HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING
February 11, 2021
5:00 P.M.
Meeting Will Be Conducted Via Zoom Conference

AGENDA

PUBLIC PARTICIPATION
The public may observe and/or participate in this meeting in 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 the link below to join the webinar:

When: **Feb 11, 2021 05:00 PM Pacific Time (US and Canada)**
Topic: **Housing, Residential Rent and Relocation Full Board Meeting**
Please click the link below to join the webinar:
https://us02web.zoom.us/j/81100261220
Or iPhone one-tap :
US: +16699009128,,81100261220# or +12532158782,,81100261220#
Or Telephone:
Dial(for higher quality, dial a number based on your current location):
US: +1 669 900 9128 or +1 253 215 8782 or +1 346 248 7799 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592
Webinar ID: 811 0026 1220
International numbers available: https://us02web.zoom.us/u/kc4LH89xid

COMMENT:
There are three 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. 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" are available here.
- 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.
- You may submit written public comments to the Board Secretary, Briana Lawrence-McGowan, via email at BMcGowan@oaklandca.gov. *Please be advised, written public comments must **ONLY** be directly related to the Tenant*

*Protection, Just Cause for Eviction, and Rent Adjustment Program Ordinance Regulations. Please **DO NOT** submit written public comments unrelated to the proposed amendments to the regulations.*

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. CONSENT ITEMS
    a) Approval of Full Board Meeting Minutes, 1/28/2021
4. OPEN FORUM
5. COMMITTEE REPORTS AND SCHEDULING
    a) Board member K. Friedman wants to add the following language for discussion on Section 8.22.360 (A)(2)(d)(ii) 7 of the amendments to the Just Cause Eviction Regulations: *Denial based on the Tenant's or proposed occupant's requesting repairs, contesting rent increases or filing a complaint with a government agency, except when the Tenant or proposed occupant did so to harass a Landlord. Such harassment may take the form of burdensome or meritless filings with a municipal rent program or government agency, frivolous petitions contesting rent increases, or a pattern of requesting unnecessary repairs.*
6. ACTION ITEMS
    a) Selection of a new Board Chair (R. Stone)
    b) Amendments to Just Cause for Eviction Ordinance
    c) Rent Adjustment Program Regulations
    d) Appendix A to Rent Adjustment Regulations
7. PUBLIC COMMENTS
8. 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. Contact us to request disability-related accommodations, American Sign Language (ASL), Cantonese, Mandarin, or another language interpreter at

least five (5) business days before the event. Rent Adjustment Program staff can be contacted via email at RAP@oaklandca.gov or via phone at (510) 238-3721. California relay service at 711 can also be used for disability-related accommodations. To listen to this meeting in Spanish, from the Zoom controls in the desktop or mobile app, switch your language from English to Spanish. Instructions on how to "Listen to Language Interpretation" is available at here.

*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

Para escuchar esta reunión en Español, desde los controles de Zoom en la aplicación, cambie su idioma de Inglés a Español. Las instrucciones sobre cómo "escuchar la interpretación de idiomas" están disponibles en: https://support.zoom.us/hc/en-us/articles/360034919791-Language-interpretation-in-meetings-and-webinars#h_6802bbbc-2ec9-47cb-a04c-6aac35914d82
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 RAP@oaklandca.gov o llame al (510) 238-3721 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 RAP@oaklandca.gov 或致電 (510) 238-3721 或 711 California relay service.

HOUSING, RESIDENTIAL RENT AND RELOCATION
BOARD FULL BOARD SPECIAL MEETING
January 28, 2021
5:00 P.M.
VIA ZOOM CONFERENCE
OAKLAND, CA

MINUTES

1. CALL TO ORDER

The Board meeting was administered via Zoom by H. Grewal, Housing and Community Development Department. He explained the procedure for conducting the meeting. The HRRRB meeting was called to order at 5:10 p.m. by Chair R. Stone.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
T. HALL	Tenant	X		
R. AUGUSTE	Tenant	X		
H. FLANERY	Tenant Alt.			
Vacant	Tenant Alt.			X
R. STONE	Homeowner	X		
A. GRAHAM	Homeowner	X*		
S. DEVUONO-POWELL	Homeowner	X		
E. LAI	Homeowner Alt.			X
J. MA POWERS	Homeowner Alt.			X
K. FRIEDMAN	Landlord	X		
T. WILLIAMS	Landlord	X		
B. SCOTT	Landlord Alt.			X
K. SIMS	Landlord Alt.			X

*Member A. Graham appeared at 5:35 p.m.

