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FILED
ALAMEDA COUNTY

JAN 07 2019
CLERK OF THE SUPERIOR COURT
By *Debra Antone*
Deputy

5 Attorneys for Petitioner,
6 Jonathan Owens

8 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA

10 Jonathan Owens,
11
12 Petitioner,
13 vs.
14 City of Oakland's Department of Housing and
Community Development Rent Adjustment
15 Program, and Does 1 through 25,
16 Respondents.

Case No.: RG18914638

**NOTICE OF MOTION AND MOTION
FOR JUDGMENT ON THE PETITION
FOR WRIT OF ADMINISTRATIVE
MANDAMUS**

Hearing Date: March 7, 2019
Time: 9:00 a.m.
Dept: 511
Complaint Filed: September 17, 2018

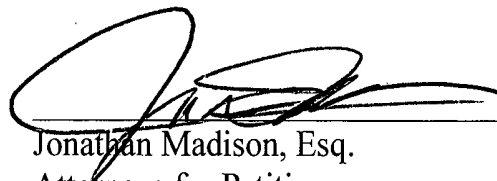
18
19 Lauren Barghout,
Mark Steinberg,
20 Ralph Gregory Johnson,
Emily Baron,
21 And Does 1-20,
22
23 Real Parties in Interest.

24 TO EACH PARTY AND THEIR RESPECTIVE COUNSEL OF RECORD:
25 YOU ARE HEREBY NOTIFIED THAT on March 7, 2019, 09:00 a.m., in
26 Department 511 of the court located at the Hayward Hall of Justice, 24405 Amador
27

1 Street, Hayward, California, Petitioner Jonathan Owens will move the court for a
2 judgment in favor of Petitioner and for a peremptory writ of mandate directing
3 Respondent CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND
4 COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM Board to vacate
5 or retract its finding of fact and conclusion of law in the Original Decision dated
6 September 19, 2016 and the Decision on Appeal dated April 23, 2018 in T16-0259 and
7 to make a new finding of fact and conclusion of law that the Property is a single-family
8 home exempt from rent control under the Costa-Hawkins Rental Housing Act. This
9 motion is made on the ground that Respondent erred, as set forth in Code of Civil Proc.
10 Section 1094.5(b), in denying Petitioner his rights of exemption under the Costa-Hawkins
11 Rental Housing Act by failing to apply Oakland Municipal Code section 8.22 and
12 California Civil Code section 1954.52 to determine that the Property is exempt from the
13 Rent Adjustment Ordinance. This motion will be based on this notice, the accompanying
14 memorandum of points and authorities, request for judicial notice, the administrative
15 record, and the records and files in this action.

16
17 Dated: January 7, 2018

Fried & Williams LLP

18
19
20 

Jonathan Madison, Esq.
Attorneys for Petitioner
Jonathan Owens

PROOF OF SERVICE BY FEDERAL EXPRESS

I declare that I am employed in the County of Alameda, California. I am over the age of eighteen years and am not a party of the within entitled cause. My business address is 1901 Harrison Street, 14th Floor, Oakland, CA 94612.

On January 7, 2019, I served the attached, concerning the action known as *Owens v. City of Oakland*, Alameda County Superior Court case no. RG18914638:

NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS;

PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDGMENT ON THE PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS;

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR JUDGMENT ON THE PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS

on the parties herein in said cause, by depositing them in a box or other facility regularly maintained by FedEx, an express service carrier providing overnight delivery, or delivering it to an authorized courier or driver authorized by the express service carrier to receive document, in an envelope or package designated by the express service carrier, with overnight delivery fees paid or provided for, clearly labeled to identify the person being served at the address shown below:

Jennifer N. Logue, Deputy City Attorney
Office of Oakland City Attorney Barbara J.
Parker
One Frank H. Ogawa Plaza, Sixth Floor
Oakland, CA 94612

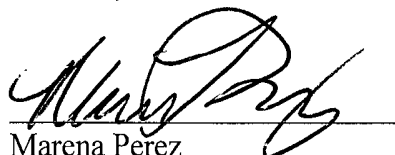
Lauren Barghout
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Oakland, CA 94619

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3420 Rubin Drive
Oakland, CA 94619

Emily Baron
3420 Rubin Drive
Oakland, CA 94619

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed on January 7, 2019 at Oakland, California.


