes me over $10k dollars. This family can't possibly pay back all that money.

Another Tenant owes over $4K. She can't pay back the rent either.

I have to borrow this money at 22 %.

Please allow us landlords to Evict these tenants so we can continue to provide Good Clean Affordable housing for our Seniors and Families that have paid on time in Good Faith.

Iris Westdyk
2856 Carmel St #B
Oakland CA 94602

29 November 2020

TO: Members, Oakland Rent Board (via Briana McGowan, Administrative Analyst, Rent Adjustment Program)
CC: Chanee Franklin Minor, Manager, Rent Adjustment Program ... [Please forward to Board Members ASAP]
Oakland City Attorneys Laura Lane, Kent Qian, Oliver Luby

Subject: Review Comments of Oakland Tenants Union on Proposed Regulations for TPO-JCO-Ellis Act-Oakland Rent Ordinance Amendments

Oakland Tenants Union complements the City Council, City Attorney staff, Oakland Rent Board members, and staff of the Rent Adjustment Program for undertaking a comprehensive overview of the City's rent laws for needed amendments toward assuring equity and justice for tenants. OTU has carefully reviewed the proposed Regulations and is pleased to submit additional comments and recommendations for the Rent Board's consideration in completing the Regulations for early adoption by the City Council and implementation by the Rent Program.

First, as a member of the "Tenants Rights Coalition," OTU stands in solidarity with the review comments document submitted earlier by the Coalition. For an improved and more efficient functioning of the Rent Program, we urge the Rent Board to give careful consideration to the comments and recommendations submitted by the Coalition.

Additionally, Oakland Tenants Union has completed its separate review of the proposed Regulations and offer here added comments and recommendations for the Board's consideration.

1. Attachment A -- Amendments to Just Cause Eviction Regulations ... 8.22.300, et seq

- **8.22.360, A, 2, d, (5); Page stamp 000010** -- "(5) where, **if the proposed tenant will be legally obligated to pay some or all of the rent to the Landlord**, the Landlord has made a written request, which is within five (5) days of receipt of the Tenant's request, for the proposed occupant to complete the Landlord's standard form application or provide sufficient information ..." [**Recommendation**: Insert the **bolded phrase**into this section to clearly distinguish that this requirement applies only in a co-tenancy situation where the cotenant will also make payments to the landlord.]

2. Attachment B -- Amendments to Rent Adjustment Program Regulations ... 8.22.020, et seq

- **8.22.020, DEFINITIONS. Page stamp 000013** -- "Imputed interest" ... [Comment] OTU objects to adding an additional one and one-half percent to the computed interest cost passed to the tenant in certain Capital Improvements cases because (1) the tenants rent payments already contribute to maintenance and upkeep; (2) any interest passed to the tenant should be 'simple interest' on only the borrowed and applicable principal amount (not compound interest); (3) the tenant has no input into the necessity or actual use of loans arranged by the landlord; (4) tenants already bear 70% of the cost of Capital Improvements, but may only benefit an average of 7 years of occupancy, while the landlord benefits for the life of the improvements. [**Recommendation:** Specify **'simple interest,'** and **delete the additional one and one-half percent** to the computed interest rate.]
- **8.22.020, DEFINITIONS. Page stamp 000013** -- "Debt Service" ... [Comment] See discussion that follows for Page stamp 000029. [**Recommendation:** Remove "Debt Service" from the list of Definitions.]
- **8.22.020,10.2.2, 4, f; Page stamp 000027** -- "f. Costs, **or portions of costs,** for which an Owner is reimbursed (e.g., insurance, court awarded damages, subsidies, tax credits, and grants) are not capital improvement costs." [**Recommendation:** Insert the **bolded phrase** to apply where the owner's costs are partly reimbursed by outside sources.]
- **8.22.020, 10,2.3, 4; Page stamp 000028** -- "4. If a unit is occupied by **the landlord or** an agent of the landlord, this unit must be included when determining the average cost per unit ..." [**Recommendation:** Insert the **bolded phrase** to clarify that if a unit is occupied by the landlord, costs being attributed to all units should also include the owner-occupied unit.]
- **8.22.020, 10.4; Page stamp 00029** -- "Exhibit 2 - Debt Service: Old Regulations" This page should be removed. **Debt Service** as an element of the rent law ended in 2014, almost 7 years ago. Similar to "Substantial Improvements" which ended only recently, and has already been removed. Retaining the description and procedures relating to the outdated "Debt Service" item only confuses and acts as an unreal temptation to landlords. [**Recommendation:** Remove the outdated **"Debt Service."** section and all other references, if any.]
- **8.22.020, 10.7; "Additional Occupants," Page stamp 000030** -- in the next to last line of the first paragraph is the term: "caretaker/attendant." The term **"caretaker"** is outmoded, and has been replaced in common usage by "caregiver. [**Recommendation:** Replace the outdated word "caretaker" with the contemporary word "caregiver" to now read **"caregiver/attendant."]**

The comments that follow are observations from the full Ordinance package as presented and "as revised by the "City Council at the July 14, 2020 City Council Meeting" and are

presented here to the Rent Board, together with the the above comments and recommendations in the hope that the Developing Regulations will also include additional clarifications where deemed needed.

OAKLAND CITY COUNCIL -- ORDINANCE NO _____ C.M.S. -- AN ORDINANCE AMENDING CHAPTER 8.22 OF THE OAKLAND MUNICIPAL CODE ...

A. Attachment B - (Residential Rent Adjustment Program)

- **8.22.020. Page 19** - Definitions: "Base occupancy level," (also at Page stamp 000013) -- The newly added definition of "Base Occupancy level" may conflict with the discussion of legal occupancy at 8.22.360.A.2., d., Page stamp 000010, which acknowledges "the maximum number permitted in the unit under state law and/or other local codes as the Building, Fire, Housing and Planning Codes." [**Recommendation:** Reconcile the definition of " base occupancy" with legally allowed occupancies.]
- **8.22.070, A, 2. Page 22** -- Rent Adjustment for Occupied Covered Units -- This section repeats the **old** "maximum allowable rent increase of 10% in a 12-month period." The former 10% maximum has been amended by the City Council to align with State law AB 1284, which limits the maximum allowable rent increase in a 12-month period by a different formula. [**Recommendation:** Remove the reference to 10% maximum annual increase, and refer to the new amended formula. (See 8.22.090, A,1, Page 28).]
- **8.22.070, A, 3. Page 23** -- This section addresses the rule that no series of rent increases in any five year period can exceed 30% based on CPI adjustments. This statement should be amended to clarify that the 30% threshold applies only to a series of CPI adjustments, but not combined with "banking" increases. [**Recommendation:** Modify the statement to include the word "only" to now read: "no series of rent increases in any five year period can exceed 30% based **only** on a series of CPI Rent Adjustments ..."]
- **8.22.070, D, 5 Page 29** (Tenant Petition), **& B, 2, Page 30** (Landlord Petition) -- Neither paragraph aligns with the recently adopted "RAP Efficiency Ordinance," which now mandates that copies of petitions filed with RAP is now mandated to also provide proof that the RAP-filed documents have been served on the opposing party. [**Recommendation:** Align these paragraphs with the mandate of the RAP Efficiency Ordinance.]

C. Attachment C -- (Just Cause for Eviction Ordinance)

- **8.22.360, Section 6, 2, B, Page 32 & Page 33**. -- The opening phrase **"Not withstanding any lease provision to the contrary ..."** is critical to the sections and definitions of the Rent Ordinance (8.22.020, Page 19) concerning "additional

occupant" and "Base occupancy level," and is necessary to clarify that base occupancy is as established by the legally allowable occupancy, and that the permissible 5% increase in rent only applies when actual occupancy exceeds the legal base occupancy. [**Recommendation:** Consider incorporating the "**Not withstanding ...** " phrase into the "Definitions" where appropriate.]

F. Attachment F -- (Relocation Payment for Owner or Relative Move-Ins)

- **8.22.850, C. Page 44** (Tenant Eligibility for Payment) -- The present wording of this section could be read to mean that tenants eligible for relocation payment due to owner or relative move-ins under this section may **have to wait 2 years to receive their final 1/3 relocation payment** -- which is not the intent of the section. [**Recommendation:** Amend the wording at paragraphs C, 1, & C, 2 & C, 3 to read: "1. If occupancy by the tenant is less than 1 year, the tenant will be eligible for one-third ..."; "2. If occupancy by the tenant is more that 1 year, but less than 2 years, the tenant will be eligible for two-thirds ..."; "3. If occupancy by the tenant is 2 years or more, the tenant will be eligible for the full amount ..."]

Oakland Tenants Union submits these observations, comments, and recommendations in the interest of clarity and equity relating to the rights of tenants and for the betterment of tenant and landlord relations.

