

INTRODUCED BY COUNCILMEMBER _____

CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING CHAPTER 8.22 OF THE OAKLAND MUNICIPAL CODE, RESIDENTIAL RENT ARBITRATION PROGRAM AND EVICTIONS, TO REORGANIZE THE ORDINANCE, CLARIFY ITS LANGUAGE, AND DELEGATE AUTHORITY TO ADOPT REGULATIONS TO THE RENT BOARD

DRAFT—FOR DISCUSSION ONLY

Whereas, the provisions of this Chapter and the regulations adopted to implement its provisions had grown through a series of amendments and needed to be reorganized and coordinated;

Whereas, it is in the best interests of both Owners and Renters to simplify and clarify the language of the provisions of this Chapter to provide a more easily understood regulatory scheme;

Whereas, amendments to Chapter 8.22 are necessary in order to improve the language, eliminate potential ambiguities, eliminate potential inconsistencies and improve coordination, in, and among, the provisions of the Ordinance and regulations;

Whereas, Owner-Renter law in general, and the application of the Rent Adjustment Ordinance in particular is a highly detailed and technical subject, requiring the dedication of considerable time and expertise to develop Regulations to implement its provisions;

Whereas, Owner-Renter disputes in the City of Oakland have generated public controversy and are a subject of continuing public interest and concern;

Whereas, the Housing Residential Rent and Relocation Board is the municipal entity charged with recommending changes to the Regulations, and has done so for several years;

Whereas, extensive public input in the process of promulgation of Rent Board Regulations is highly desirable

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN THAT CHAPTER 8.22, ARTICLE I OF THE OAKLAND MUNICIPAL CODE IS HEREBY AMENDED AS FOLLOWS:

CHAPTER 8.22

RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS

ARTICLE I

RESIDENTIAL RENT ADJUSTMENT PROGRAM

Sections:

- 8.22.010 Definitions**
- 8.22.030 Application and Exemption**
- 8.22.040 Housing, Residential Rent and Relocation Board**
- 8.22.050 Requirement that Owner Give Rent Program Notices to Renters**
- 8.22.060 Rent Increases for Occupied Covered Units**
- 8.22.070 Rent Increases Following Vacancies**
- 8.22.080 Petitions to the Rent Adjustment Program**
- 8.22.090 Mediation of Rent Disputes**
- 8.22.100 Decisions on Petitions**
- 8.22.110 Appeals**
- 8.22.120 General Remedies**
- 8.22.130 Severability**
- 8.22.140 Nonwaiverability**
- 8.22.150 Applicability—Effective date of Chapter 8.22, Article I**

8.22.010 Findings and purpose

A. The City Council finds that a shortage of decent, safe, affordable and sanitary residential Rental housing continues to exist in Oakland. This shortage is evidenced by a low vacancy rate among such units throughout the city and a continually increasing demand for such housing. Many residents of Oakland pay a substantial amount of their monthly income for Rent. The present shortage of Rental housing units and the prevailing Rent levels have a detrimental effect on the health, safety, and welfare of a substantial number of Oakland residents, particularly senior citizens, persons in low and moderate income households, and persons on fixed incomes. Stability in their Rental housing situation is important for individuals, families and neighborhoods. In particular, Renters' desire to be free from the fear of eviction motivated by a Rental property Owner's desire to increase Rents. Rental property Owners' desire the ability to expeditiously terminate the tenancies of problem Renters.

B. Further, the welfare of all persons who live, work, or own residential Rental property in the city depends in part on attracting persons who are willing to invest in residential Rental property in the city. It is, therefore, necessary that the City Council take actions that encourage investment in residential housing while also protecting the welfare of residential Renters.

C. Among the purposes of Chapter 8.22 are providing relief to residential s in Oakland by limiting Rent increases for existing tenancies, encouraging rehabilitation of Rental units,

DRAFT—FOR DISCUSSION ONLY

encouraging investment in new residential Rental property in the city, reducing the financial incentives to Rental property Owners who terminate tenancies under California Civil Code Section 1946 or where Rental units are vacated on other grounds under state law Civil Code Sections 1954.50 to 1954.535 (Costa-Hawkins Rental Housing Act) that permit the city to regulate initial Rents to new Renters, and allowing efficient Rental property Owners the opportunity for both a fair return on their investment and Rental income sufficient to cover increasing costs of operation.