Marena Perez



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FILED
ALAMEDA COUNTY

JAN 07 2019
 CLERK OF THE SUPERIOR COURT
 By *Delbra Gutierrez* Deputy

6 Attorneys for Petitioner,
 7 Jonathan Owens

8
 9 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA
 10 IN AND FOR THE COUNTY OF ALAMEDA

11 Jonathan Owens,
 12
 13 Petitioner,
 vs.
 14 City of Oakland's Department of Housing and
 15 Community Development Rent Adjustment
 Program, and Does 1 through 25,
 16
 17 Respondents.

Case No.: RG18914638
**PETITIONER'S MEMORANDUM OF
 POINTS AND AUTHORITIES IN
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1 Petitioner Jonathan Owens (“Petitioner” or “Owner”) respectfully submits the
2 following memorandum of points and authorities in support of his motion for judgment
3 for a writ of mandate against the City of Oakland and its Department of Housing and
4 Urban Development Rent Adjustment Program (hereafter “RAP” or “Respondent”)
5 regarding the Decision on Appeal in the matter of Owens v. Barghout, Case No. T16-
6 0259. In his Petition to the RAP, Petitioner sought a reversal of the RAP’s detrimental
7 finding that Petitioner’s home is not exempt from the Rent Adjustment Ordinance even
8 though the property in question is a single-family home exempt. Petitioner seeks a writ
9 of mandamus directing the Respondent to vacate or retract its finding of fact and
10 conclusion of law and to make a new finding of fact and conclusion of law that the
11 Property is a single-family home exempt from rent control under the Costa-Hawkins
12 Rental Housing Act.

13 **I. RELEVANT LAW**

14 Oakland Municipal Code (“OMC”) Section 8.22.030.B.4¹ provides that certain
15 types of dwelling units are exempt from the City of Oakland’s Residential Rent
16 Adjustment Program including “Dwelling Units Exempt Under Costa-Hawkins.”

17 OMC Section 8.22.030.B.4 provides:
18

19 Costa-Hawkins addresses dwelling units that are exempt under state
20 law. The Costa-Hawkins exemptions are contained at California
21 Civil Code Section 1954.52.

22 California Civil Code Section 1954.52(a)² (the Costa-Hawkins Rental Housing
23 Act) provides that certain dwelling units are exempt under state law:

24 (a) Notwithstanding any other provision of law, an owner of residential real
25 property may establish the initial and all subsequent rental rates for a dwelling
26 or a unit about which any of the following is true:
27

28 ¹ Copies of those portions of the current Oakland Municipal Code cited in this brief are attached to Petitioner’s
Request for Judicial Notice on file herewith as Exhibit 1.

² Copies of those portions of the California Civil Code cited in this brief are attached to Petitioner’s Request for
Judicial Notice on file herewith.

1 . . . (3)(A) It is alienable separate from the title to any other dwelling unit or is a
2 subdivided interest in a subdivision, as specified in subdivision (b) , (d) , or (f) of
3 Section 11004.5 of the Business and Professions Code.

4 Alameda Rent Stabilization Ordinance No. 3148, Section 6-58.135³ provides
5 that certain dwelling units are exempt, including:

6 Rental Units that are separately alienable from the title of any other dwelling (e.g.,
7 single family residences, condominiums, etc.); and any other Rental Units exempt
8 under the Costa-Hawkins Rental Housing Act (California Civil Code, sections
9 1954.50 and following) or under any other applicable state or federal law.

10 The California Legislative Analyst Office Publication dated October 10, 2018⁴,
11 prepared by the California Attorney General, clarifies the type of dwelling units exempt
12 under the Costa-Hawkins Rental Housing Act:

13 The Costa-Hawkins legislation is located in the California Civil Code, sections
14 1954.50 to 1954.535.44 While cities and counties continue to maintain the ability
15 to implement local rent control laws, they must follow the parameters established
16 in the Costa-Hawkins Rental Housing Act. Costa-Hawkins creates three main
17 limitations; (1) rent control cannot apply to any single-family homes; (2) rent
18 control can never apply to any newly built housing completed on or after February
19 1, 1995; (3) rent control laws cannot tell landlords what they can charge a new
20 renter when first moving in.

