



CITY OF OAKLAND

AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Shola Olatoye
Director, HCDD

SUBJECT: Amendments to Rent Ordinance and
Rent Adjustment Program
Regulations

DATE: April 2, 2021

City Administrator Approval 

Date: Apr 15, 2021

RECOMMENDATION

Staff Recommends That The City Council Adopt The Following Pieces Of Legislation:

- (I) **An Ordinance Amending The Rent Adjustment Ordinance (Oakland Municipal Code Chapter 8.22, Article I) as Recommended by the Housing Residential Rent and Relocation Board To (1) Allow Owners To Petition For An Unlimited Rent Increase When A Tenant Does Not Reside In The Unit As Their Principal Residence; (2) Allow Subtenants To Petition To Contest Overcharges By Primary Tenants; And (3) Make Clean Up Changes; And**
- (II) **A Resolution Adopting Amendments To The Rent Adjustment Program Regulations Developed And Approved by the Housing Residential Rent and Relocation Board To (1) Comply With Ordinance No. 13608 C.M.S.; (2) Make Clean Up Changes And Eliminate Duplicative Definitions; And (3) Make Failure To Occupy As A Principal Residence Grounds For A Rent Increase Above The Consumer Price Index Adjustment.**

EXECUTIVE SUMMARY

The proposed legislation consists of amendments to the Rent Adjustment Program Regulations promulgated and adopted by the Housing Residential Rent and Relocation Board (Rent Board) and submitted to the City Council for ratification, as well as amendments to the Residential Rent Adjustment Program Ordinance (Oakland Municipal Code (OMC) Section 8.22.010, et seq.) (Rent Ordinance) to allow for two new petition processes prescribed by the Regulation amendments. Specifically, the Rent Ordinance amendments would allow subtenants to petition the Rent Adjustment Program (RAP) to contest overcharges by primary tenants and owners to petition RAP to impose an unlimited rent increase when a tenant does not reside in the unit as their principal residence.

The Regulation amendments include changes consistent with the City Council direction in Ordinance No. 13608 C.M.S., the Tenant Protection Ordinance, Rent Ordinance, and Just Cause for Eviction Ordinance amendments adopted by the City Council in July 2020. This direction called for the development of various amendments to the Regulations, as well as a new petition process to allow owners to impose an unlimited rent increase when a tenant does not reside in a unit as their principal residence. Both the Ordinance and the Resolution also include minor clean up changes.

BACKGROUND/LEGISLATIVE HISTORY

On July 21, 2020, the City Council adopted Ordinance No. 13608 C.M.S., which made various amendments to the Rent Ordinance, Tenant Protection Ordinance, Just Cause for Eviction Ordinance (JCO), and other ordinances related to tenant relocation payments for specified types of evictions.

The JCO amendments included prohibiting evictions based on adding an additional occupant or occupants to a rental unit, if the owner has unreasonably refused a tenant's written request to add an occupant or occupants.

The Rent Ordinance amendments included (a) permitting owners to petition for a rent increase up to 5 percent per additional non-family occupant added to the unit, (b) conforming the maximum rent increase in a 12-month period with state limits that took effect in January 2020, and (c) authorizing a RAP Hearing Officer to issue an administrative decision without a hearing if the petition and response raise no genuine dispute as to any material fact.

Section 8 of Ordinance No. 13608 C.M.S. required, in relevant part, the development of amendments to the Rent Adjustment Program Regulations for the purpose of conforming the regulations to changes made to the Rent 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.

In compliance with the City Council's direction, the Rent Board developed amendments to the Rent Adjustment Program Regulations. The Rent Board created an ad hoc committee to develop initial draft amendments and presented them to the full Board. The Rent Board considered the proposed Regulation amendments extensively at several noticed public meetings and received extensive written and oral public comment.

On February 11, 2021, the Rent Board unanimously adopted the Regulation amendments, subject to the ratification of the City Council. In addition, the Rent Board recommended that the City Council adopt corresponding changes to the Rent Ordinance to allow for subtenant petitions to contest overcharges by primary tenants and owner petitions to impose an unlimited rent increase when a tenant does not reside in the unit as their principal residence.