D. The City Council also wishes to foster better relations between Rental property Owners and s and to reduce the cost and adversarial nature of disputes regarding Rental tenancies in the City of Oakland. For these reasons, Chapter 8.22 includes options for Rental property Owners and Renters to mediate disputes that would otherwise be subject to a judicial process, including evictions.

E. The City Council believes that the relationship between Owners and Renters in smaller Owner-occupied Rental properties involves special relationships between the Owner and the Renters residing in the same smaller property. Smaller property Owners also have a difficult time understanding and complying with Rent and eviction regulations. The Just Cause for Eviction Ordinance recognizes this special relationship and exempts from its coverage Owner-occupied properties divided into a maximum of three units. For these reasons, the City Council believes Owner-occupied Rental properties exempt from the Just Cause for Eviction Ordinance should similarly be exempt from the Residential Rent Adjustment Program so long as the property is Owner-occupied. The City Council also desires to provide time for Renters in the newly exempted units to adapt to the possibility of unregulated Rents. Also the City Council desires to discourage the potential for abuse of the Owner-occupancy exemption by Owners who would move into a property to gain an exemption just to increase Rent and not to reside in the property. To these ends, the specified Rental units are exempted beginning October 7, 2004 or one year after the Owner begins Owner-occupancy, whichever is later.

8.22.020 Definitions

A. "Anniversary date" is the anniversary of the day a Renter was provided with possession of the Covered Unit or the anniversary of the effective date of the most recent Rent increase, whichever is later. Following certain vacancies, a subsequent Renter will assume the anniversary date of the previous Renter (Section 8.22.070).

B. "Banking" means those annual general Rent increases the Owner is entitled to impose but delays imposing in part or in full. Banking may include both the CPI Rent Adjustment and former Rent adjustments known as the Annual Permissible Rent Increase.

C. "Board" means the Housing, Residential Rent and Relocation Board, or HRRRB, commonly known as the Rent Board.

D. "Capital improvement" means an improvement to a Covered Unit or common area, primarily for the benefit of the Renter that materially adds to the value of the property or appreciably prolongs its useful life or adapts it to new building codes, subject to the Regulations.

E. "Costa-Hawkins" means the Costa-Hawkins Rental Housing Act (California Civil Code Sections 1954.50 to 1954.535).

F. "Covered Unit" means any dwelling unit, including live-work and work-live units used or occupied in consideration of payment of "Rent", as defined in this section, not exempted from

DRAFT—FOR DISCUSSION ONLY

application of this Chapter 8.22, Article I.

G. "CPI Rent Adjustment" is the annual general allowable Rent increase calculated according to Section 8.22.060.

H. "CPI-All Items" means the Consumer Price Index-All Urban Consumers, All Items for the San Francisco-Oakland-San Jose area as published by the U.S. Department of Labor, Bureau of Labor Statistics.

I. "CPI-Less Shelter" means the 'Consumer Price Index-All Urban Consumers, 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, Bureau of Labor Statistics.

J. "Decreased Housing Services" means that the Owner decreased the Housing Services provided to a tenant

K. "Debt Service" means the monthly principal and interest payments on one or more promissory notes secured by one or more deeds of trust on the real property with the Covered Units.

L. "Final Agency Decision" means a decision, either of staff, including hearing officers, or the Board that has not been timely appealed.

M. "Hearing Officer" is a person designated by staff to conduct hearings.

N. "Housing Services" means all services provided by the Owner to a Renter related to the use or occupancy of a Covered Unit, except debt service.

O. "Inadequate Housing Services" includes that the unit provided to a Renter contains one or more habitability defects that violate OMC Chapter 15.08, and the defect(s) were not corrected within a reasonable time.

P. "Owner" means a landlord, an Owner of record, or lessor or sub lessor of an Owner of record, or any other person or entity entitled either to receive Rent for the use or occupancy of any Rental unit or to maintain an action for possession of a Rental unit, or an agent, representative, or successor of any of the foregoing.