21 Oakland Municipal Code (“OMC”) Section 8.22.010.F⁵ provides that certain
22 types of dwelling units are exempt from the City of Oakland’s Residential Rent
23 Adjustment Program, including certain owner-occupied units:

24 The City Council believes that the relationship between landlords and tenants in
25 smaller owner-occupied rental properties involve special relationships between
26 the landlord and the tenants residing in the same smaller property. Smaller
property owners also have a difficult time understanding and complying with rent
and eviction regulation. The Just Cause for Eviction Ordinance recognizes this

27 ³ Copies of those portions of the Alameda Rent Stabilization Ordinance No. 3148 cited in this brief are attached to
Petitioner’s Request for Judicial Notice on file herewith.

28 ⁴ Copies of those portions of the Legislative Analyst Office Publication dated October 10, 2018 cited in this brief
are attached to Petitioner’s Request for Judicial Notice on file herewith.

⁵ Copies of those portions of the current Oakland Municipal Code cited in this brief are attached to Petitioner’s
Request for Judicial Notice on file herewith.

1 special relationship and exempts from its coverage owner-occupied properties
2 divided into a maximum of three units. For these reasons, the City Council
3 believes owner-occupied rental properties exempt from the Just Cause for Eviction
4 Ordinance should similarly be exempt from the Rent Adjustment Program so long
5 as the property is owner-occupied.

6 Oakland Municipal Code (“OMC”) Section 8.22.030.A.8⁶ provides:

7 A dwelling unit in a residential property that is divided into a maximum of three
8 (3) units, one of which is occupied by an owner of record as his or her principal
9 residence. For purposes of this section, the term owner of record shall not include
10 any person who claims a homeowner’s property tax exemption on any other real
11 property in the state of California.

12 California Building Code (“CBC”) Section 202⁷ provides the following definition
13 of “dwelling unit”:

14 A single unit providing complete, independent living facilities for one or more
15 persons, including permanent provisions for living, sleeping, eating, cooking and
16 sanitation. For the purposes of Chapter 11A, a single unit of residence for a family
17 of one or more persons.

18 Oakland Planning Code (“OPC”) Section 17.09.040⁸ provides the following
19 definition of “dwelling unit”:

20 [a] room or suite of rooms including only one kitchen, except as otherwise
21 provided in Section 17.102.270, and designed or occupied as separate living
22 quarters for one person or family; or, where the facility occupied is a One-Family
23 Dwelling, such family and not more than three (3) boarders, roomers, or lodgers
24 where access to all rooms occupied by such boarders, roomers, or lodgers is had
25 through the main entrance of the dwelling unit.

26 //

27 //

28 ⁶ Copies of those portions of the current Oakland Municipal Code cited in this brief are attached to Petitioner’s
Request for Judicial Notice on file herewith.

⁷ Copies of those portions of the current California Building Code cited in this brief are attached to Petitioner’s
Request for Judicial Notice on file herewith.

⁸ Copies of those portions of the current Oakland Planning Code cited in this brief are attached to Petitioner’s
Request for Judicial Notice on file herewith.

1 **II. FACTUAL BACKGROUND AND THE RAP’S ERRORS**

2 Petitioner Jonathan Owens challenges the finding in the decision on appeal dated
3 April 23, 2018 (“Decision on Appeal”) and the hearing decision dated September 19,
4 2016 (“Original Decision”) by Respondent City of Oakland’s Department of Housing
5 and Community Development Rent Adjustment Program (“RAP”) that Petitioner’s
6 single-family home is not exempt from the Rent Adjustment Ordinance under California
7 Civil Code section 1954.52 (The Costa-Hawkins Rental Housing Act).

8 The property in question is a single-family dwelling unit⁹ located at 3420 Ruben
9 Drive, Oakland, California (“Property”).

10 On August 25, 2016, Petitioner and then tenant Lauren Barghout appeared before
11 Hearing Officer Steven Kasdin in regards to case number T16-0259. [See Transcript of
12 Rent Adjustment Program Hearing dated August 25, 2016, page 2-3, AR AR 153-154.]¹⁰
13 The tenant filed a petition seeking a decrease in housing services. [See Hearing Decision
14 dated September 19, 2016 (“Original Decision”), page 1, AR 9.] Petitioner argued that
15 the property was exempt from rent adjustment because it is a single-family home and
16 thus exempt under the Costa-Hawkins Rental Housing Act and the Rent Adjustment
17 Ordinance. [AR 9] Petitioner also testified that he occupied one of the rooms in the
18 Property. [AR 155]