Staff Present

Oliver Luby	Deputy City Attorney
Barbara Kong-Brown	Senior Hearing Officer (RAP)
Barbara Cohen	Acting Senior Hearing Officer (RAP
Harman Grewal	Business Analyst III (HCD)

3. CONSENT ITEMS

a) Approval of Board Minutes from January 28, 2021, Full Board Special Meeting

K. Friedman moved to approve the Rent Board minutes. R. Stone Seconded.

The Board voted as follows:

Aye: K. Friedman, T. Hall, R. Auguste, R. Stone, S. Devuono-Powell, T. Williams
Nay: None
Abstain:

The motion was approved by consensus.

4. OPEN FORUM

The Board meeting was also conducted in Spanish. The Spanish interpreters were Clara Garzon and Laura Joosee, who were administered the Oath.

Assata Olugbala

- Expressed concern about the use of the phrase “master tenant” and requests replacement with the word “primary”. Stated that this sounds similar to racial profiling in the Police Dept. Just because a person is a landlord does not mean that landlords are wrong. This constitutes landlord profiling. She could rent out her property but will not do it because of all these regulations which puts her at a disadvantage. She also stated that the board meeting is only being conducted in Spanish (in addition to English) which is not giving everyone the opportunity to weigh in on the process.

Caitlin Kilgore

- Supports the tenants’ changes. She and her housemates are underemployed. They had a vacancy in December and just found a new occupant this week. It is hard to find a housemate during the pandemic. If we need a 30-day approval process this makes it more challenging to find someone willing to wait that long. It also requires us to leave the unit empty which incurs more rent debt. There is no reason to extend the pre-approval process 30 days.

Camille Villa

- States the 5 days is insufficient. The landlord only accepts

subsequent occupant by mail and paper checks. She is also concerned about the 30-day advance notice. This is a difficult housing market. She lives with 4 or 5 roommates and landlords reject tenants for unfair reasons. There is limited ability to communicate, resulting in delays in rent. She wants to be able to add a tenant in an efficient and transparent process.

Emily Wheeler

- Echoes Jackie Zaneri's comments. Currently there are 14 days for landlords to deny tenants. The TPO law was to increase tenant protection. It is against the spirit of the City Council to make it easier to landlords to take advantage of tenants to evict tenants because they did not turn in an application in 5 days. This is ripe for abuse. She is also against the 30-day notice of a tenant move in. There is enough time for the landlord to review and deny an application. She wants to be able to get more roommates to help pay the rent.

Grant Rich, Oakland Tenants Union

- The advance notice to add tenants to the lease makes it hard to add new people to the lease. He cannot add anyone to his lease. His landlord added new provisions, requires a credit check, and $20. Everyone was rejected. This is a tactic to get tenants out of the property so landlords can make more money.

Ben Sigurest

- Is a JDW tenant. A lot of tenants moved out because of the pandemic. His landlord (JDW) does not respond to requests and has additional requirements which did not apply to tenants in the prior lease-a higher credit score, 3 months of rent payment history, which is not in the original lease. The 5-day deadline affects the tenants' ability to pay rent.

Iliana Cervantes

- Is a JDW tenant. She supports the changes in the tenants' letter. The 5-day application rule is too short and should toll the 14-day period. The "threat to safety" can be used to discriminate against tenants. You need to add "substantial evidence." The Board has a responsibility to protect tenants.

Jackie Zaneri, ACCE

- States the reasons to deny an occupant in §8.22.360 (A) (2) (d)(i) 5, regarding the 5 days for the tenant is insufficient . She recommends a regulation that if the tenant does not apply in 5 days you can toll the 14-day period.

James Vann

- Commented on the proof of service requirement in §8.22.090, (C) (1) f) Owner Petition and Response Requirements, stating that the owner should supply the documents to the tenant; Also commented on Appendix A, in allocation of units subject to a capital improvement increase, include the agent of the owner and the owner if they have a unit. Agrees with the tenants' rights coalition letter.

John Deboer, Oakland Tenants' Union

- He replaced another roommate and it is difficult to know if he is approved. There are arbitrary criteria. He does not have a place to stay in the meantime, and dos does not want to pay two rents at once. He states banked increases should not be passed to the new owner. If the prior owner did not raise the rent in the past the new owner should not be able to do it in the future.

Laurel Chun

- Is an Oakland tenant and supports the changes in the tenants' rights letter. Is concerned about the "principal resident" language. Says this is another way for landlords to increase tenant surveillance. The 5-day rule is limiting. Prefers 15 to 30 days. The owner already has power over tenants and the Board should not make it easier to evict tenants.