Corrections (**in Red**) to OTU Comments in:

A. Attachment B - (Residential Rent Adjustment Program)

- **8.22.070, A, 2. Page 22** -- Rent Adjustment for Occupied Covered Units -- This section repeats the **old** "maximum allowable rent increase of 10% in a 12-month period." The former 10% maximum has been amended by the City Council to align with State law **AB 1482**, which limits the maximum allowable rent increase in a 12-month period by a different formula. [**Recommendation:** Remove the reference to 10% maximum annual increase, and refer to the new amended formula. (See 8.22.090, A,1, Page 28).]
- **8.22.070, A, 3. Page 23** -- This section addresses the rule that no series of rent increases in any five year period can exceed 30% based on CPI adjustments. This statement should be amended to clarify that the 30% threshold applies only to a series of CPI adjustments, but not combined with "banking" increases. [**Recommendation:** Modify the statement to include the word "only" to now read: "no series of rent increases in any five year period can exceed 30% **unless based solely** on a series of CPI Rent Adjustments ..."]

My Voice-Is Just As Important...

Im a tax paying citizen, homeowner and landlord of a small single family home in the "Deep East" and for the past 3 years I've been severely impacted by the Unjust,Unbalanced Ordnances and Referendums levied on Landlords and Property owners here in the City Of Oakland, and I'm absolutely outraged at the blatant disregard from City Gate Keepers (Alameda County Supervisors and Councilpersons). I object to the lack of leadership and willingness to push and participate in enacting unprecedented abuses of power that supported biases and egregious agendas.

Please consider this...Not providing Landlords with equal protection under the law, will yield real consequences; Law Suites, Rental Market Exodus, Loss of Business Tax(es) Revenue Streams and The Most Importantly ...Lost Trust (divisiveness and the promotions of factions and a Fractured Community (us vs them)!

I am absolutely horrified and offended by the Lack Of Stewardship from Oakland's Gate Keepers, this Alternate Reality, where only tenants have rights!

Alameda County Supervisors and Oakland City Council have allowed Tenants Advocates and Special Interest Groups to Run AMOK. Lurking around under the Cover of Covid pushing various oppressive agendas in an "unprecedented time" to push forth everything, that under Normal circumstances would have sparked more Conversations From Landlords and allowed for transparency and open discussion.

I'm imploring Oakland Rent Board not to repeat these same unconscionable behaviors. Rent Boards (Gate Keepers-Commissioners) should not engage in widely to divide.

I'm respectful asking for an acknowledgment of the rights of Landlords and to reject the inequitably of such over reaching demands coming from Special Interest-Tenant Advocacy Groups.

It's the the best interest of a all Gate Keepers to consider the full negative impact enacting these types of oppressive restraints would have on housing providers.

This Commission was designed to work as a Mechanism to bridge FAIRNESS…And Is duty bound to protect and preserve the integrity of the processes set in place to hear from and consider all sides when deciding to enact change and or alter positions or policies that would most certainly have a negative impact on Landlords and there by failing to protect our basic rights as property owners.

To date in this current climate, there are attack after attack campaigns usurping and eroding property owners rights to prevail over their own real property and the anti landlord regulations that have been enacted.
For example:
1. The inability to evict tenants for nonpayment or valid just-cause
2. The inability to enforce the terms of a legally binding lease
3. Inability to exact penalties for leases broken by tenants

4. The inability to grandfather lease agreements executed before new oppressive regulations
5. The oppressive and punitive tenant relocation fees that adversely affect landlords (Section 37.9C(e)(1).

These are just a few of the policies that work a hardship on landlords and certainly discourage anyone interested in engaging in a rental property business from doing it.

In what alternate reality (Gatekeepers) is this Fair and Balanced Justice for All... To advocate Hostel Takeovers and Land Grabs?

TENANT ADVOCACY GROUPS ARE RECOMMENDING Enacting Sandbagging (symptomatic under-compensation) a form of Eminent Domain (hostel takeover/the erosion of property owners legal right to maintain and control) and practicing Extortion Tactics aka Relocation Fees (the practice of obtaining something/real property through force or threat) all being currently practiced here in Oakland Hostel Aggressive and Bullish Mandates being Supported by both Alameda County Supervisors Oakland City Council are marred in race and economic disadvantage (to Oakland's Mom and Pop landlords****WE ARE NOT Exempt**** like major developers).

Here are just a few buyers recommendations from tenant advocacy groups drawing my immediate attention;

Complete Rent Abatement (for just because they say so act of 2020) Where in this World is it an acceptable practice to takes someone's property or goods without proper compensation? IT'S Not…Its THEFT there's no provision for supporting the illegal seizure of real property in America, this includes the City Of Oakland.

Placing the Full Burden and Saddling Landlords with the Full Obligation to meet the Demands of Tenants Demands, Mortgage Provider, Insurance Providers, City of Oakland (Taxes) County of Alameda Taxes, Maintenance Fees…Etc!

No Eviction (ever, for any reason act of 2020) aka The Tenant Is Always Right-100% ZERO Accountability Irresponsible Act of 2020

Enacting such over reach policy would further support the very notion that All Tenants renting in Alameda County are entitled to the full Legal Support (s) of our **PublicOfficials** to do whatever the hell they very well please, why, because there's **Zero Renters Accountability.**

As a community there has to be reasonable standards of conduct, so I'm objecting to any wide and open language that supports renters arguments that their Bad Conduct shouldn't be consider as part of their consequences for losing housing, to support ant such positions is utterly absurd.

Rules in this Real Reality, is ,if, you don't follow the Rules/LEASE Agreements there's a price to be paid and as a act of good community, renters shouldn't be precluded from conducting themselves in a proper and decent fashion. This notion again, that only Landlord are expected to follow the Laws are not only dangerous, this has the ability to lead to total **RENTAL ANARCHY**…Renters and property Owners alike should be held to a Reasonable Standard.

The No Renter Accountability or Responsibility (for anything act of 2020) Has to be Rejected…

IT'S WRONG and supports the notation that all misfortune is a result of somebody else, when are we expected as a society and community to be accountable for the decisions that we make in our personal lives?

It's Wrong to charged Landlords with the Epic Failures of the City of Oakland, City governments have been derelict in their duties they've been distracted by a myriad of missed steps bad accounting and stewardship. This immeasurable epidermic of homelessness and lack of affordability, wasn't created by landlords, and these egregious, disingenuous backdoor conversations being floated tenant advocacy- anarchist groups, suggesting somehow landlords should be the only ones responsible for creating affordable housing is Lazy and will ultimately make a bad situation worse.

I'm Urging The Rent Board Commissioners to Listen to The Voices of Landlords and Consider the Elements of **Justice and Fairness** for All (think beyond the now, consider the weight and impact rushing into decisions creating negative unintended consequences impacting the affordable rental market decades to come.) Small Mom and Pop Landlords will sell (or worst, lose their homes to foreclosure because tenants are exempt from paying proper compensation) and move out of the market altogether, (which Oakland can not afford/there's already a serious housing shortage)

That being said, Im submitting my on the record objections to the implementation to any New Changes to Current Rules or Language as it relates to the Oakland Rentals governed by this board of Commissioners.

I'm urging this Rental Board to suspend all further actions until after the Covid 19 State of Emergency is lifted by Governor Gavin Newson as a act of Good Faith (to do otherwise will be a clear indication that this Board Of Commissioners isn't interested in supporting fairness for both Landlords and Renters.

These Tenants Advocates, pushing these Bullish and Oppressive Agendas are reaping the benefits of Landlords Proprty Tax Dollars and backed by State and Federal Tax Revenues (Grants) with absolutely no benefit to Landlords.

Landlords are the ignored part of the conversations and I'm calling out Bull Crap…The lines of Tierney (taxation without representation) is Very Close Here In Oakland Ca!

I STAND OPPOSE TO ANY FUTHER ACTIONS TAKEN BY THE CITY OF OAKLAND AND OAKLAND RENT BOARD which would Impede Property Owners Right To Protect and Participate in Fair Trade.

I STAND OPPOSE TO ANY FUTHER ACTIONS TAKEN BY THE CITY OF OAKLAND AND OAKLAND RENT BOARD which would Complicate, Erode Any Rights We Have As Free Tax Paying Property Owning Citizens.

I'M OPPOSED TO ANY CHANGES WHICH SUPPORT THE ABDICATION OF OUR RIGHT TO HAVE CONTROL(S) OVER DWELLINGS AND LAND.

Best regards,

Aundrea Batte

Dear Members of the Oakland Rent Board:

I am the appointed Executor for the Estate of Maxine Wickware Morgan. The property is a single-family residence, located at 3316 Courtland Avenue in Oakland, CA. My sister passed away on 2/16/2020, leaving a squatting grandson occupying the house. The Executor's duties include taking care of all assets and the house. The garage has been extensively vandalized since the Deceased passed away.

As the Executor of the Estate, I am requesting that the Oakland Rent Board NOT renew the Tenants Moratorium when reviewing the new proposed amendments because it is unfair to landlords. There are tenants not paying rent and the landlords cannot do anything about getting the tenants out.

Thank you for your time and consideration of this request.

