

CITY OF OAKLAND
REPORT

TO: Housing Residential Rent and Relocation Board Members
FROM: Community and Economic Development/HCD/Rent Adjustment
DATE: January 13, 2005

Deleted: December 30, 2004

**RE: REPORT AND DRAFT ORDINANCE AMENDING RENT ADJUSTMENT
ORDINANCE**

SUMMARY

The proposed changes to the Rent Adjustment Ordinance address three key areas—

- improving the language and organization of the document to make it easier for everyone to understand both the law and the Rent Program procedures
- eliminating inconsistencies and unnecessary complications in the process
- making the regulatory process more effective

The Ordinance has been extensively redrafted while keeping the same basic regulatory structure and process in place. The language changes are so extensive that a redlined or comparison version is more confusing than helpful, so a redlined version is not attached to this report.

FISCAL IMPACT

The proposed changes will reduce program costs by some undetermined amount by increasing process efficiency and reducing staff time spent answering questions from the public.

BACKGROUND

The Rent Adjustment Ordinance (hereinafter “Ordinance”) has been revised by the City Council many times since its adoption. Most recently it was revised in July 2000, January 2002, and again in 2003. Now that we have more than two years experience with a fully self-funded program, many needed improvements to the process have become apparent.

SUMMARY OF PROPOSED CHANGES

The principal changes and the rationale for each are:

- Authority to adopt regulations is delegated to the Rent Board.

The authority to adopt regulations, including substantive regulations, is delegated to the rent board. The City Council would retain the authority to modify or veto any regulations adopted by the Board within 120 days after having been notified of passage. By delegating the adoption of Rent Adjustment Regulations to the Board, the City Council may set direction by Ordinance and leave the details of implementation to the Board and Staff. The City Council may direct the Board by repealing regulations or limiting their scope by amending the Ordinance, if desired.

The Board devotes most of its time to the business of Rent Adjustment in detail. The Board has the means to receive and consider extensively public comment on the specific issues of Rent Adjustment. This change would parallel the mandate in the Just Cause for Eviction Ordinance (Measure EE) that charges the Board with adopting regulations to implement that Ordinance. Staff understands that the Board is the logical body to address the program details set forth in the Regulations.

- Exemptions

Procedures for Owner are clarified when a unit is no longer exempt. The proposed change requires the owner to give the Renter the same notice when a building ceases to be exempt as to a new Renter.

An evidentiary standard for proving new construction for manufactured homes and other homes that do not require a certificate of occupancy issued by the City of Oakland is included.

The proposed changes include a provision allowing an Owner to file a petition for a certificate that a unit is permanently exempt.

- The Board

The requirements in section 8.22.040 (rent adjustment) are coordinated with the provisions in Chapter 15.08 that also governs the HRRRB activities powers and duties. Although not changed, some of the provisions in chapters 15.08 are repeated in 8.22.040 for sake of clarity.

- Rent program notice

The effect of failure to give the rent program notice both at the beginning of the tenancy and at the time of serving a rent increase notice is clarified, formulating the Board's interpretations regarding failure to give these notices.

- CPI rent adjustment

The annual CPI rent adjustment formula has been unsatisfactory because it does not reflect inflation and it has proven so volatile as to affect program administration. Instead staff proposes

to adopt option “2” in the draft which is 65 percent of the CPI—all items all urban consumers for the SF-OAK-SJ statistical area for the prior year. This is the formula adopted by the City of Berkeley rent board after extensive negotiations with Owners and Renters as a settlement of litigation that reasonably reflects a Owner’s annual cost increases. West Hollywood uses 75% of CPI. San Francisco uses 60% of CPI. The benefits of this change are simplicity, accuracy, predictability and stability.

In addition, the annual CPI rate is averaged to the nearest whole percent. This simplifies calculations for Owners, Renters, and Rent Program staff without affecting the total of rent adjustments when averaged over time.

Finally, the current Ordinance does not fix the period for giving CPI increases by using a fixed date. It is proposed to fix the period of time for giving the annual CPI rent adjustment -- from July 1, through June 30 of each year.

- Justifications for increases

Uninsured repair costs, which are identical to capital improvement costs, have been combined in the regulations with capital improvements and eliminated from the ordinance as a separate ground for increase.

It is proposed to eliminate or limit debt service as a ground for a rent increase. Debt service increases are the largest sudden increases given to low income Renters. Commonly, debt service increases approach or exceed 100 percent of the current rent. This has resulted in displacement of many Renters who cannot afford to pay the increase, totally defeating the purposes of the rent adjustment program. Staff recommends elimination of the debt service increase. In the alternative, debt service increases should be phased in to allow Renters a longer time to find other housing and avoid the sudden dislocation that now results from a large debt service increase.

There is no need for a debt service increase for owner occupied smaller buildings. Purchasers of single-family dwellings, duplexes and triplexes who want to live in one of the units have the means to totally exempt their properties from rent adjustment. Nor is there a need for a debt service increase for larger buildings. Lenders do not calculate purchase money mortgages based on potential income from the property. Therefore, the increase does not facilitate the sale or transfer of large residential rental properties in Oakland. The debt service increase operates only to provide immediate and extraordinarily large increases to Renters in duplexes and triplexes purchased as investment property and, in Staff’s view, should be eliminated.

The details of an alternative proposal for a phased in debt service increase are included in the proposed regulations which will be made public in draft form during early 2005.

- Mediation

The scope of mediation is expanded to encompass other types of disputes beyond resolving petitions filed with the Rent Program. This change is based on staff experience. Resolving disputes before petitions are filed is usually a more efficient use of staff and resources, enhancing program efficiency and producing a better result for the parties. Owners and Renters, even some commercial Owners and Renters, have requested rent program staff to mediate their disputes. This public service may be provided without increasing staff costs by using existing staff.

- Decisions

The basic requirements for decisions, which restate existing law, are moved from the regulations to the Ordinance. The circumstances under which summary decisions may be issued are spelled out in greater detail, as are the requirements for written decisions. The advisory time for issuance of a decision has been moved to the Regulations.

- Appeals

The appeals section as proposed includes the existing practice of staff reconsidering a decision when an appeal demonstrates a plain error in the decision. This provides a method for staff to correct its own errors without subjecting the parties to the time, effort, inconvenience and expense of prosecuting an appeal. The current practice for the Board to issue a summary decision is also set out in this section.

SUSTAINABLE OPPORTUNITIES

Benefits that will result from the proposed changes:

Social equity: simplified, clear processes and a more efficient program for both Property Owners and Renters.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the Board recommend the proposed changes to the City Council.

Respectfully submitted

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Rent Adjustment Program