Melanie Letendre

- States that the reality of the landlord comments is that they do not want to make it easier for tenants to add more tenants and are protecting their investments. She cannot afford to pay rent during the pandemic. If a tenant needs to move in another tenant because they cannot afford the rent, right now it is 15 days advance notice. 30 days is too long.

a. Ryan Furtkamp

- Commented on the people affected by Ghost Ship

Constance Thomason

- She inherited a property. She commented on the experience of a friend who had a property and was gone for 2 months, and the property was subleased to 2 other people, which stressed the owner out. That sub tenant put a heater in a crawl space and installed cameras.

5. Committee Reports and Scheduling

❖ §8.22.360 (A) (2) (d) (i) (4-8)-Discussion of Changes to Amendments to Just Cause for Eviction Ordinance

- §4- Lack of creditworthiness-do not use more stringent criteria. Discussion of the word “any” and “current tenant.”
- §5-Time frame for landlord to conduct background check
    - Addresses ability of owner to do adequate background check-time frame for tenant application
    - Discussions re 5-day tenant request, 14-day landlord response-Board request to deputy city attorney to draft language
- §6-Misrepresentation of intentional facts by tenant
    - Discussion of the phrase “minor discrepancy.”
- §7-Threat to health, safety or security of other residents by proposed occupant
    - Discussion of preponderance of evidence standard for establishing such a threat
- §8-Refusal of tenant to identify proposed occupant
    - Discussion of importance to know who is living there

❖ §8.22.360 (A)(2) (d) (ii) (1-7)

- §1-Unreasonable denial based on criminal history of proposed occupant

- Discussion of “applicant” and expansion of protection to sublet.

- §2-Denial based on more stringent requirements than those imposed on other applicants or existing tenant
    - This is a mirror of §8.22.360 (A) (2) (d) (i) (4).
- §3-Denial based on tenant’s refusal to agree to extended lease term or other change in terms of tenancy
- §4-Denial based on proposed occupant’s lack of creditworthiness if occupant is not legally obligated to pay some or all of the rent
    - If occupant is not in a contractual relationship
- §5-Denial based on tenant refusal to provide copy of sub tenant agreement to landlord
    - Board requested report from staff about why this section was included in the amendments
- §6-Denial based on tenant or proposed occupant to provide information or participate in processes that are outside the reasonable scope of the application process
    - This language suggested by Ad Hoc Committee
- §7-Denial based on prior acts of tenant organizing, membership in tenant rights organization, requesting repairs, contesting rent increases, filing complaints with governmental agency or other exercise of legal rights under the law as a tenant
    - Discussion of vexatious litigant and what constitutes reasonable basis for denial.
    - Member Friedman will draft suggested language to this section

❖ §8.22.360 (A) (2) (d)(iii)

- If occupant is denied for lack of creditworthiness, tenant can still request same occupant as a subtenant

Chair Stone requested that 1) Amendments to Just Cause for Eviction

Ordinance, 2) Rent Adjustment Program Regulations, and 3) Appendix A to Rent Adjustment Regulations be placed on the agenda for action for the next board meeting on February 11, 2021.

6. OPEN FORUM

Ethan Silverstein, ACCE

- Supports the recommendations in the tenant advocates' letter. Highlights the importance about changing 5-day deadline. The regulation is not just about changing roommates. The regulations are about when landlords can evict tenants. Needing to find a tenant by missing a deadline is difference about non-payment eviction or not. Allowing all out rejection is a setup for displacement by bad actors. If you leave this hard deadline you will have landlords lie about when they provided the application. There is a simple fix. If a tenant makes a request it is deemed approved if the landlord does not respond in 14 days. If within 5 days the landlord provides the application and the tenant does not respond, the application is incomplete. Once the tenant returns the application, the landlord can have their 5 days. This does not run afoul of the 14-day deadline.

Carver Cordis

- States the 5-day deadline needs to be removed from the language. Evictions should not happen because of this. Landlords have a lot of power. Tenants need to have time to find roommates and submit applications.

The HRRRB meeting was adjourned at 8:40 p.m. by consensus.

After Open Forum, the Board discussed its role of impartiality, the importance of respectful dialogue and not speaking over one another and avoiding debate.

7. ADJOURNMENT

The meeting was adjourned at 8:38 p.m. by consensus.