Q. "Owner of Record" means a natural person, who is an Owner of record holding an interest equal to or greater than thirty-three percent (33%) in the property.

R. "Rent Adjustment Program Regulations" or "Regulations", means the regulations for implementation of this Chapter 8.22, Article I (formerly known as "Rules and Procedures").

S. "Rent" means the total consideration, including any bonus, benefit or gratuity, demanded or received by an Owner in exchange for the use or occupancy of a Covered Unit, including all housing services provided to the .

T. "Renter" means any renter tenant, subtenant, lessee, or sub-lessee of a rental unit, or any group of renters, tenants, subtenants, lessees, sub lessees of a rental unit, or any other person entitled to the use or occupancy of such Rental unit, or any successor of any of the foregoing.

U. "Residential Rent Adjustment Program," also known as the Rent Adjustment Program ("RAP"), means the administrative unit in the City of Oakland that administers the ordinances codified in this Chapter and also includes the Board.

V. "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.

W. "Summary Decision" is a decision on a petition or application issued by Rent Program

DRAFT—FOR DISCUSSION ONLY

Staff without a hearing.

8.22.030 Application and Exemption.

A. This Chapter 8.22, Article I applies to the Rental of all Covered Units except the following:

1. Units whose Rents are controlled, regulated (other than by this Chapter), or subsidized by any governmental unit, agency or authority.
2. Accommodations in motels, hotels, inns, rooming houses, and boarding houses, provided that such accommodations are not occupied by the same Renter for more than thirty (30) days.
3. Housing accommodations in any licensed hospital, convent, monastery, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by an educational institution.
4. Units in a nonprofit cooperative association which is owned, occupied, and controlled by a majority of the residents.
5. Newly Constructed Units.
 - a. Dwelling units that were newly constructed on or after January 1, 1983 and for which a certificate of occupancy has been issued for the unit.
 - b. Dwelling units whose construction is regulated by a government agency and not by the City of Oakland and where a certificate of occupancy is not required (such as manufactured housing) may qualify as new construction by the Owner showing that the unit was permanently placed on its site and the final City of Oakland building inspection approval was obtained on or after January 1, 1983.
 - c. To qualify as a newly constructed dwelling unit, the dwelling unit must either be entirely new construction or created from structural space that was formerly used entirely for nonresidential purposes.
6. Substantially rehabilitated buildings as limited by subsection B, below;
7. Units exempt pursuant to the Costa-Hawkins Rental Housing Act (California Civil Code Sections 1954.50 to 1954.535).
8. Properties with three or fewer residential units, one of which is Owner-occupied, as limited by subsection D, below.

B. Exemptions for Substantially Rehabilitated Buildings.

1. A building on which an Owner has spent at least fifty percent (50%) of the average basic cost for new construction to rehabilitate the building is exempt.
2. The average basic cost for new construction shall be determined using tables issued by the Chief Building Inspector applicable to the time period when the substantial rehabilitation was completed.

C. Units No Longer Exempt. The Owner of a unit that is exempt under subsections A.1, A.2, A.3, A.4 or A.8 must inform the Rent Adjustment Program in writing, and give any Renters in the unit a Rent Program Notice as stated in 8.22.050.B.1., below, within thirty (30) days after the unit ceases to be exempt.

D. Exemptions for Owner-Occupied Properties of Three or Fewer Units. Properties divided into three or fewer units are exempt from Chapter 8.22, Article I under the following conditions:

1. One-Year Minimum Owner Occupancy. An Owner of Record must have occupied one of the units continuously as his/her principal residence for at least one year.

DRAFT—FOR DISCUSSION ONLY

2. Continuation of Exemption. The Owner-occupancy exemption expires when no qualifying Owner of Record occupies one of the units continuously as his/her principal residence.

3. Rent Increases. This exemption is first effective October 7, 2004 or one year after the qualifying Owner of Record starts residing at the affected property as his/her principal place of residence, whichever is later.

8.22.040 Housing, Residential Rent and Relocation Board.

A. Appointment.

1. The Board consists of seven (7) members. The Board shall be comprised of two (2) residential rental property Owners, two (2) Renters, and three (3) persons who are neither Renters nor residential rental property Owners.