19 On September 19, 2016, the hearing officer issued a decision denying the tenant’s
20 petition because she was not current on her rent and also determined that no decreases in
21 housing services existed. [AR 11] However, the hearing officer erroneously made a
22 finding of fact and conclusion of law that the single-family home was not exempt because
23 the landlord chose to rent to three roommates, and this somehow transformed the single-
24 family home into a multi-unit dwelling. [AR 11] This, according to the hearing officer,
25 rendered Petitioner’s rental to roommates within the single-family home not exempt from
26 the Rent Adjustment Ordinance. [AR 11] Petitioner filed an appeal to the Rent and
27

28 ⁹ Copies of the Alameda County Property Assessment Information and the 2016-2017 Notification of Assessed Value evidencing the homeowner’s exemption and single-family property status are attached to Petitioner’s Request for Judicial Notice on file herewith.

¹⁰ Citations to the Administrative Record are abbreviated as “AR”.

1 Relocation Board challenging only the hearing officer's finding of fact and conclusion of
2 law that the home is not exempt from the Rent Adjustment Ordinance under the Costa-
3 Hawkins Rental Housing Act.

4 At Petitioner's August 17, 2017 appeal hearing before the RAP, Petitioner
5 challenged the Original Decision on the grounds that it violated the Costa-Hawkins
6 Rental Housing Act. [AR 68] Petitioner presented evidence demonstrating that the
7 property was a single-family home. [AR 74-75] That evidence included the Alameda
8 County Property Assessment Information and the 2016-2017 Notification of Assessed
9 Value, showing Petitioner is receiving the Homeowner's Exemption. [AR 74-75] After
10 a significant discussion among the Board, the Board voted unanimously to continue the
11 hearing to be heard by the full Board. The Board voted to continue the hearing because
12 **it did not have any precedent or case history before it to make ruling consistent with**
13 **prior cases.** [See Hearing Transcript of August 17, 2017 Appeal, AR 88.] The Board
14 members voted to continue the hearing with the assurance that the City Attorney's Office
15 would bring case history, citations, and relevant cases to the continued hearing. [AR 88].

16 On March 29, 2018, Petitioner appeared at the continued appeal hearing and again
17 challenged the Original Decision. [See Hearing Transcript of March 29, 2018 Appeal,
18 AR 46.] Contrary to the Board's unanimous vote to support its decision with precedent,
19 case history, or prior cases, the RAP failed to reference any precedent to support its vote
20 to affirm the decision. Further, the City Attorney's Office did not bring any case history,
21 citations or relevant cases to support the decision. Instead, a member of the Board
22 provided the following inconclusive personal opinions to support the ruling: "I think this
23 is a similar case, *maybe* with the same parties came up before, and *I think* we ruled that
24 the property was not exempt under Costa-Hawkins . . ." [AR 47] The Board member
25 went on to suggest that he did not think homes which were separately alienable (i.e.
26 single-family homes) applied to Costa-Hawkins exemptions for each of the rooms. "It is
27 akin to an apartment building," the member stated. [AR 47] On April 23, 2018, the RAP
28 issued its decision on appeal affirming the Original Decision.

1 The Rent Board erred in its determination that Petitioner's single-family home is
2 not exempt from the Rent Adjustment Ordinance and directly contradicts state law. The
3 Costa Hawkins Rental Housing Act preempts local laws and exempts certain kinds of
4 dwelling units from rent control — notably, "separately alienable" units (i.e., single-
5 family houses and condominiums) (Civil Code section 1954.52(a)(3)(A)).

6 Due to this RAP's error, RAP effectively denied the Owner his rights of
7 exemption under the Costa-Hawkins Rental Housing Act to charge rents exceeding the
8 amount governed by rent control.

9 RAP has refused to correct this error or to clearly explain how persons renting
10 rooms in the Property transformed the Property from a single-family home to a multi-
11 family dwelling, particularly when Petitioner shares bathroom or kitchen facilities with
12 roommates at the Property.

13 **III. LEGAL DISCUSSION**

14 An aggrieved party may seek judicial review by a trial court of a local rent control
15 board's final decision by seeking a writ of mandate. Code of Civil Procedure Section
16 1094.5; See 67 *Searle v. City of Berkley Rent Stabilization Board* (1088) 197 Cal. App.
17 3d, 1251. The trial court always reviews questions of the law de novo no matter which
18 standard (independent judgment, or substantial evidence) is used. See Cont. Ed. Bar, *Cal.*
19 *Administrative Mandamus*, Sec. 6.162 citing *Duncan v. Dept of Personnel Admin.* (2000)
20 Cal. App 4th 1166.