CITY OF OAKLAND

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

RESOLUTION

RESOLUTION NO. R21-001

RESOLUTION: (1) ADOPTING, SUBJECT TO CITY COUNCIL APPROVAL, AMENDMENTS TO THE RENT ADJUSTMENT PROGRAM REGULATIONS: AS REQUIRED BY ORDINANCE NO. 13608 C.M.S.; TO ALLOW OWNERS TO PETITION FOR AN UNLIMITED RENT INCREASE WHEN A TENANT DOES NOT RESIDE IN THE UNIT AS THEIR PRINCIPAL RESIDENCE; AND TO MAKE CLEAN UP CHANGES TO CONFORM TO PAST RENT ORDINANCE AMENDMENTS AND ELIMINATE DUPLICATIVE DEFINITIONS; AND (2) RECOMMENDING THE CITY COUNCIL'S ADOPTION OF THE REGULATIONS AND CORRESPONDING CHANGES TO THE RENT ORDINANCE FOR SUBTENANT AND NOT-PRINCIPAL-RESIDENCE PETITIONS

WHEREAS, the City Council adopted Ordinance No. 13608 C.M.S. on July 21, 2020, which amended various laws, including the Residential Rent Adjustment Program Ordinance (OMC 8.22.010, et seq.) ("Rent Ordinance"), the amendments for which included permitting owners to petition for rent increases up to 5% per additional non-family occupant in correspondence with eviction protection related to additional occupants added to the Just for Eviction Ordinance, permitting a tenant to seek a rent reduction if the owner unreasonably denies them the right to replace a departing roommate, conforming the maximum rent increase in a 12-month period with state limits that took effect in January 2020, and authorizing a Rent Adjustment Program Hearing Officer to issue an administrative decision without a hearing if the petition and response raise no genuine dispute as to any material fact and the petition may be decided as a matter of law; and

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

WHEREAS, some existing provisions of the Rent Adjustment Program Regulations have not yet been updated to reflect other past amendments to the Rent Ordinance, including but not limited to service requirements under Regulation 8.22.090, which is not in accord with OMC 8.22.090 as amended by Ordinance No. 13618 C.M.S. adopted by the City Council on October 20, 2020, and a cost limitation for capital improvements that is not reflected in Section 10.2.2 of Appendix A of the Regulations, which is not in accord with the definition of "Capital Improvements" in OMC 8.22.20 as amended by Ordinance No. 13516 C.M.S. adopted by the City Council on January 22, 2019; and

WHEREAS, OMC Section 8.22.040.D2 permits the Housing, Residential Rent and Relocation Board ("Rent Board") to adopt or modify the Rent Adjustment Program Regulations subject to City Council approval; now, therefore be it

RESOLVED: The Rent Adjustment Program Regulations are hereby amended as set out in Attachment A; and be it

FURTHER RESOLVED: That the Rent Board recommends that the City Council approve the amendments to the Rent Adjustment Program Regulations as set out in Attachment A; and be it

FURTHER RESOLVED: That the Rent Board further recommends that the City Council adopt amendments to the Rent Ordinance to allow for subtenant petitions regarding primary tenant violations of maximum rent charges and owner petitions for an unlimited rent increase when a tenant does not reside in a unit as their principal residence, in correspondence with the Rent Adjustment Program Regulation amendments set out in Attachment A.

APPROVED BY THE FOLLOWING VOTE

AYES: AUGUSTE, DEVUONO-POWELL, FRIEDMAN, GRAHAM, HALL, WILLIAMS AND CHAIRPERSON STONE

NOES:

ABSENT:

ABSTENTION:

_____
Date:

ATTEST_____
MARYANN LESHIN
Deputy Director, Housing &
Community Development
Department

#3022293v1

Attachment A – Proposed 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.

~~"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.~~

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

"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 or intended place of return. A Principal Residence is distinguishable 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 may 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 primary tenants, rather than directly to the owner to whom the primary 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 primary tenants reside with one or more subtenants in a covered unit, the maximum rent that a primary 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 primary tenant than the primary 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 primary 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 primary 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 primary 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 Primary 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. Primary 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.

Proposed Amendments - 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, subsidies, 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.

10.5~~6~~.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.

10.5~~6~~.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.

10.6~~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.

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.

10.78 Tenant Not Residing in Unit as Principal 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		

CITY OF OAKLAND

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

RESOLUTION

RESOLUTION NO. R21-002

RESOLUTION ADOPTING AMENDMENTS TO THE JUST CAUSE FOR EVICTION REGULATIONS, AS REQUIRED BY ORDINANCE NO. 13608 C.M.S.