2. Board members are appointed by the Mayor subject to confirmation by the Oakland City Council, pursuant to Article VI, Section 601 of the Oakland City Charter.

3. An appointee to the Board takes office after confirmation by the City Council and upon taking the oath of office.

4. Board members serve without compensation.

5. City of Oakland employees cannot be Board members.

B. Terms of Members.

1. Board members shall be appointed to terms of three (3) years beginning on February 12 of each year and ending on February 11 three (3) years later.

2. Board members shall be appointed to staggered terms so that only one third (1/3) of the Board will have terms expiring each year, with no more than one (1) Board member who is neither a residential Rental property Owner nor a Renter, and no more than one (1) Rental property Owner and no more than one (1) Renter expiring each year.

3. No employee of the City of Oakland may serve as a Board member.

4. Terms will begin on the date of appointment, except that an appointment to fill a vacancy shall be for the unexpired portion of the term only.

5. No person may serve more than two (2) consecutive full terms. For purposes of the two consecutive term limit, a person who serves more than one-half of an unexpired term is considered to have served a full term.

6. Removal. To assure participation of Board members, attendance by the members of the Board to all regularly scheduled and special meetings of the Board shall be recorded, and such record shall be provided semi-annually to the Office of the Mayor for review. A member may be removed pursuant to Section 601 of the City Charter. Among other things, conviction of a felony, misconduct, incompetency, inattention to or inability to perform duties, or absence from three (3) consecutive regular meetings except on account of illness or when absent from the City by permission of the Board shall constitute cause for removal.

7. Holdover.

a. A Board member whose term has expired may remain as a Board member for up to one (1) year following the expiration of his/her term or until a replacement is appointed, whichever is earlier.

b. The City Clerk shall notify the Mayor, the Residential Rent Adjustment Program, the Board, the City Council, and the affected Board member when a Board member's holdover status expires.

c. Prior to notification by the City Clerk of the end of holdover status, a Board

DRAFT—FOR DISCUSSION ONLY

member may fully participate in all Board meetings and Board decisions.

C. Duties and Functions. In addition to duties created under other provisions of law, the Board has the following duties and functions under Chapter 8.22, Article I:

1. Rent Program Appeals. The Board hears and decides appeals from decisions of Rent Program Staff. The Board's Decision is the final decision of the City of Oakland.

2. Other Duties. The Board may have other duties set forth in the Oakland Municipal Code, including those contained in OMC Chapter 15.08.

3. Subpoenas. The Board may have the City Clerk issue subpoenas.

4. Regulations. The Board may develop and adopt or amend Regulations for the Rent Adjustment Program, subject to City Council review. The City Council may reject or amend the Regulations adopted by the Board within 120 days after adoption by the Board. The Regulations or amendments to the Regulations take effect 120 days after adoption by the Board, unless the City Council act to reject or amend the action on the Regulations taken by the Board. If the City Council modifies the action of the Board, the Regulations or amendments, as modified by the City Council, takes effect 120 days after adoption by the Board. Every Regulation change shall be reported to the City Council Rules Committee at its first meeting following adoption of the Regulations for consideration by the appropriate City Council Committee. The Rules Committee shall schedule consideration of the Regulations as will permit City Council consideration of the Regulations before the Regulation automatically take effect.

5. The Board shall establish Rules of Procedure for the conduct of its business by a majority vote of the members present. Voting shall be required for the adoption of any motion or resolution.

6. Reports. The Board shall make such reports to the City Council or committees of the City Council as may be required by this Chapter, by other provisions in the Oakland Municipal Code, by the City Council or by City Council Committee.

7. Recommendations. The Board may act to make recommendations pertaining to this Chapter or City housing policy to the City Council or appropriate City Council committee.

8.22.050 Requirement that Owner Give Rent Program Notices to Renters

A. An Owner must give a copy of the Rent Program Notice to the Renter at the beginning of the tenancy and together with every notice of Rent increase or other notice in change of terms of the tenancy.