21 **A. Respondent RAP Erred by Misapplying the Law, Issuing a** 22 **Decision That Contradicts State Law, and Committed Prejudicial Abuse by** 23 **Issuing a Decision That is Unsupported by the Evidence.**

24 **1. Misapplication of the Law and Issuing a Decision** 25 **Contradicting State Law.**

26 By issuing the Original Decision dated September 19, 2016 and the Decision on
27 Appeal dated April 23, 2018, the RAP misapplied local and state law governing rent
28 control exemptions for single-family homes, and in doing so has significantly hampered

1 Petitioner's ongoing and future use of his own home.

2 Oakland Municipal Code ("OMC") Section 8.22.030.B.4 provides that certain
3 types of dwelling units are exempt from the City of Oakland's Residential Rent
4 Adjustment Program including "dwelling units exempt under Costa-Hawkins."

5 California Civil Code Section 1954.52(a)(3)(A) (the Costa-Hawkins Rental Housing
6 Act) provides the following exemptions from rent control for certain units: "(1) rent
7 control cannot apply to any single-family homes; (2) rent control can never apply to any
8 newly built housing completed on or after February 1, 1995; and (3) rent control laws
9 cannot tell landlords what they can charge a new renter when first moving in." See
10 California Legislative Analyst Office Publication dated October 10, 2018.

11 Civil Code Section 1954.52(a)(3) uses the following phrase to encompass single-
12 family homes: "alienable separate from the title to any other dwelling unit." Under
13 California Civil Code §1954.52 (hereafter "Costa-Hawkins Act"), an owner may
14 establish rental rates notwithstanding local rent control when the dwelling "is alienable
15 separate from the title to any other dwelling unit." According to the English Oxford
16 Living Dictionaries, "alienable" is defined as "[a]ble to be transferred to new
17 ownership." Accordingly, a real property, such as a single-family home or a
18 condominium unit, is a dwelling unit that is able to be transferred to new ownership
19 separate from any other dwelling unit. A dwelling unit located in a multi-unit residential
20 apartment complex, on the other hand, would be an example of a dwelling unit that could
21 not be transferred to a new ownership separately from the other dwelling units in the
22 apartment complex.

23 The neighboring City of Alameda has correctly defined the Costa-Hawkins Rental
24 Housing Act exemption for single-family homes in the Alameda Rent Stabilization
25 Ordinance No. 3148, Section 6-58.135. The law provides that certain dwelling units are
26 exempt, including "rental units that are separately alienable from the title of any other
27 dwelling (e.g., single family residences, condominiums, etc.); and any other rental units
28 exempt under the Costa-Hawkins Rental Housing Act (California Civil Code, Sections

1 1954.50 and following) or under any other applicable state or federal law.”

2 Hearing Officer Kasdin’s Original Decision was a complete misapplication of the
3 single-family home exemption under the Oakland Rent Ordinance and the Costa-
4 Hawkins Rental Housing Act and because the decision is a final finding of fact and
5 conclusion of law, severely limits the Petitioner’s use of his home. The Original Decision
6 goes so far as to contradict the RAP’s representations on its website
7 ([https://www.oaklandca.gov/resources/learn-more-about-exemptions-from-the-rent-
9 adjustment-program](https://www.oaklandca.gov/resources/learn-more-about-exemptions-from-the-rent-
8 adjustment-program)).¹¹ The RAP website page explaining exemptions from the Oakland
10 Rent Ordinance provides that the three most common exemptions from RAP are: (1)
11 government-subsidized housing, (2) units built after January 1, 1983, and (3) “single-
12 family homes or condominiums exempt under the Costa-Hawkins Rental Housing
13 Act.” The Original Decision not only misapplies the law, but it completely ignores the
14 RAP’s own explanation of the exemption for single-family homes.

15 The hearing officer’s decision also ignores RAP’s procedure for landlords to
16 obtain a permanent exemption from the Oakland Rent Ordinance. Landlords of single-
17 family dwelling units in Oakland may petition for a permanent certificate of exemption
18 under OMC Section 8.22.030B.¹² The RAP’s procedure for a single-family home to be
19 permanently exempt from rent control makes the Original Decision nonsensical. The
20 City Council did not intend for the single-family home designation to fluctuate based on
21 the number of bedrooms rented out by a landlord. If the City Council did intend for such
22 a fluctuation, RAP would not have a procedure in place that permanently exempts single-
23 family homes. Further, if the City Council intended the single-home designation to
24 fluctuate based on the number of bedrooms rented out by a landlord, the City Council
25 would have specified that in the Oakland Rent Ordinance.