WHEREAS, the City Council adopted Ordinance No. 13608 C.M.S. on July 21, 2020, which amended various laws, including the Just Cause for Eviction Ordinance, the amendments for which included expansion of eviction protection under Oakland Municipal Code (OMC) Section 8.22.360.A2 to include requests to add additional occupants; and

WHEREAS, Section 8 of Ordinance No. 13608 C.M.S. requires the development of amendments to the Regulations for the Just Cause for Eviction Ordinance for the purpose of clarifying "reasonable refusal" as used in OMC 8.22.360.A2b; and

WHEREAS, the Housing Residential Rent and Relocation Board is authorized to adopt regulations for the Just for Eviction Ordinance, without approval of the City Council; now, therefore be it

RESOLVED: The Regulations for Just Cause for Eviction Ordinance are hereby amended as set out in Attachment A.

APPROVED BY THE FOLLOWING VOTE

AYES: AUGUSTE, DEVUONO-POWELL, FRIEDMAN, GRAHAM, HALL, WILLIAMS AND CHAIRPERSON STONE

NOES:

ABSENT:

ABSTENTION:

_____ ATTEST_____

Date: MARYANN LESHIN
Deputy Director, Housing &
Community Development
Department

#3022273v1

Attachment A – Proposed 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 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;

(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 not include minor discrepancies on credit reports or tenant screening reports or where the proposed occupant's background check returns other names that were undisclosed 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, as prohibited by the Fair Chance Access to Housing Ordinance (O.M.C. 8.25.010 et seq or successor provisions). 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.

CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney (510) 238-3601

Barbara J. Parker FAX: (510) 238-6500

City Attorney TTY/TDD: (510) 238-3254

February 4, 2021

Housing Residential Rent and Relocation Board
Oakland, California

RE: Revisions to Regulations for the Just Cause for Eviction Ordinance required by Ordinance No. 13608 C.M.S.

Dear Chairperson Robert Stone and Members of the Board:

Section 8 of Ordinance No. 13608 C.M.S. adopted by the City Council on July 21, 2020, requires the development of regulations for the Just for Eviction Ordinance to clarify "reasonable refusal" as used in subsection 8.22.360.A.2.b of the Ordinance. The Housing Residential Rent and Relocation Board is authorized to adopt regulations for the Just Cause for Eviction Ordinance. Following the Board's meeting of January 28, 2021, the City Attorney's Office is providing some options for the proposed amendments to the Regulations in response to the Board's discussion regarding certain provisions, as well as recommending some additional revisions, as follows.

1. Proposed Regulation 8.22.360.A.2 d.i(4) [reasonable denial based on creditworthiness]

At the January 28th meeting, the Board discussed the following possible edits to 8.22.360.A.2 d.i(4) (additions are underlined, deletions are in strikeout):

> (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 current~~original or subsequent~~ occupants;

2. Proposed Regulation 8.22.360.A.2 d.i(5) [reasonable denial based on refusal to provide standard application or info sufficient for the owner to complete background check]

As published in the Board's agenda packet, the drafting for 8.22.360.A.2 d.i(5) is as follows:

> (5) where 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;

Following the Board's discussion regarding concern that five days would provide insufficient time for a proposed occupant to complete an application or provide requested information and could result in denials not intended by the ordinance, the City Attorney's Office recommends elimination of the proposed provision. Since disagreements between owners and tenants over the reasonableness of requests for applications or background check information could involve a wide variety of factual circumstances, elimination of d.i(5) would leave such disagreements ultimately subject to judicial determination, in those instances of denial leading to a repossession attempt.

3. Proposed Regulation 8.22.360.A.2 d.ii(6) [unreasonable denial based on refusal to provide info or participate in processes outside the reasonable scope of the application process]

This proposed provision defines *unreasonable* denial based on a request outside the *reasonable* scope of the application process. Since that is circular and anything outside a reasonable scope is not reasonable, the City Attorney's Office recommends the following edits (additions are underlined, deletions are in strikeout):

> (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~~a typical application process;

4. New proposed Regulation 8.22.360.A.2 d.ii(8) [unreasonable denial based on prior request]

To clarify that denial of a request to add a proposed occupant is not a permanent bar to requesting to add that proposed occupant, the City Attorney's Office recommends the addition of subsection 8.22.360.A.2 d.ii(8), as follows:

> (8) denial based merely on the fact that a prior request to add the proposed occupant was denied.

5. New proposed Regulation 8.22.360.A.2 d.iv [definition of creditworthiness]

The City Attorney's Office recommends the addition of subsection 8.22.360.A.2 d.iv, as follows:

> iv. As used in O.M.C. Section 8.22.360 A2 and Regulation 8.22.360.A.2, "creditworthiness" includes any standard of determining suitability to receive credit or reliability to pay money owed, including any financial or income standard.

Respectfully submitted,

/s/ Oliver Luby

Oliver Luby
Deputy City Attorney