V Lucile James, Executor
ESTATE OF MAXINE WICKWARE MORGAN

December 3, 2020

To whom it may concern:

I am writing to share my parent's unfortunate and ongoing rental situation as a landlord, hoping that their situation will be heard and considered, as Alameda County and the Oakland Rent Board continues to make revisions to primarily protect tenants. My parents own just one rental property located in Oakland, in which they have stopped receiving rent from the tenant prior to the Covid-19 pandemic. The tenant had also broken other parts of the lease. Therefore, my parents went through the eviction process and the court system, in which they obtained the approval from the judge on the case to evict the tenant. This is when everything suddenly came to a standstill as everything closed end of March 2020 due to the pandemic. With everything closed, the sheriff department was no longer performing any evictions, even though my parent's case happened before the pandemic started. It is almost a year now that my parents stopped receiving rent from the tenant and to make matters worse, we have received complaints from the neighbors about the tenants. The neighbors have observed many suspicious people coming in and out of the property and has informed us that the property is being damaged. As my parents are in their 60's, they are concerned to visit their property during the pandemic as they do not know who and how many individuals have been accessing their property. It is clear that the tenant has no respect for my parent's property or my parents and is taking advantage of the current situation during the pandemic.

My parents are also currently renters themselves so not only are they paying for their own rent but they have to also pay for the property tax, maintaining the property, etc. My parents are struggling emotionally and financially because there is nothing they can do right now to address this issue and it breaks my heart to see them so defeated and helpless, especially at their age and with their current health.

We need more balance in these rental regulations. As Alameda County or the Oakland Rent Board continues to update rental regulations, we only ask that these regulations protect not only the tenants but to also protect the property owners, who have a rental, as these are tough times for EVERYONE. There should be some flexibility for case by case situations, such as my parent's case, as these regulations should not be a one shoe fits all.

Thank you for listening and we are all hoping that the struggles that property owners are also facing will be addressed in the updated regulations. Feel free to reach out to me at my e-mail, chmaryan@gmail.com, if you have any questions.

Thank you,

Mary Reth

From Sigvart and Phyllis Horneman

To the Rent Board and Staff:

December 4, 2020

Thank for your attention to these remarks. We are very, very small housing providers. We have an in-law unit and a 1 bedroom cottage on adjoining lots. We are in our 70's and have rented out our in-law unit for well over 40 years; the cottage housed my wheelchair bound sister until she moved and then was rented.

We addressing the proposed rental regulations for the TPO. We would like to mention changes and additions that we find very helpful. The clearer the rules are for both housing providers and tenants, the better. The staff did a very good job defining base occupancy versus maximum legal occupancy; this way, both tenants and providers know where the starting point is. They clearly identified which occupants will not be subject to rent increase up to 5%.

The process for approving prospective occupants timely is clear; the timely actions need by potential occupants is also clear. There is no question that a credit check or other financial information will be requested only for occupants who will be paying rent directly to the housing provider. As well, potential applicants will provide sufficient information for normal background checks. For us, that would be past rentals and contact information for rental owners or managers. Also, we normally ask prospective occupants to provide information or references they wish to share with us. The numerous situations that will not disqualify an occupant are listed. The regulations also provide that where a provider can establish that the proposed occupant presents a direct threat to the health, safety or security of the other residents of the property, or to the property itself, a prospective occupant can be denied. This provision is especially important after the Ghost Ship tragedy, where the owner was so uninformed or lackadaisical about the additional occupants and tenants that people died.

The new additions for process of rent increase on tenants who rent but don't occupy a unit as their primary residence are extremely timely. We are sure we aren't the only ones who have heard about units here in California being subleased by a tenant on Airbnb; or about the person on the East Coast who rented 12 very large houses and turned them into rooming houses. Thirty years ago we had someone who moved to Los Angeles, got a new job and a husband and didn't come back. She sometimes paid the rent and let her brother and his friends use the unit as they pleased. It was almost 2 years before we resolved this. We're not much on eviction. A lot of thought went into defining a "primary residence" so that RAP can determine when this action is justified. We also like having the process for this set up on the front end. If a provider has this kind of situation, it should be taken before the rent board for a decision by a hearing officer. It would have been helpful to us 30 years ago!

Small housing providers are under a lot of regulation from the city, even when the state law would exempt in-law units. We get slapped with the evil landlord label and often have activists sneer at us for daring to rent our real estate instead of providing it free, evidently. We really are in this together, particularly with COVID-19 looming. Involving small housing providers at the beginning instead of the end can help with this. Thanks for considering all this.

Amendments to Just Cause for Eviction Regulations (MEASURE EE, CODIFIED IN THE OAKLAND MUNICIPAL CODE at 8.22.300, *et seq*.)

8.22.360 - Good Cause Required for Eviction.

8.22.360.A.2.

a. A "material term of the tenancy" of the lease includes obligations that are implied by law into a residential tenancy or rental agreement and are an obligation of the Tenant. Such obligations that are material terms of the tenancy include, but are not limited to:
    i. Nuisance. The obligation not to commit a nuisance. A nuisance, as used in these regulations, is any conduct that constitutes a nuisance under Code of Civil Procedure § 1161 (4). Provided that a termination of tenancy for any conduct that might be included under O.M.C. 8.22.360 A4 (causing substantial damage), A5 (disorderly conduct), or A6 (using premises for illegal purpose) and which also be considered a nuisance, can follow the requirements of those sections in lieu of this section (O.M.C 8.22.360 A2). Nuisance also includes conduct by the Tenant occurring on the property that substantially interferes with the use and enjoyment of neighboring properties that rises to the level of a nuisance under Code of Civil Procedures § 1161 (4).
    ii. Waste. The obligation not to commit waste, as the term waste may be applicable to a residential tenancy under California Code of Civil Procedure § 1161. Waste, as used in these regulations, is any conduct that constitutes waste under Code of Civil Procedure § 1161 (4). Provided that a termination of tenancy for any conduct that falls under O.M.C 8.22.360 A4 (causing substantial damage) and might also be considered waste can follow the requirements of that section in lieu of this section (O.M.C 8.22360 A2).
b. Repeated Violations for Nuisance, Waste or Dangerous Conduct.
    i. Repeating the Same Nuisance, Waste, or Dangerous Conduct within 12 Months. The first time a Tenant engages in conduct that constitutes nuisance, waste or is dangerous to persons or property within any 12 month period, the Landlord must give the Tenant a warning notice to cease and not repeat the conduct. If the Tenant repeats the same or substantially similar nuisance, waste or dangerous conduct within 12 months after the Landlord served the prior notice to cease, the Landlord need not serve a further notice to cease, but may give a notice pursuant to Code of Civil Procedure § 1161 for the repeated conduct.
    ii. Repeating Different Nuisance or Waste Conduct within 24 Months. The first two times a Tenant engages in different conduct that constitutes waste or a nuisance that interferes with the right of quiet enjoyment of other Tenants at the property, the Landlord must give the Tenant a warning notice to cease and not repeat the conduct. If within 24 months after the Landlord served the first of the two notices

to cease for the waste or nuisance conduct, the Tenant again engages conduct that constitutes waste or a nuisance that interferes with the right of quiet enjoyment of other Tenants at the property, the Landlord need not serve a further notice to cease, but may give a notice pursuant to Code of Civil Procedure § 1161 for the third incident of waste or nuisance conduct.

c. By giving a Tenant a notice that the Tenant has violated a material term of tenancy, the Landlord is not precluded from also noticing a possible eviction for the same conduct under a separate subsection of O.M.C. 8.22.360 so long as the notices are not contradictory or conflicting.

d. Reasonable and Unreasonable Refusal of Tenant's Written Request to Sublet or Add Additional Occupants

i. A Landlord may reasonably deny a Tenant's request to sublease, to replace a departing tenant, or to add an additional occupant in some circumstances including but not limited to:

(1) where the Landlord resides in the same rental unit as the Tenant;

(2) where the unit is restricted as affordable housing as defined by O.M.C. Section 15.72.030 and the request to add an occupant is deemed incomplete and inadequate due to failure to provide all documentation required for qualification of such occupant and the household, after the occupant's addition, under the rules restricting the housing;

(3) where the total number of occupants in the unit exceeds (or with the proposed additional occupant(s) would exceed) the lesser of:

(i) two persons in a studio unit, three persons in a one-bedroom unit, four persons in a two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four-bedroom unit; or

(ii) the maximum number permitted in the unit under state law and/or other local codes as the Building, Fire, Housing and Planning Codes;

(4) where the proposed occupant will be legally obligated to pay some or all of the rent to the Landlord and the Landlord can establish the proposed additional occupant's lack of creditworthiness, so long as the Landlord does not use more stringent criteria or processes with the proposed occupant that they or their predecessor used with any of the original or subsequent occupants;

(5) where ~~the Landlord has made a written request, which is within five (5) days of receipt of the Tenant's request, for~~ the proposed occupant does not comply within five (5) days of receipt of a written request by the Landlord to complete the