26 //

27 //

28 ¹¹ Copies of those portions of the Oakland Rent Adjustment Program website cited in this brief are attached to
Petitioner’s Request for Judicial Notice on file herewith.

¹² Copies of those portions of the Landlord Petition for Certificate of Exemption are cited in this brief are attached
to Petitioner’s Request for Judicial Notice on file herewith.

1 The hearing officer's decision also contradicts state and local definitions of a
2 single-family dwelling unit. California Building Code ("CBC") Section 202 defines
3 dwelling unit as "a single unit providing complete, independent living facilities for one
4 or more persons, including permanent provisions for living, sleeping, eating, cooking and
5 sanitation. . . a *single unit* of residence for a family of one or more persons."

6 Oakland Planning Code ("OPC") Section 17.09.040¹³ has a definition consistent
7 with the California Building Code. Section 17.09.040 describes a dwelling unit as a room
8 or suite of rooms with one kitchen, where a family *and* not more than three boarders,
9 roomers, or lodgers occupy rooms within the household.

10 The "dwelling unit" definitions in the California Building Code and Oakland
11 Planning Code are consistent with the Property. At the time of the hearing officer's
12 decision, the Property was occupied by Petitioner and three roommates (i.e., a family and
13 not more than three roomers). The Property had only one kitchen. To date, the Property
14 continues to be occupied by no more than three roommates and has only one kitchen.
15 The hearing officer's decision that Petitioner's three roommates who paid rent somehow
16 transformed the single-family dwelling unit into a multi-family dwelling is wholly
17 inconsistent with the Oakland Planning Code and California Building Code, and is
18 unsupported by state and local law. The Original Decision is a misapplication and
19 contradiction of local and state law.

20 **2. Prejudicial Abuse of Discretion.**

21 By issuing the Original Decision dated September 19, 2016 and the Decision on
22 Appeal dated April 23, 2018 – both of which are unsupported by the evidence – the RAP
23 committed a major error that constitutes a prejudicial abuse of discretion. The Hearing
24 Officer acknowledged the fact that the Property is a single-family home, but failed
25 explain or support the logic in the Original Decision that renting rooms out to roommates
26 in a single-family home somehow transforms the single-family home into a multi-family
27 dwelling unit.

28

¹³ Copies of those portions of the current Oakland Planning Code cited in this brief are attached to Petitioner's Request for Judicial Notice on file herewith.

1 **B. Respondent RAP Denied the Petitioner His Rights to**
2 **Exemption Under the Oakland Rent Ordinance and the Costa-Hawkins**
3 **Rental Housing Act.**

4 The RAP's abuse of discretion resulted in a finding of fact and conclusion of law
5 that directly contradicts state law and the Oakland Rent Ordinance. This abuse of
6 discretion resulted in denying Petitioner his rights to an exemption from the Rent
7 Adjustment Ordinance and the Costa-Hawkins Rental Housing Act without any
8 evidence.

9 Oakland Municipal Code ("OMC") Section 8.22.010.F expresses the legislative
10 intent and purpose behind the Rent Ordinance exemption for owner-occupied single-
11 family units. The City Council believes "the relationship between landlords and tenants
12 in smaller-occupied rental properties involve special relationships between the landlord
13 and the tenants residing in the same smaller property. . . For these reasons, the City
14 Council believes owner-occupied rental units . . . should be exempt from the Rent
15 Adjustment Program so long as the property is owner-occupied."

16 Oakland Municipal Code ("OMC") Section 8.22.030.A.8 permits an owner-
17 occupant of a three-unit single-family home to be exempt from the Oakland Rent
18 Ordinance.

19 Petitioner owns and occupies the Property as his principal place of residence.
20 The Property has no more than three units. The unit is unquestionably exempt from the
21 Oakland Rent Ordinance, regardless of whether Petitioner collected rents from
22 roommates. The RAP's decision not only contradicts OMC Section 8.22.030.A.8., but
23 it frustrates the purpose behind the Oakland Rent Ordinance. The City Council clearly
24 expressed in the legislative intent of the Oakland Rent Ordinance an acknowledgment
25 of the special relationships between tenants and landlords in smaller occupied units.
26 The RAP should continue to honor that legislative intent and the applicable code, rather
27 than denying Petitioner's rights to an exemption he is entitled to.