B. Notice at Beginning of Tenancy.

1. Prior to or at the time a Renter first occupies his or her Covered Unit, or a written lease for a Covered Unit is signed by the Renter, whichever is earlier, an Owner must give the Renter a written notice of when a petition contesting the Rent may be filed. The notice must be given in the form prescribed by the Rent Adjustment Program. When a unit loses an exemption to this Ordinance thereby becoming a Covered Unit, the Owner must give this notice to the Renter within thirty (30) days of the date the unit lost its exemption.

2. This notice shall include notice of the existence and scope of the Rent Adjustment Program, the Renter's right to file a petition to challenge Rent increases under this Chapter, and any other information required by Ordinance or Regulations.

3. An Owner may cure a failure to give the Rent Program Notice at the beginning of a tenancy at any time, by serving the Notice on the Renter, subject to the penalty in subsection C.2., below.

DRAFT—FOR DISCUSSION ONLY

C. Failure to Give Rent Program Notice at the Beginning of Tenancy.

1. An Owner of a Covered Unit who has never served the Rent Program Notice on the affected Renter(s) may not:

- a. increase the Rent for the Covered Unit during the tenancy; or,
- b. petition the Board for relief regarding the Covered Unit during the tenancy.

2. An Owner who fails to give a Notice of Rent Program to a Renter in a Covered Unit at the beginning of the tenancy and later serves the Notice may not increase the Rent on a Covered Unit for six (6) months after first serving the Notice.

D. Notice Accompanying Rent Increase or Change in Terms of Tenancy.

1. Together with a notice to increase Rent or change in terms of tenancy, an Owner of a Covered Unit must also give the Renter of a Covered Unit a notice of the right to contest the Rent increase and the proper time to file a petition with the Board. The notice must be in the form prescribed by the Rent Adjustment Program.

2. A notice of Rent increase must state each justification for increase and the amount justified by each.

E. A notice of Rent increase or other change in terms of tenancy served without including the information required by 8.22.060.D.1 is ineffective to increase the Rent or change the terms of tenancy.

8.22.060 Rent Increases for Occupied Covered Units

A. An Owner cannot increase the Rent for a Covered Unit except by following the procedures set out in OMC Chapter 8.22, including the Just Cause for Eviction Ordinance (Chapter 8.22, Article II) and the Ellis Act Ordinance (Chapter 8.22, Article III) or where Costa-Hawkins allows an Owner to set the initial Rent for a new without restriction.

B. One Annual Rent Increase. An Owner may first increase the Rent on a Covered Unit occupied continuously by any Renter on, or after, the Renter's Anniversary Date and only once in any twelve (12) month period, thereafter.

C. CPI Rent Adjustment. If not otherwise prohibited by this Chapter, an Owner may give a Renter an annual increase generally applicable to all Covered Units, known as the CPI Rent Increase, without further justification.

1. **OPTION 1** [The CPI Rent Increase is the average of the percentage increase in the CPI-All Items and the CPI-Less Shelter for the twelve month period starting on March 1 of each calendar year and ending on the last day of February of the following calendar year calculated to the nearest percent.] **OPTION 2** [The CPI Rent Increase is 65% of the CPI-All Items for the twelve month period starting on March 1 of each calendar year and ending on the last day of February of the following calendar year calculated to the nearest percent.]

2. The CPI Rent Increase may be imposed during the period from July 1 following the announcement of the annual CPI increase rate by the Rent Adjustment Program through June 30 of the next year.

D. Rent Increases Exceeding CPI Rent Adjustment.

1. Rent increases greater than the CPI Rent Adjustment may be imposed based on the following justifications:

- a. Banking.
- b. Capital improvement costs.
- c. Increased operating expenses.
- d. Option 1 [Limited Debt service in Regulations] or Option 2 [delete debt service

justification]

e. Constitutional Fair Return

2. The amount of Rent increase allowable for each of the grounds listed in this subsection is subject to the limitations set forth in the Regulations.

a. A Renter must comply with a properly noticed Rent increase until the petition contesting the increase is filed.

b. Rent Payable Until Final Decision. A Renter is not required to pay any noticed Rent increase during the time that the Renter’s petition is pending before the Rent Adjustment Program or on appeal before the Board; except that the tenant must pay that provided that portion of the Rent increase that is stated on the increase notice equal to the CPI Rent Adjustment. Any such Rent increase will accrue and the Owner may require the Renter to pay the accrued amount of any portion of the Rent increase determined to be justified going back to the date the Rent increase notice would have been effective under State law pursuant to the notice.