ANALYSIS AND POLICY ALTERNATIVES

1. Rent Adjustment Program Regulation Amendments

The amendments to the Rent Adjustment Regulations adopted by the Rent Board are attached as **Exhibit A** to the proposed Resolution accompanying this report. These amendments would make the following changes:

- Eliminate duplicative definitions;
- Define “Principal Residence”;
- Prohibit primary tenants from charging subtenants more than a proportional share of the total rent;
- Clarify petition and response requirements applicable to subtenants and primary tenants;
- Conform service of petitions and responses with the Rent Ordinance at OMC Section 8.22.090;
- Amend Regulation Section 8.22.110 to allow tenants to waive hearings regarding petitions for rent increases based on additional occupants;
- Clarify the operation of rent increases and decreases for additional occupants, including updating the definition of “Base Occupancy Level;”
- Conform Appendix A of the RAP Regulations with the definition of “Capital Improvements” in the Rent Ordinance;
- Conform Appendix A of the RAP Regulations with the rent increase cap provided by the Rent Ordinance at OMC Section 8.22.070.A.2;
- Allow owners to petition for an unlimited rent increase when the tenant does not reside in the unit as their principal residence.

Because the proposed regulation amendments contain two new petition processes with the RAP, the Rent Board recommends amendments to the Rent Ordinance to include the new types of petitions. The new petition allows for a rent increase pursuant to the Costa Hawkins Rental Housing Act which allows a landlord to raise the rent when a tenant does not reside in a unit as their principal residence.

2. Rent Ordinance Amendments

The proposed amendments to the RAP Ordinance which accompany this report would make the following changes:

- Provide minor clean-up of the list of grounds under which a tenant may petition to contest a rent increase (OMC 8.22.070.B.2);
- Authorize owners to petition for an unlimited rent increase when a tenant does not reside in the unit as their principal residence (OMC 8.22.070.C.1);
- Authorize subtenants to petition to contest rent overcharges by a primary tenant in violation of the Rent Adjustment Program Regulations and clarify what requirements are applicable in order for subtenants to file petitions and primary tenants to file responses to subtenant petitions (OMC 8.22.090).

Allowing an owner to petition for an unlimited rent increase when a tenant does not reside in the unit as their principal residence is consistent with the Costa Hawkins Rental Housing Act (Civil Code 1954.50 which allows owners to increase the rent by any amount if the original tenant(s) no longer permanently reside in the unit.

FISCAL IMPACT

The new Subtenant and Tenant in Occupancy petitions would likely increase the workload of the Rent Adjustment Program hearing staff and may require hiring additional hearing officers. This fiscal impact will be evaluated in the first year of implementation and if needed, strategies to address identified increased staffing needs will be presented to City Council.

PUBLIC OUTREACH / INTEREST

Housing and Community Development Department staff and the Rent Board received an extensive amount of public input regarding amending the RAP Regulations, including from groups representing the interests of both tenants and residential rental property owners. Drafts of the Regulations were published in the agenda packet for five noticed Board meetings.

COORDINATION

The City Attorney's office was extensively consulted on the development of the Regulations and this report and legislation. The report and legislation were also reviewed by the Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: The approval of amendments consistent with Ordinance No. 13608 C.M.S. will support its protections intended to prevent tenant displacement, thereby diminishing homelessness, loss of employment, displacement of families from their neighborhoods, disruption of children's education, and other detriments to the local economy.

Environmental: The approval of amendments consistent with Ordinance No. 13608 C.M.S. will support its protections intended to prevent tenant displacement, thereby potentially lessening displacement-related longer commutes and a commensurate negative impact on the environment from more cars on the road and longer drives.

Race and Equity: The approval of amendments consistent with Ordinance No. 13608 C.M.S. will support its protections intended to prevent tenant displacement, which is disproportional based on race. Strengthening the City's anti-displacement efforts would advance equity in housing outcomes, which are critical to almost all other forms of equity.

ACTION REQUESTED OF CITY COUNCIL

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For questions regarding this report, please contact Chanée Franklin Minor, RAP Manager at 510.238.3262.

Respectfully submitted,



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