28 //

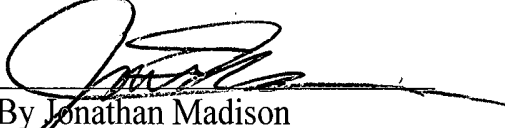
1 As explained above, Petitioner's was deprived of his rights to an exemption from
2 rent control under the Costa-Hawkins Rental Housing Act when the RAP decided his
3 renting rooms in a single-family home transformed his home into a multi-unit dwelling.
4 Renting to roommates within one's own home is not akin to creating an apartment
5 building and certainly does not create "alienable separate" rooms within the home. The
6 RAP failed to support this decision with any legal basis or precedent, which is an
7 unfounded abuse of discretion and a clear deprivation of Petitioner's rights.

8 **IV. CONCLUSION**

9 Based on the forgoing, Petitioners respectfully request the Court to enter
10 judgment to issue a writ of administrative mandamus commanding the Rent Board to
11 vacate, rescind, void, its finding of fact and conclusion of law in the Original Decision
12 dated September 19, 2016 and the Decision on Appeal dated April 23, 2018 in T16-
13 0259 and to make a new finding of fact and conclusion of law that the Property is a
14 single-family home exempt from rent control under the Costa-Hawkins Rental Housing
15 Act. Petitioner further requests the Court order the City of Oakland to pay for costs of
16 suit herein and attorney fees under Government Code §800 or other applicable
17 provisions of law.

18
19
20 Date: January 7, 2018

Fried & Williams LLP

21 

22 By Jonathan Madison
23 Attorneys for Petitioner
24 Jonathan Owens



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FILED
ALAMEDA COUNTY

JAN 07 2019
CLERK OF THE SUPERIOR COURT
By *Debra Tuttle*
Deputy

Attorneys for Petitioner,
Jonathan Owens

IN THE SUPERIOR COURT OF STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

Jonathan Owens,

Case No.: RG18914638

Petitioner,

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF MOTION FOR
JUDGMENT ON THE PETITION FOR
WRIT OF ADMINISTRATIVE
MANDAMUS**

vs.

City of Oakland's Department of Housing and
Community Development Rent Adjustment
Program, and Does 1 through 25,

Hearing Date: March 7, 2019
Time: 9:00 a.m.
Dept: 511
Complaint Filed: September 17, 2018

Respondents.

Lauren Barghout,
Mark Steinberg,
Ralph Gregory Johnson,
Emily Baron,
And Does 1-20,

Real Parties in Interest.

Petitioner Jonathan Owens requests that the Court take judicial notice of the
following matters, pursuant to Evidence Code §452(b) & (h), as it may, and pursuant to

1 Evidence Code §453, as it must, in considering Petitioner's Motion for Judgment on the
2 Petition for Writ of Administrative Mandamus:

3 1. Oakland Municipal Code, Chapter 8.22, Article 1 (Residential Rent Adjustment
4 Program), Section 8.22.030.A.7 and specifically that dwelling units exempt pursuant to the
5 Costa-Hawkins Rental Housing Act (Civil Code Section 1954.52) are exempt from the
6 Oakland Rent Adjustment Ordinance.

7 2. California Civil Code Section 1954.52(a)(3)(A) and specifically that units
8 alienable separate from the title to any other dwelling unit is exempt from rent control.

9 3. Alameda Rent Stabilization Ordinance No. 3148, Section 6-58.135 and
10 specifically that single-family residences exempt pursuant to the Costa-Hawkins Rental
11 Housing Act (Civil Code Section 1954.52) are exempt from the Alameda Rent
12 Stabilization Ordinance.

13 4. California Legislative Analyst Office Publication dated October 10, 2018 and
14 specifically that rent control cannot apply to any single-family homes.

15 5. Oakland Municipal Code, Chapter 8.22, Article 1 (Residential Rent Adjustment
16 Program), Section 8.22.010.F and specifically that the City Council believes owner-
17 occupied rental properties exempt from the Just Cause for Eviction Ordinance should be
18 exempt from the Rent Adjustment Program.