3. Rent increases imposed in violation of this Chapter do not form part of the Rent due for purposes of the non-payment of Rent provisions of Chapter 8.22, Article II (Just Cause for Eviction).

8.22.070 Rent Increases Following Vacancies.

A. Initial Rents to Renters Not Restricted, Exceptions. When California Civil Code (C.C.) Section 1954.53, et seq. (Costa-Hawkins) provides that Owners may set the initial Rent without regulation, the initial Rent is exempt from regulation under this Chapter. However, not all initial Rents are exempted by Costa-Hawkins. An initial Rent not exempted by Costa-Hawkins is regulated by this Chapter.

B. Additional Rent Increases.

1. After an Owner sets an initial Rent for a Covered Unit not regulated by this Chapter, all subsequent Rent increases during the tenancy are restricted by this Chapter.

2. When an Owner sets an initial, unregulated Rent for a Covered Unit, the Owner may not use any costs incurred, or circumstances existing, before the tenancy began as a basis for justifying a Rent increase.

C. The Owner May be Restricted in Setting the Initial Rent for a New Renter:

1. The “Just Cause for Eviction Ordinance” [8.22, Article II] restricts the initial Rent set for a new Renter or if the Covered Rental Unit is re-Rented to the same Renter. If a Renter is caused to surrender possession of a Covered Unit for Owner move-in (OMC 8.22.360.A.9) or substantial repairs (OMC 8.22.360.A.10), the initial Rent set when the unit is next rented is the last Rent charged plus a CPI increase, to which the Owner is entitled, if any, plus an increase for capital improvements to which the Owner is entitled, if any, as limited by other provisions of this Chapter and the Regulations.

2. The “Ellis Act” section of this Chapter [Chapter 8.22, Article III] provides for certain restrictions on setting the initial Rent for a Covered Unit after the Owner has evicted a prior Renter in accordance with California Government Code Sections 7060-7060.7 (the “Ellis Act”).

3. If an Owner seeks to set the Rent for a new Renter where the initial Rent is restricted pursuant to this Subsection 8.22.070C, and the initial Rent is greater than the last Rent charged plus any allowable CPI Rent Increases, the Owner must first file a petition with the Rent Program and obtain approval for such Rent.

8.22.080 Petitions to the Rent Adjustment Program.

A. General. In order to be filed, every petition and response must be verified under penalty of perjury attesting to the truth of the facts or to the truth of the belief that the facts contained in the petition or response are true.

B. Renter Petitions and Renter Responses to Owner Petitions.

1. A Renter in a Covered Unit may petition the Rent Program on any one or more of the following grounds:

- a. A Rent increase exceeds the CPI Rent Adjustment;
- b. The Owner set an initial Rent in excess of the amount permitted by Section 8.22.070.C.;
- c. The Owner failed to give the Renter any required Rent Program Notice;
- d. The Owner Decreased Housing Services to the Renter;
- e. The notice increasing the Rent is invalid under state law; and/or,
- f. The unit occupied by the Renter provides Inadequate Housing Services.

2. A Renter petition contesting a Rent increase must be filed within sixty (60) days after the service of a Rent increase notice or after the date the Rent Program Notice is first served on the Renter by the Owner, whichever is later.

3. A Renter must provide the following with a petition or response to an Owner petition:

- a. A completed petition or response on a form prescribed by the Rent Adjustment Program;
- b. An allegation that the Renter's Rent is current or that the Renter is lawfully withholding Rent; and
- c. A copy of any citation of an uncured serious code violation, if at issue.

4. A Renter petition for a Rent adjustment based on a decrease in housing services must specify the Housing Services Decreased.

5. A Renter must file a response to an Owner's petition within thirty (30) days after service of a copy of the petition by the Rent Adjustment Program.