Landlord's standard form application or provide sufficient information to allow the Landlord to conduct a typical background check, if the Landlord's written request was made within five (5) days of receipt of the Tenant's request to add the proposed occupant ~~and the proposed occupant does not comply within five (5) days of receipt of the Landlord's request~~;

(6) where the Landlord can establish that the proposed occupant has intentionally misrepresented significant facts on the Landlord's standard form application or provided significant misinformation that interferes with the Landlord's ability to conduct a background check. Such misrepresentation or misinformation does include minor discrepancies on credit reports or tenant screening reports or where the proposed occupant's background check returns other names that were not disclosed by the proposed occupant;

(7) where the Landlord can establish that the proposed occupant presents a direct threat to the health, safety or security of other residents of the property, or to the property itself;

(8) where the tenant refuses to identify the proposed occupant.

ii. A Landlord's denial of a Tenant's written request to replace a departing tenant or add an additional occupant shall be considered unreasonable in some circumstances, including but not limited to the following:

(1) denial based on the criminal history of the proposed occupant, ~~if the tenancy is not exempt from~~as prohibited by the Fair Chance Access to Housing Ordinance (O.M.C. 8.25.010 et seq or successor provisions) ~~, including for~~ This subsection shall also apply to proposed occupants who do not qualify as Applicants under the Fair Chance Access to Housing Ordinance, who also may not be denied on the basis of criminal history;

(2) denial based on requirements that are more stringent than those imposed by the Landlord on other applicants, including on the existing Tenant at the inception of the tenancy;

(3) denial based on the Tenant's refusal to agree to an extended lease term or other changes in the terms of tenancy;

(4) denial based on the proposed occupant's lack of creditworthiness, if the occupant will not be legally obligated to pay some or all of the rent to the Landlord;

(5) denial based on the Tenant's refusal to provide a copy of the subtenancy agreement to the Landlord;~~.~~

(6) denial based on the Tenant's or proposed occupant's refusal to provide information or participate in processes that are outside of the reasonable scope of the application process;

(7) denial based on the Tenant's or proposed occupant's prior acts of tenant organizing, participating in or belonging to a tenant rights organization, requesting repairs, contesting rent increases, filing a complaint with a government agency, or other exercise of legal rights under the law as a tenant.

iii. When a request to add an occupant who will be legally obligated to pay some or all of the rent to the Landlord is denied based on the proposed occupant's lack of creditworthiness, a new request to add the same occupant as a subtenant may be submitted. Such new requests made for individuals without legal obligation to pay some or all of the rent to the Landlord may not be reasonably denied based on the proposed individual's lack of creditworthiness.

Amendments to Rent Adjustment Program Regulations

8.22.020 DEFINITIONS.

~~"1946 Notice" means any notice of termination of tenancy served pursuant to California Civil Code §1946. This notice is commonly referred to as a 30-day notice of termination of tenancy, but the notice period may actually be for a longer or shorter period, depending on the circumstances.~~

~~"1946 Termination of Tenancy" means any termination of tenancy pursuant to California Civil Code § 1946.~~

~~"Anniversary Date" is the date falling one year after the day the Tenant was provided with possession of the Covered Unit or one year after the day the most recent rent adjustment took effect, whichever is later. Following certain vacancies, a subsequent Tenant will assume the Anniversary Date of the previous Tenant (OMC 8.22.080).~~

~~"Appeal Panel" means a three-member panel of board members authorized to hear appeals of Hearing Officer decisions. Appeal Panels must be comprised of one residential rental property owner, one tenant, and one person who is neither a tenant nor a residential rental property owner. Appeal Panels may be made up of all regular board members, all alternates, or a combination of regular board members and alternates.~~

~~"Banking" means any CPI Rent Adjustment (or any rent adjustment formerly known as the Annual Permissible Rent Increase) the Owner chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in the Regulations.~~

"Base occupancy level" means the number of tenants occupying the covered unit as principal residence as of June 16, 2020, with the owner's knowledge, or allowed by the lease or rental agreement effective as of June 16, 2020, whichever is greater, except that, for units that had an initial rent established on or after June 17, 2020, "base occupancy level" means the number of tenants allowed by the lease or rental agreement entered into at the beginning of the current tenancy. When there is a new lease or rental agreement solely as a result of adding one or more additional occupants to the lease or rental agreement, the "beginning of the current tenancy" refers to the tenancy existing prior to the new lease or rental agreement regarding the additional occupant(s).

~~"Board" and "Residential Rent Adjustment Board" means the Housing, Residential Rent and Relocation Board.~~

~~"Capital Improvements" means those improvements to a Covered Unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the Tenant rather than the Owner. Capital improvement costs that may be passed through to tenants include seventy percent (70%) of actual costs, plus imputed financing. Capital improvement costs shall be amortized over the useful life of the~~

~~improvement as set forth in an amortization schedule developed by the Rent Board. Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements ("gold-plating" "over-improving") excluding improvements approved in writing by the tenant, improvements that bring the unit up to current building or housing codes, or the cost of a substantially equivalent replacement.~~

~~"CPI - All Items" means the Consumer Price Index – all items for all urban consumers for the San Francisco-Oakland-San Jose area as published by the U.S. Department of Labor Statistics for the 12 month period ending on the last day of February of each year.~~

~~"CPI - Less Shelter" means the Consumer Price Index- all items less shelter for all urban consumers for the San Francisco-Oakland-San Jose area as published by the U.S. Department of Labor Statistics for the 12 month period ending on the last day of February of each year.~~

~~"CPI Rent Adjustment" means the maximum Rent adjustment (calculated annually according to a formula pursuant to OMC 8.22.070 B. 3) that an Owner may impose within a twelve (12) month period without the Tenant being allowed to contest the Rent increase, except as provided in OMC 8.22.070 B. 2 (failure of the Owner to give proper notices, decreased Housing Services, and uncured code violations).~~

~~"Costa-Hawkins" means the California state law known as the Costa-Hawkins Rental Housing Act codified at California Civil Code § 1954.50, et seq. (Appendix A to this Chapter contains the text of Costa-Hawkins).~~

~~"Covered Unit" means any dwelling unit, including joint living and work quarters, and all Housing Services located in Oakland and used or occupied in consideration of payment of Rent with the exception of those units designated in OMC 8.22.030 A as exempt.~~

~~"Debt Service" means the monthly principal and interest payments on one or more promissory notes secured by deed(s) of trust on the property on which the Covered Units are located. NOTE: Debt Service for newly-acquired units has been eliminated as a justification for new rent increases in excess of the CPI pursuant to Ordinance No. 13221 C.M.S., adopted by the Oakland City Council on April 1, 2014.~~

~~"Housing Services" means all services provided by the Owner related to the use or occupancy of a Covered Unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.~~

"Imputed interest" means the average of the 10 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 Rent Program will post the quarterly interest rates allowable.

"Master tenant" means a tenant who resides in a covered unit and, as a landlord who is not an owner of record of the property, charges rent to or receives rent from one or more subtenants in the covered unit.

~~"Owner" means any owner, lessor or landlord, as defined by state law, of a Covered Unit that is leased or rented to another, and the representative, agent, or successor of such owner, lessor or landlord.~~

"Principal Residence" means the one dwelling place where an individual primarily resides. Such occupancy does not require that the individual be physically present in the dwelling place at all times or continuously, but the dwelling place must be the individual's usual place of return. A Principal Residence is distinguishable ~~for~~from one kept primarily for secondary residential occupancy, such as a pied-a-terre or vacation home, or non-residential use, such as storage or commercial use. A determination of Principal Residence shall be based on the totality of circumstances, which shall include, but are not limited to, the following factors: (1) whether the individual carries on basic living activities at the subject premises; (2) whether the individual maintains another dwelling and, if so, the amount of time that the individual spends at each dwelling place and indications, if any, that residence in one dwelling is temporary; (3) the subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including Federal, State and local taxing authorities; (4) utilities are billed to and paid by the individual at the subject premises; (5) all or most of the individual's personal possessions have been moved into the subject premises; (6) a homeowner's tax exemption for the individual has not been filed for a different property; (7) the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, incarceration, or other reasonable temporary periods of absence.

~~"Rent" means the total consideration charged or received by an Owner in exchange for the use or occupancy of a Covered Unit including all Housing Services provided to the Tenant.~~

~~"Rent Adjustment Program" means the department in the City of Oakland that administers this Ordinance and also includes the Board.~~

~~"Regulations" means the regulations adopted by the Board and approved by the City Council for implementation of this Chapter (formerly known as "Rules and Procedures") (After Regulations that conform with this Chapter are approved they will be attached to this Chapter as Appendix B).~~

~~"Security Deposit" 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 an Owner 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 exclusive of normal wear and tear.~~

"Staff" means the staff appointed by City Administrator to administer the Rent Adjustment Program.

"Subtenant," for purposes of Regulation 8.22.025, means a tenant who resides with and pays rent to one or more master tenants, rather than directly to the owner to whom the master tenant(s) pay rent, for the housing services provided to the subtenant.

~~"Tenant" means a person entitled, by written or oral agreement to the use or occupancy of any Covered Unit.~~

~~"Uninsured Repairs" means that work done by an Owner or Tenant to a Covered Unit or to the common area of the property or structure containing a Covered 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.~~

8.22.025 SUBLEASES.

A. Maximum rent for subtenants

Where one or more master tenants reside with one or more subtenants in a covered unit, the maximum rent that a master tenant may charge a subtenant is no more than the proportional share of the total current rent paid to the owner by the tenants for the housing and housing services to which the subtenant is entitled under the sublease. The allowable proportional share of total rent may be calculated based upon the square footage shared with and/or occupied exclusively by the subtenant; or an amount substantially proportional to the space occupied by and/or shared with the subtenant (e.g. three persons splitting the entire rent in thirds) or any other method that allocates the rent such that the subtenant pays no more to the master tenant than the master tenant pays to the Owner for the housing and housing services to which the subtenant is entitled under the sublease. In establishing the proper initial base rent that the subtenant is charged, additional housing services (such as utilities) provided by, or any special obligations of, the master tenant, or evidence of the relative amenities or value of rooms, may be considered by the parties or the Rent Adjustment Program when deemed appropriate. Any methodology that shifts the rental burden such that the subtenant(s) pays substantially more than their square footage portion, or substantially more than the proportional share of the total rent paid to the Owner, shall be rebuttably presumed to be in excess of the lawful limitation.

B. Petitions

Subtenants in covered units may petition the Rent Adjustment Program to contest overcharges in violation of this section, as if the master tenant were the Owner. Such

petitions are not subject to the timing requirements of OMC 8.22.090.A.2. Any restitution awards for subtenant overcharges are limited to the period of three years preceding the the filing of the subtenant's petition, except that no restitution shall be awarded for any period prior to [*effective date – when approved by City Council*]. This section shall not apply to agreements between master tenants and subtenants that terminated prior to [*effective date – when approved by City Council*].

* * *

8.22.070 RENT ADJUSTMENTS FOR OCCUPIED COVERED UNITS.

A. Purpose

This section sets forth the Regulations for a Rent adjustment exceeding the CPI Rent Adjustment and that is not authorized as an allowable increase following certain vacancies.

B. Justifications for a Rent Increase in Excess of the CPI Rent Adjustment

Regulations regarding the justifications for a Rent increase in excess of the CPI Rent Adjustment are attached as Appendix A to these Regulations. The justifications are: banking; capital improvement costs; uninsured repair costs; increased housing service costs; additional occupant as defined by OMC 8.22.020; Tenant does not reside in the unit as their principal residence; and the rent increase is necessary to meet constitutional or fair return requirements.

* * *

8.22.090 PETITION AND RESPONSE FILING PROCEDURES.

A. Filing Deadlines

In order for a document to meet the filing deadlines prescribed by OMC Chapter 8.22.090, documents must be received by the Rent Adjustment Program offices no later than 5 PM on the date the document is due. A postmark is not sufficient to meet the requirements of OMC Chapter 8.22.090. Additional Regulations regarding electronic and facsimile filing will be developed when these filing methods become available at the Rent Adjustment Program.

B. Tenant Petition and Response Requirements

1. A Tenant petition or response to an Owner petition is not considered filed until the following has been submitted:

a. Evidence that the Tenant is current on his or her Rent or is lawfully withholding Rent. For purposes of filing a petition or response, a statement under oath

that a Tenant is current in his or her Rent or is lawfully withholding Rent is sufficient, but is subject to challenge at the hearing;

b. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath; ~~and~~

c. For Decreased Housing Services claims, organized documentation clearly showing the Housing Service decreases claimed and the claimed value of the services, and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file~~.~~; and

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

2. Subtenant petitions described by Regulation 8.22.025 and Master Tenant responses to them are subject to the tenant petition and response requirements in this section. ~~Staff shall serve on respondents copies of the completed petition forms accepted for filing with notification that the petition has been filed. Staff shall serve on petitioners completed response forms accepted for filing. Attachments to petitions and responses shall not be included but will be available to review upon request of either party~~.

C. Owner Petition and Response Requirements

1. An Owner's petition or response to a petition is not considered filed until the following has been submitted:

a. Evidence that the Owner has paid his or her City of Oakland Business License Tax;

b. Evidence that the Owner has paid his or her Rent Program Service Fee;

c. Evidence that the Owner has provided written notice, to all Tenants affected by the petition or response, of the existence and scope of the Rent Adjustment Program as required by OMC 8.22.060. For purposes of filing a petition or response, a statement that the Owner has provided the required notices is sufficient, but is subject to challenge at the hearing;

d. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath;

e. Organized documentation clearly showing the Rent increase justification and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file~~.~~; 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. Master tenant responses to subtenant petitions described by Regulation 8.22.025 are not subject to the Owner response requirements in this section.~~Staff shall serve on respondents copies of the completed petition forms accepted for filing with notification that the petition has been filed. Staff shall serve on petitioners completed response forms accepted for filing. Attachments to petitions and responses shall not be included but will be available to review upon request of either party~~.

D. Time of Hearing and Decision

1. The time frames for hearings and decisions set out below are repeated from OMC 8.22.110 D.

2. The Hearing Officer shall have the goal of hearing the matter within sixty (60) days of the original petition's filing date.

3. The Hearing Officer shall have a goal of rendering a decision within sixty (60) days after the conclusion of the hearing or the close of the record, whichever is later.

E. Designation of Representative

Parties have the right to be represented by the person of their choice. A Representative does not have to be a licensed attorney. Representatives must be designated in writing by the party. Notices and correspondence from the Rent Adjustment Program will be sent to representatives as well as parties so long as a written Designation of Representative has been received by the Rent Adjustment Program at least ten (10) days prior to the mailing of the notice or correspondence. Parties are encouraged to designate their representatives at the time of filing their petition or response whenever possible.

* * *

8.22.110 HEARING PROCEDURE.

A. Postponements

1. A Hearing Officer or designated Staff member may grant a postponement of the hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. “Good cause" includes but is not limited to: a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party; b. Verified travel plans scheduled before the receipt of notice of hearing; c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of a hearing must be made in writing at the earliest date possible after receipt of the notice of hearing with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date set for the hearing.

B. Absence Of Parties

1. If a petitioner fails to appear at a properly noticed hearing, the Hearing Officer may, in the Hearing Officer’s discretion, dismiss the case.

2. If a respondent fails to appear, the Hearing Officer may rule against the respondent, or proceed to a hearing on the evidence.

C. Record Of Proceedings

1. All proceedings before a Hearing Officer or the Rent Board, except mediation sessions, shall be recorded by tape or other mechanical means. A party may order a duplicate or transcript of the tape recording of any hearing provided that the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.

2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

D. Translation

Translation services for documents, procedures, hearings and mediations in languages other than English pursuant to the Equal Access to Services ordinance (O.M.C. Chapter 2.3) shall be made available to persons requesting such services subject to the City's ability to provide such services. In the event that the City is unable to provide such services, petitioners and respondents who do not speak or are not comfortable with English must provide their own translators. The translators will be required to take an oath that they are fluent in both English and the relevant foreign language and that they will fully and to the best of their ability translate the proceedings.

E. Conduct Of Hearings Before Hearing Officers

1. Each party, attorney, other representative of a party or witness appearing at the hearing shall complete a written Notice of Appearance and oath, as appropriate, that will be submitted to the Hearing Officer at the commencement of the hearing. All Notices of Appearance shall become part of the record.

2. All oral testimony must be given under oath or affirmation to be admissible.

3. Each party shall have these rights:

a. To call and examine witnesses;

b. To introduce exhibits;

c. To cross-examine opposing witnesses on any matter relevant to the issues even if that issue was not raised on direct examination;

d. To impeach any witness regardless of which party called first called him or her to testify;

e. To rebut the evidence against him or her;

f. To cross-examine an opposing party or their agent even if that party did not testify on his or her own behalf or on behalf of their principal.

4. Unless otherwise specified in these Regulations or OMC Chapter 8.22, the rules of evidence applicable to administrative hearings contained in the California Administrative Procedures Act (California Government Code Section 11513) shall apply.

F. Decisions Of The Hearing Officer

1. The Hearing Officer shall make written findings of fact and issue a written decision on petitions filed.

2. If an increase in Rent is granted, the Hearing Officer shall state the amount of increase that is justified, and the effective date of the increase.

3. If a decrease in Rent is granted, the Hearing Officer shall state when the decrease commenced, the nature of the service decrease, the value of the decrease in services, and the amount to which the rent may be increased when the service is restored. When the service is restored, any Rent increase based on the restoration of service may only be taken following a valid change of terms of tenancy notice pursuant to California Civil Code Section 827. A Rent increase for restoration of decreased Housing Services is not considered a Rent increase for purposes of the limitation on one Rent increase in twelve (12) months pursuant to OMC 8.22.070 A. (One Rent Increase Each Twelve Months).