C. Owner Petitions and Owner Responses to Renter Petitions.

1. A Owner may petition the Rent Adjustment Program for the following relief:

- a. For a declaration that a proposed Rent increase meets the requirements of this Chapter;
- b. To certify that existing Rents are lawful;
- c. For approval to increase Rents because the controlled Rents for the property do not provide a constitutionally mandated fair return on investment;
- d. For a certificate declaring a permanent exemption from application of this Ordinance. A certificate declaring a permanent exemption may only be granted for newly constructed units, substantially rehabilitated buildings or units exempted by Costa-Hawkins.

2. An Owner must file a response to a Renter's petition within thirty (30) days after service of a copy of the petition by the Rent Adjustment Program.

3. To file a petition or response, the Owner must provide:

- a. A completed response or petition on a form prescribed by the Rent Adjustment Program;
- b. Either an allegation that the unit is exempt from application Chapter 8.22, Article I; or
 - i. an allegation of service of the Rent Program Notice on a Renter in each

DRAFT—FOR DISCUSSION ONLY

affected Covered Unit in the building prior to the petition being filed; and,

ii. an allegation of possession of a current City of Oakland business license and an allegation of current payment of the Rent Program Service Fee.

8.22.090 Mediation of Rent Disputes.

The Rent Adjustment Program may conduct voluntary mediation of Rent disputes and evictions at no charge, if the Owner(s) and the Renter(s) agree in writing. The Program may also conduct voluntary mediation of other types of disputes between Owners and Renters, depending upon the availability of resources.

8.22.100 Decisions on Petitions

A. General Procedure

1. All petitions filed pursuant to this Ordinance are decided by Rent Adjustment Program staff in the first instance. Staff decisions on a petition shall be made either summarily or after conducting a hearing.

B. Summary Decisions.

1. Program staff may issue a Summary Decision without a hearing only when:
 - a. The petition or response has not been properly completed or submitted;
 - b. The petition or response has not been filed within the applicable time limit;
 - c. The requirements for filing a petition or response have not been met;
 - d. The uncontested material facts presented in the petition, response, and documents submitted by the parties can lead to only one result.
2. Program staff may not issue a Summary Decision in cases raising a claim of exemption.
3. A Summary Decision may be appealed in the same manner as a Hearing Decision.

C. Hearing Decisions

1. Hearings shall be conducted by Hearing Officer designated by Rent Program Staff who will decide only the issues raised by the petition and response, except the Hearing Officer may decide whether the Rent Program has jurisdiction over the Unit or the issues raised by the petition, subject to the guidelines set out in this Ordinance and the Regulations.
2. All hearings shall be open to the public and an audio recording of the proceedings shall be made by the Rent Adjustment Program.
3. Any party to a hearing may be represented or assisted by a person of his or her choice, subject to the guidelines set out in the Regulations.
 - a. Hearing decisions shall
 - i. Be Issued in writing;
 - ii. Contain findings of fact and conclusions of law; and
 - iii. Be based solely on evidence in the hearing record.
 - b. Hearing Officers have the authority to award restitution for overcharges and undercharges of Rent, subject to guidelines set out in the Regulations.

8.22.110 Appeals

A. A final decision by staff on a petition may be appealed to the Board within fifteen (15) days after mailing of the notice of decision by filing a properly completed appeal form prescribed by the Rent Adjustment Program.

DRAFT—FOR DISCUSSION ONLY

B. All appeals shall be decided by the Board, or a Board Appeals Panel, pursuant to the procedure set forth in the Regulations.

C. Rent Program Staff may reconsider a staff decision after an appeal is filed, if the appeal demonstrates plain error that can be corrected by a revised decision.

D. Staff will schedule Appeals on the Board's agenda, subject to review and modification by the Board.

E. The Board shall have a goal of deciding each appeal within sixty (60) days after the appeal is filed;

1. An appeal may be decided without a hearing by unanimous vote of the Board members present only when:

- a. The appeal has not been properly completed or submitted;
- b. The appeal has not been filed within the applicable time limit;
- c. The requirements for filing an appeal have not been met;

2. . All other appeals shall be decided after a hearing before the Board.

F. All appeal hearings conducted by the Board are public and an audio recording of the proceedings shall be made by the Rent Adjustment Program.