4. The Hearing Officer may order Rent adjustment for overpayments or underpayments over a period of months, however, such adjustments shall not span more than a twelve (12) month period, unless longer period is warranted for extraordinary circumstances.

The following is a schedule of adjustments for underpayment and overpayments that Hearing Officers must follow unless the parties otherwise agree or good cause is shown:

a. If the underpayment or overpayment is 25% of the Rent or less, the Rent will be adjusted over 3 months;

b. If the underpayment or overpayment is 50% of the Rent or less, the Rent will be adjusted over 6 months;

c. If the underpayment or overpayment is 75% of the Rent or less, the Rent will be adjusted over 9 months;

d. If the underpayment or overpayment is 100% of the Rent or more, the Rent will be adjusted over 12 months.

5. For Rent overpayments based on an Owner's failure to reduce Rent after the expiration of the amortization period for a Capital Improvement, the decision shall also include a calculation of any interest that may be due pursuant to Reg. 10.2.5 (see Appendix A).

6. If the Landlord has petitioned for multiple capital improvements covering the same unit or building, the Hearing Officer may consolidate the capital improvements into a single amortization period and, in the Hearing Officer's discretion, determine the length for that amortization period in the Decision.

G. Administrative Decisions

For rent increase petitions based on one or more additional occupants, if there is no genuine dispute regarding any material fact, the petition may be decided as a matter of law, and the tenant waives their right to a hearing in writing on a form provided by the Rent Adjustment Program, the Hearing Officer shall issue a decision without a hearing.

RENT ADJUSTMENT BOARD REGULATIONS
APPENDIX A
EXCERPTS FROM OAKLAND CITY COUNCIL RESOLUTION NO. 71518
(SUPERSEDED)
RESIDENTIAL RENT ARBITRATION BOARD RULES AND REGULATIONS SECTIONS
2.0 AND 10.0 (all other section omitted, pages 1, 5-13, 21 omitted)

2.0 DEFINITIONS

2.1 **Additional Occupancy Level**: A number equal to the total number of occupants minus the base occupancy level, as defined by O.M.C 8.22.020 and Regulation 8.22.020.
2.2 **Base Rent**: The monthly rental rate before the latest proposed increase
2.32 **Current Rent**: To keep current means that the tenant is paid up to date on rental payments at the base rental rate.
2.43 **Landlord**: For the purpose of these rules, the term "landlord" will be synonymous with owner or lessor of real property that is leased or rented to another and the representative, agent, or successor of such owner or lessor.
2.54 **Manager**: A manager is a paid (either salary or a reduced rental rate) representative of the landlord.
2.65 **Petitioner**: A petitioner is the party (landlord or tenant) who first files an action under the ordinance.
2.76 **Respondent**: A respondent is the party (landlord or tenant) who responds to the petitioner.
2.87 **Priority 1 Condition**: The City of Oakland Housing Code Enforcement Inspectors determine housing conditions(s)/repair(s) as a "Priority 1" condition when housing condition (s)/repair(s) are identified as a major hazardous or inhabitable condition(s). A "Priority 1" condition must be abated immediately by correction, removal or disconnection. A Notice to Abate will always be issued.
2.98 **Priority 2 Condition**: The City of Oakland Housing Code Enforcement Inspectors determine housing condition(s)/repair(s) as a Priority condition when housing condition (s)/repair(s) are identified as major hazardous or inhabitable condition(s) that may be deferred by an agreement with the Housing Code enforcement Section.

2.109 The following describe five major hazard conditions classified as Priorities 1 & 2:

I. MECHANICAL

Priority 1

A. Unvented heaters
B. No combustion chamber, fire or vent hazard
C. Water heaters in sleeping rooms, bathrooms
D. Open gas lines, open flame heaters

Priority 2

A. Damaged gas appliance
B. Flame impingement, soot
C. Crimped gas line, rubber gas connections
D. Dampers in gas heater vent pipes, no separation or clearance, through or near combustible surfaces
E. Water heater on garage floor

II. PLUMBING

Priority 1

A. Sewage overflow on surface

C. T & P systems, newly or improperly installed

Priority 2

A. Open sewers or waste lines
B. Unsanitary, inoperative fixtures; leaking toilets

III. ELECTRICAL

Priority 1

A. Bare wiring, open splices, unprotected knife switches, exposed energized electrical parts
B. Evidence of overheated conductors including extension cords
C. Extension cords under rugs

Priority 2

A. Stapled cord wiring; extension cords
B. Open junction boxes, switches, outlets
C. Over-fused circuits
D. Improperly added wiring

IV. STRUCTURAL

Priority 1

A. Absence of handrail, loose, weakly-supported handrail
B. Broken glass, posing potential immediate injury
C. Hazardous stairs
D. Collapsing structural members

Priority 2

A. Garage wall separation
B. Uneven walks, floors, tripping hazards
C. Loose or insufficient supporting structural members
D. Cracked glass, leaky roofs, missing doors (exterior) and windows
E. Exit, egress requirements; fire safety

Note: Floor separation and stairway enclosures in multi-story handled on a case basis.

V. OTHER

Priority 1

A. Wet garbage
B. Open wells or unattended swimming pools
C. Abandoned refrigerators
D. Items considered by field person to be immediate hazards

Priority 2

A. Broken-down fences or retaining walls
B. High, dry weeds, next to combustible surfaces
C. Significant quantity of debris
D. Abandoned vehicles

Questions concerning permits, repairs and compliance schedules should be referred to code enforcement office of the City of Oakland -- (510) 238-3381.

10.0 JUSTIFICATION FOR ADDITIONAL RENT INCREASES

10.1 Increased Housing Service Costs: Increased Housing Service Costs are 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. Any repair cost

that is the result of deferred maintenance, as defined in Appendix A, Section 10.2.2, cannot be considered a repair for calculation of Increased Housing Service Costs.

10.1.1 In determining whether there has been an increase in housing service costs, consider the annual operating expenses for the previous two years. (For example: if the rent increase is proposed in 1993, the difference in housing service costs between 1991 and 1992 will be considered.) The average housing service cost percentage (%) increase per month per unit shall be derived by dividing this difference by twelve (12) months, then by the number of units in the building and finally by the average gross operating income per month per unit (which is determined by dividing the gross monthly operating income by the number of units). Once the percentage increase is determined the percentage amount must exceed the allowable rental increase deemed by City Council. The total determined percentage amount is the actual percentage amount allowed for a rental increase.

10.1.2 Any major or unusual housing service costs (i.e., a major repair which does not occur every year) shall be considered a capital improvement. However, any repair cost that is not eligible as a capital improvement because it is deferred maintenance pursuant to Appendix A, Section 10.2.2, may not be considered a repair for purposes of calculating Increased Housing Service Costs.

10.1.3 Any item which has a useful life of one year or less, or which is not considered to be a capital improvement, will be considered a housing service cost (i.e., maintenance and repair).

10.1.4 Individual housing service cost items will not be considered for special consideration. For example, PG&E increased costs will not be considered separately from other housing service costs.

10.1.5 Documentation (i.e., bills, receipts, and/or canceled checks) must be presented for all costs which are being used for justification of the proposed rent increase.

10.1.6 Landlords are allowed up to 8% of the gross operating income of unspecified expenses (i.e., maintenance, repairs, legal and management fees, etc.) under housing service costs unless verified documentation in the form of receipts and/or canceled checks justify a greater percentage.

10.1.7 If a landlord chooses to use 8% of his/her income for unspecified expenses, it must be applied to both years being considered under housing service cost (for example, 8% cannot be applied to 1980 and not 1981).

10.1.8 A decrease in housing service costs (i.e., any items originally included as housing service costs such as water, garbage, etc.) is considered to be an increase in rent and will be calculated as such (i.e., the average cost of the service eliminated will be considered as a percentage of the rent). If a landlord adds service (i.e., cable TV, etc.) without increasing rent or covers costs previously paid by a tenant, this is considered to be a rent decrease and will be calculated as such.

10.1.9 The transfer of utility costs to the tenant by the landlord is not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs.

10.1.10 When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of PG&E. The best way

to remedy the bill is to install individual meters. If this is too expensive, then the property owner should pay the utility bill himself/herself and build the cost into the rent.

10.2 Capital Improvement Costs: Capital Improvement Costs are 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.

10.2.1 Credit for capital improvements will only be given for those improvements which have been completed and paid for within the twenty-four (24) month period prior to the date the petition for a rent increase based on the improvements is filed.

10.2.2 Eligible capital improvements include, but are not limited to, the following items:

1. Those improvements which primarily benefit the tenant rather than the landlord. (For example, the remodeling of a lobby would be eligible as a capital improvement, while the construction of a sign advertising the rental complex would not be eligible). However, the complete painting of the exterior of a building, and the complete interior painting of internal dwelling units are eligible capital improvement costs.

2. In order for equipment to be eligible as a capital improvement cost, such equipment must be permanently fixed in place or relatively immobile (for example, draperies, blinds, carpet, sinks, bathtubs, stoves, refrigerators, and kitchen cabinets are eligible capital improvements. Hot plates, toasters, throw rugs, and hibachis would not be eligible as capital improvements).

3. Except as set forth in subsection 4, repairs completed in order to comply with the Oakland Housing Code may be considered capital improvements.

4. The following may not be considered as capital improvements:

a. Repairs for code violations may not be considered capital improvements if the Tenant proves the following:

i. That a repair was performed to correct a Priority 1 or 2 Condition that was not created by the Tenant, which may be demonstrated by any of the following:

(a) the condition was cited by a City Building Services Inspector as a Priority 1 or 2 Condition;

(b) the Tenant produces factual evidence to show that had the property or unit been inspected by a City Building Services Inspector, the Inspector would have determined the condition to be a Priority 1 or 2 Condition, but the Hearing Officer may determine that in order to decide if a condition is a Priority 1 or 2 Condition expert testimony is required, in which case the Hearing Officer may require such testimony.

ii. That the tenant

(a) informed the Owner of the condition in writing;

(b) otherwise proves that the landlord knew of the conditions, or

(c) proves that there were exceptional circumstances that prohibited the tenant from submitting needed repairs in writing; and

iii. That the Owner failed to repair the condition within a reasonable time after the Tenant informed Owner of the condition or the Owner otherwise knew of the condition.

iv. A reasonable time is determined as follows:

(a) If the condition was cited by a City Building Services Inspector and the Inspector required the repairs to be performed within a particular

time frame, or any extension thereof, the time frame set out by the Inspector is deemed a reasonable time; or

(b) Ninety (90) days after the Owner received notice of the condition or otherwise learned of the condition is presumed a reasonable time unless either of the following apply:

(1) the violation remained unabated for ninety (90) days after the date of notice to the Owner and the Owner demonstrates timely, good faith efforts to correct the violation within the ninety the (90) days but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause; or

(2) the Tenant demonstrated that the violation was an immediate threat to the health and safety of occupants of the property, [in which case] fifteen (15) business days is presumed a reasonable time unless:

(i) the Tenant proves a shorter time is reasonable based on the hazardous nature of the condition, and the ease of correction, or

(ii) the Owner demonstrates timely, good faith efforts to correct the violation within the fifteen (15) business days after notice but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause.

(c) If an Owner is required to get a building or other City permit to perform the work, or is required to get approval from a government agency before commencing work on the premises, the Owner's attempt to get the required permit or approval within the timelines set out in (i) and (ii) above shall be deemed evidence of good faith and the Owner shall not be penalized for delays attributable to the action of the approving government agency.

b. Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.

i. Among the factors that may be considered in determining if the landlord knew or should reasonably have known of the problem that caused the damage:

(a) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?

(b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?

(c) Did the landlord conduct routine inspections of the property?

(d) Did the tenant permit the landlord to inspect the interior of the unit?

ii. Examples:

(a) A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak causes ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the

repair. In this case, replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.

(b) A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord or landlord's agents either had not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition, and tenant complaints.

iii. Burden of Proof

(a) The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair.

(b) Once a tenant meets the burden to prove the landlord knew or should have reasonably known, the burden shifts to the landlord to prove that the landlord exercised reasonable diligence in making timely repairs after the landlord knew or should have known of the problem.

c. "Gold-plating" or "Over-improvements"

i. Examples:

(a) A landlord replaces a Kenmore stove with a Wolf range. In such a case, the landlord may only pass on the cost of the substantially equivalent replacement.

(b) A landlord replaces a standard bathtub with a jacuzzi bathtub. In such a case, the landlord may only pass on the cost of the substantially equivalent replacement.

ii. Burden of Proof

(a)The tenant has the initial burden to prove that the improvement is greater in character or quality than existing improvements.

(b) Once a tenant meets the burden to prove that the improvement is greater in character or quality than existing improvements, the burden shifts to the landlord to prove that the tenant approved the improvement in writing, the improvement brought the unit up to current building or housing codes, or the improvement did not cost more than a substantially equivalent replacement.

d. Use of a landlord's personal appliances, furniture, etc., or those items inherited or borrowed are not eligible for consideration as capital improvements.

e. Normal routine maintenance and repair of the rental until and the building is not a capital improvement cost, but a housing service cost. (For example: while the replacement of old screens with new screens would be a capital improvement).

<u>f. Costs for which an Owner is reimbursed (e.g., insurance, court awarded damages, subsides, tax credits, and grants) are not capital improvement costs.</u>

10.2.3 Rent Increases for Capital Improvement costs are calculated according to the following rules:

1. For mixed-use structures, only the percent of residential square footage will be applied in the calculations. The same principle shall apply to landlord-occupied dwellings (i.e., exclusion of landlord's unit).

2. Items determined to be capital improvements pursuant to Section 10.2.2. shall be amortized over the useful life of the improvement as set out in the Amortization Schedule attached as Exhibit 1 to these regulations and the total costs shall be amortized over that time period, unless the Rent increase using this amortization would exceed the Rent increase limits provided by O.M.C. 8.22.070 A2 or 3 ~~ten percent (10%) of the existing Rent for a particular unit~~. Whenever a Capital Improvement Rent increase alone or with any other Rent increases noticed at the same time for a particular Unit exceeds the limits set by O.M.C. 8.22.070 A2 or 3 ~~ten percent (10%) in a 12-month period or thirty percent (30%) in five years~~, if the Owner elects to recover the portion of the Capital Improvement that causes the Rent Increase to exceed the limits set by O.M.C. 8.22.070 A2 or 3 ~~ten percent (10%) or thirty percent (30%)~~, the excess can only be recovered by extending the Capital Improvement's amortization period in yearly increments sufficient to cover the excess, and complying with any requirements to notice the Tenant of the extended amortization period with the initial Capital Improvement increase. The dollar amount of the rent increase justified by Capital Improvements shall be removed from the allowable rent at the end of the amortization period.

3. A monthly Rent increase for a Capital Improvement is determined as follows:

a. A maximum of seventy percent (70%) of the total cost for the Capital Improvement (plus imputed interest calculated pursuant to the formula set forth in Regulation 8.22.020) may be passed through to the Tenant;

b. The amount of the Capital Improvement calculated in a. above is then divided equally among the Units that benefit from the Capital Improvement;

c. The monthly Rent increase is the amount of the Capital Improvement that may be passed through as determined above, divided by the number of months the Capital Improvement is amortized over for the particular Unit.

4. If a unit is occupied by an agent of the landlord, this unit must be included when determining the average cost per unit. (For example, if a building has ten (10) units, and one is occupied by a nonpaying manager, any capital improvement would have to divided by ten (10), not nine (9), in determining the average rent increase). This policy applies to all calculations in the financial statement which involve average per unit figures.

5. Undocumented labor costs provided by the landlord cannot exceed 25% of the cost of materials.

6. Equipment otherwise eligible as a Capital Improvement will not be considered if a "use fee" is charged (i.e., coin-operated washers and dryers).

7. Where a landlord is reimbursed for Capital Improvements (i.e., insurance, court-awarded damages, subsidies, etc.), this reimbursement must be deducted from such Capital Improvements before costs are amortized and allocated among the units.

10.2.4 In some cases, it is difficult to separate costs between rental units; common vs. rental areas; commercial vs. residential areas; or housing service costs vs. Capital Improvements. In these cases, the Hearing Officer will make a determination on a case-by-case basis.

10.2.5 Interest on Failure to Reduce Capital Improvement Increase After End of Amortization Period.

1. If an Owner fails to reduce a Capital Improvement Rent increase in the month following the end of the amortization period for such improvement and the Tenant pays any portion of such Rent increase after the end of the amortization period, the Tenant may recover interest on the amount overpaid.

2. The applicable rate of interest for overpaid Capital Improvements shall be the rate specified by law for judgments pursuant to California Constitution, Article XV and any legislation adopted thereto and shall be calculated at simple interest.

10.3 Uninsured Repair Costs: Uninsured Repair Costs are costs for 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

10.3.1 Uninsured Repair Costs are those costs incurred as a result of natural causes and casualty claims; it does not include improvement work or code correction work. Improvements work or code correction work will be considered either capital improvements or housing services, depending on the nature of the improvement.

10.3.2 Increases justified by Uninsured Repair Costs will be calculated as Capital Improvement costs.

~~**10.4 Debt Service Costs**: Debt Service Costs are the monthly principal and interest payments on the deed(s) of trust secured by the property.~~

~~Debt Service for newly-acquired units has been eliminated as a justification for new rent increases in excess of the CPI, effective April 1, 2014. This restriction will not apply to any property on which the rental property owner can demonstrate that the owner made a bona fide, arms-length offer to purchase on or before April 1, 2014, the effective date of this amendment. The regulations previously in effect regarding debt service are attached to these Regulations as Exhibit 2.~~

10.~~4~~5 Rent History/"Banking"

10.~~4~~5.1 If a landlord chooses to increase rents less than the annual CPI Adjustment [formerly Annual Permissible Increase] permitted by the Ordinance, any remaining CPI Rent Adjustment may be carried over to succeeding twelve (12) month periods ("Banked"). However, the total of CPI Adjustments imposed in any one Rent increase, including the current CPI Rent Adjustment, may not exceed three times the allowable CPI Rent Adjustment on the effective date of the Rent Increase notice.