G. Any party to an appeal hearing may be represented or assisted by a representative designated by the party, in writing, or on the record of the hearing, subject to guidelines set out in the Regulations;

H. Appeal decisions must be issued in writing and must include the reasons for the decision.

I. Appeal decisions must be based on the record of the proceeding before the agency, and any such new evidence the Board decides to accept.

J. If the appellant does not appear for a properly noticed appeal hearing, the Board may dismiss the appeal.

K. The Board's Appeal decision is the final decision of the City of Oakland. Parties cannot appeal to the City Council. A Board decision is final on the date it is signed by the Board Chair or the Board's designee after it is approved by the Board.

L. A party may seek judicial review of a final decision of the Board pursuant to California Code of Civil Procedure Section 1094.5 not later than the 90th day following the date on which the decision becomes final.

8.22.120 General Remedies.

A. Violations of Chapter 8.22, Article I.

1. Violations of Chapter 8.22, Article I may be enforced by administrative or by civil remedies as set forth in this Section or as otherwise provided by law.

2. In addition to the remedies provided in this Chapter, a violator is liable for such costs and expenses, including attorney's fees, paid or incurred by the City in abatement and prosecution of the violation.

3. The remedies available in this Chapter are not exclusive and may be used cumulatively with any other remedies in this Chapter or available at law.

B. General Administrative Remedies.

1. Administrative Citation. Anyone who violates specified provisions of Chapter 8.22, Article I may be issued an administrative citation. Administrative citations shall be issued in accordance with O.M.C Chapter 1.12 (Administrative Citations). The specified sections of Chapter 8.22, Article I that may be enforced by administrative citation shall be set out in the

Regulations.

2. Administrative Assessment of Civil Penalties. Anyone who violates specified provisions of Chapter 8.22, Article I may be administratively assessed a civil penalty. Civil penalties for violations are assessed in accordance with O.M.C Chapter 1.08 (Administrative Assessment of Civil Penalties) as a major violation under that Chapter 1.08. Violations of Chapter 8.22, Article I that may be enforced with civil penalties include:

- a. Failure to give a Renter any notice required by this Chapter 8.22, Article I;
 - b. Demanding payment of a Rent in excess of that permitted by this Chapter 8.22, Article I;
 - c. Failure or refusal to abide by a final order of the Rent Adjustment Program;
 - d. Failure to pay the Rent Program Service Fee;
 - e. Failure to inform the Rent Adjustment Program that a unit is no longer exempt;
- and
- f. Claiming an exemption from Chapter 8.22, Article I without a reasonable belief that the unit is exempt.

3. The City Administrator shall designate staff authorized to issue administrative citations and civil penalties.

4. Each and every day or any portion of a day during which a violation of any provision of this Chapter is committed, continued, or permitted is a separate violation and shall be punishable accordingly.

C. General Civil Remedies.

An aggrieved party or the City Attorney, on behalf of such party, may bring a civil action for injunctive relief or damages, or both, for any violation of the provisions of this Chapter 8.22, Article I or an order or final decision issued by Staff or the Board.

8.22.130 Severability.

This Chapter shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this Chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application; and to this end the provisions of this Chapter are declared to be severable and are intended to have independent validity.

8.22.140 Nonwaiverability.

Any provision whether oral or written, in or pertaining to a Rental agreement, whereby any provision of this Chapter is waived or modified is against public policy and void.

8.22.150 Applicability—Effective date of Chapter 8.22, Article I.

The ordinance codified in this Chapter shall take effect as follows:

A. The CPI Rent Increase. The CPI Rent Increase is effective for Rent increases taking effect on or after July 1, 2002 .

B. Exemption for Owner-occupied Properties of Three or Fewer Units. The exemption for Owner-occupied properties of three or fewer units is effective October 7, 2004.

C. Other Provisions. All other provisions of this Chapter take effect pursuant to Section

DRAFT—FOR DISCUSSION ONLY

216 of the Oakland City Charter. Whenever a new Section takes effect on a date after this amended Chapter takes effect pursuant to Section 216 of the Oakland City Charter, the provisions of the former Chapter 8.22 will apply.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

ABSTENTION-

ATTEST:

**CEDA FLOYD
CITY CLERK AND CLERK OF THE
COUNCIL
OF THE CITY OF OAKLAND,
CALIFORNIA**