10.~~4~~5.2 Banked CPI Rent Adjustments may be used together with other Rent justifications, except Increased Housing Service Costs and Fair Return, because these justifications replace the current year's CPI increase.

10.~~4~~5.3 In no event may any banked CPI Rent Adjustment be implemented more than ten years after it accrues.

10.~~5~~6 "Fair Return"

10.~~5~~6.1 Owners are entitled to the opportunity to receive a fair return. Ordinarily, a fair return will be measured by maintaining the net operating income (NOI) produced by the property in a base year, subject to CPI related adjustments. Permissible rent increases will be adjusted upon a showing that the NOI in the comparison year is not equal to the base year NOI.

10.56.2 Maintenance of Net Operating Income (MNOI) Calculations

1. The base year shall be the calendar year 2014.
    a. New owners are expected to obtain relevant records from prior owners.
    b. Hearing officers are authorized to use a different base date, however, if an owner can demonstrate that relevant records were unavailable (e.g., in a foreclosure sale) or that use of base year 2014 will otherwise result in injustice.

2. The NOI for a property shall be the gross income less the following: property taxes, housing service costs, and the amortized cost of capital improvements. Gross income shall be the total of gross rents lawfully collectible from a property at 100% occupancy, plus any other consideration received or receivable for, or in connection with, the use or occupancy of rental units and housing services. Gross rents collectible shall include the imputed rental value of owner-occupied units.

3. When an expense amount for a particular year is not a reasonable projection of ongoing or future expenditures for that item, said expense shall be averaged with the expense level for that item for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses.

10.56.3 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 considerations in their case. To pursue an alternative methodology, owners must first show that they cannot get a fair return under an MNOI analysis. They must specifically state in the petition the factual and legal bases for the claim, including any calculations.

10.67 Additional Occupants

As provided by O.M.C. 8.22.020, "Additional occupant," the addition of occupants above the base occupancy level, as defined by the Rent Adjustment Ordinance, allows an owner to petition to increase the rent by an amount up to 5% for each occupant above the base occupancy level. Such petitions must be filed within ninety (90) days of approval, or deemed approval as provided by O.M.C. 8.22.360.A.2.b, of the tenant's written request to add the occupant. No rent increase shall be granted for an additional occupant who is the spouse, registered domestic partner, parent, grandparent, child, adopted child, foster child, or grandchild of an existing tenant, or the legal guardian of an existing tenant's child or grandchild who resides in the unit, or a caretaker/attendant as required for a reasonable accommodation for an occupant with a disability.

Such rent increases must be reversed by the Owner if the additional occupancy level decreases, beginning with the most recently granted increase. Once a tenant provides written notice to the Owner of a decrease in the additional occupancy level and lists all current occupants, the Owner must provide written notice within fifteen (15) days to the tenant of the applicable reduced rent, effective as of the next regular rent due date occurring no sooner than thirty (30) days after the tenant's written notice.

If there are changes in occupancy following a tenant's request to add an occupant and, prior to the Owner's 15-day rent reduction notice deadline and the Owner issuing the notice, the additional occupancy level remains the same (e.g., a departing occupant is replaced), the Owner need not issue the rent reduction notice and the rent increase granted due to the prior additional occupant shall remain in effect, until and unless the additional occupancy level decreases. When the additional occupancy level remains the same following a change in occupancy, the Owner may not be granted a new additional occupant rent increase for any additional occupant that is added. The number of rent increases for additional occupants that currently apply to the rent may not exceed the additional occupancy level.

10.~~7~~8 Tenant Not Residing in Unit as Prinicipal Residence

An Owner who seeks to impose a rent increase without limitation because the Tenant is not residing in the unit as their principal residence must petition for approval of the unrestricted rent increase based on a determination made pursuant to a hearing that the Tenant does not reside in the unit as their principal residence as of the date the petition is filed.

Exhibit 1
Amortization Schedule

Improvement	Years	Improvement	Years
Air Conditioners	10	Heating	
Appliances		Central	10
Refrigerator	5	Gas	10
Stove	5	Electric	10
Garbage Disposal	5	Solar	10
Water Heater	5	Insulation	10
Dishwasher	5	Landscaping	
Microwave Oven	5	Planting	10
Washer/Dryer	5	Sprinklers	10
Fans	5	Tree Replacement	10
Cabinets	10	Lighting	
Carpentry	10	Interior	10
Counters	10	Exterior	10
Doors	10	Locks	5
Knobs	5	Mailboxes	10
Screen Doors	5	Meters	10
Earthquake Expenses		Plumbing	
Architectural and Engineering Fees	5	Fixtures	10
Emergency Services		Pipe Replacement	10
Clean Up	5	Re-Pipe Entire Building	20
Fencing and Security	5	Shower Doors	5
Management	5	Painting	

Tenant Assistance	5
Structural Repair and Retrofitting	
Foundation Repair	10
Foundation Replacement	20
Foundation Bolting	20
Iron or Steel Work	20
Masonry-Chimney Repair	20
Shear Wall Installation	10
Electrical Wiring	10
Elevator	20
Fencing and Security	
Chain	10
Block	10
Wood	10
Fire Alarm System	10
Fire Sprinkler System	20
Fire Escape	10
Flooring/Floor Covering	
Hardwood	10
Tile and Linoleum	5
Carpet	5
Carpet Pad	5
Subfloor	10
Fumigation	
Tenting	5
Furniture	5
Interior	5
Exterior	5
Paving	
Asphalt	10
Cement	10
Decking	10
Plastering	10
Pumps	
Sump	10
Railing	10
Roofing	
Shingle/Asphalt	10
Built-Up, Tar and Gravel	10
Tile and Linoleum	10
Gutters/Downspots	10
Security	
Entry Telephone Intercom	10
Gates/Doors	10
Fencing	10
Alarms	10
Sidewalks/Walkways	10
Stairs	10
Stucco	10
Tilework	10
Wallpaper	5
Window Coverings	5

Automatic Garage Door Openers	10	Drapes	5
Gates		Shades	5
Chain Link	10	Screens	5
Wrought Iron	10	Awnings	5
Wood	10	Blinds/Miniblinds	5
Glass		Shutters	5
Windows	5		
Doors	5		
Mirrors	5		

~~Exhibit 2~~
~~Debt Service: Old Regulations~~

~~**10.4 Debt Service Costs:** Debt Service Costs are the monthly principal and interest payments on the deed(s) of trust secured by the property.~~

~~10.4.1 An increase in rent based on debt service costs will only be considered in those cases where the total income is insufficient to cover the combined housing service and debt service costs after a rental increase as specified in Section 5 of the Ordinance. The maximum increase allowed under this formula shall be that increase that results in a rental income equal to the total housing service costs plus the allowable debt service costs.~~

~~10.4.2 No more than 95% of the eligible debt service can be passed on to tenants. The eligible debt service is the actual principal and interest.~~

~~10.4.3 If the property has been owned by the current landlord and the immediate previous landlord for a combined period of less than twelve (12) months, no consideration will be given for debt service.~~

~~10.4.4 If a property has changed title through probate and has been sold to a new owner, debt service will be allowed. However, if the property has changed title and is inherited by a family member, there will be no consideration for debt service unless due to hardship.~~

~~10.4.5 If the rents have been raised prior to a new landlord taking title, or if rents have been raised in excess of the percentage allowed by the Ordinance in previous 12- month periods without tenants having been notified pursuant to Section 5(d) of the Ordinance, the debt service will be calculated as follows:~~

~~1. Base rents will be considered as the rents in effect prior to the first rent increase in the immediate previous 12-month period.~~

~~2. The new landlord's housing service costs and debt service will be considered. The negative cash flow will be calculated by deducting the sum of the housing service costs plus 95% of the debt service from the adjusted operating income amount.~~

~~3. The percentage of rent increase justified will then be applied to the base rents (i.e., the rent prior to the first rent increase in the 12-month period, as allowed by Section 5 of the Ordinance).~~

~~10.4.6 Refinancing and second mortgages, except those second mortgages obtained in connection with the acquisition of the property, will not be considered as a basis for a rent increase under the debt service category. Notwithstanding this provision, such refinancing or second mortgage will be considered as basis for a rent increase when the equity derived from such refinancing or second mortgage is invested in the building under consideration in a manner which directly benefits the tenant (i.e., capital improvements or housing services such as maintenance and repairs) or if the refinancing was a requirement of the original purchase.~~

~~10.4.7 As in housing service costs, a new landlord is allowed up to 8% of the gross operating income for unspecified expenses.~~