19 6. City of Oakland Rent Adjustment Program Landlord Petition for Certificate of
20 Exemption (Oakland Municipal Code, Chapter 8.22, Article 1, Section 8.22.030.B) and
21 specifically that a landlord of a single-family residence may petition for a *permanent*
22 exemption from the Oakland Rent Ordinance.

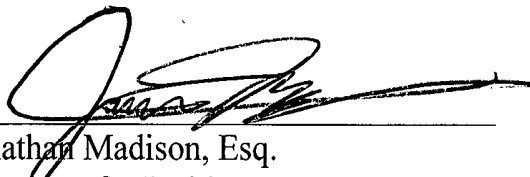
23 7. Oakland Rent Adjustment Program website publication on dwelling units
24 exempt from the Oakland Rent Ordinance and specifically that it states that single family
25 homes or condominiums exempt under the Costa-Hawkins Rental Housing Act are
26 exempt under the Oakland Rent Ordinance.

1 8. California Building Code (“CBC”) Section 202 and specifically that a dwelling
2 unit is defined as a “single unit” with independent living facilities for one or more
3 persons.

4 9. Oakland Planning Code (“OPC”) Section 17.09.040 and specifically that a
5 dwelling unit is defined as a one-family dwelling containing a room or suite of rooms
6 including only one kitchen, where a family and not more than three (3) boarders,
7 roomers, or lodgers have access to all rooms occupied by such boarders, roomers, or
8 lodgers, all of whom have access through the main entrance of the building.

9
10 Dated: January 7, 2019

Fried & Williams LLP

11
12 
13 Jonathan Madison, Esq.
14 Attorneys for Petitioner
Jonathan Owens

8.22.030 - Exemptions.

- A. Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this chapter, Article I only (the Just Cause for Eviction Ordinance (Chapter 8.22, Article II) and the Ellis Act Ordinance (Chapter 8.22, Article II)) have different exemptions):
1. Dwelling 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, tourist houses, rooming houses, and boarding houses, provided that such accommodations are not occupied by the same tenant for thirty (30) or more continuous days.
 3. Housing accommodations in any hospital, convent, monastery, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by an educational institution.
 4. Dwelling units in a nonprofit cooperative, owned, occupied, and controlled by a majority of the residents.
 5. Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. This exemption does not apply to any newly constructed dwelling units that replace covered units withdrawn from the rental market in accordance with O.M.C. 8.22.400, et seq. (Ellis Act Ordinance). To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential.
 6. Substantially rehabilitated buildings.
 7. Dwelling units exempt pursuant to Costa-Hawkins (California Civil Code § 1954.52).
 8. A dwelling unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by an owner of record as his or her principal residence. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the state of California.
- B. Exemption Procedures.
1. Certificate of Exemption:
 - a. A certificate of exemption is a determination by the Rent Adjustment Program that a dwelling unit or units qualify for an exemption and, therefore, are not covered units. An owner may obtain a certificate of exemption by claiming and proving an exemption in response to a tenant petition or by petitioning the Rent Adjustment Program for such exemption. A certificate of exemption may be granted only for dwelling units that are permanently exempt from the Rent Adjustment Ordinance as new construction, substantial rehabilitation, or by state law (Costa Hawkins)
 - b. For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner. A certificate of exemption is a final determination

of exemption absent fraud or mistake.

- c. Timely submission of a certificate of exemption previously granted in response to a petition shall result in dismissal of the petition absent proof of fraud or mistake regarding the granting of the certificate. The burden of proving such fraud or mistake is on the tenant.

2. Exemptions for Substantially Rehabilitated Buildings.

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.
- c. An owner seeking to exempt a property on the basis of substantial rehabilitation must first obtain a certificate of exemption after completion of all work and obtaining a certificate of occupancy. If no certificate of occupancy was issued for the property, in lieu of the certificate of occupancy an owner may provide the last finalized permit. For any property that has a certificate of occupancy issued on or before the date of enactment of this subparagraph O.M.C. 8.22.30B.2.c. for which an owner claims exemption as substantially rehabilitated, the owner must apply for such exemption not later than June 30, 2017 or such exemption will be deemed to be vacated.

C. Controlled, Regulated, or Subsidized Units. The owner of a dwelling unit that is exempt because it is controlled, regulated (other than by this chapter), or subsidized by a governmental agency (Section 8.22.030A.1) must file a notice with the Rent Adjustment Program within thirty (30) days after such dwelling unit is no longer otherwise controlled, regulated, or subsidized by the governmental agency. Once the dwelling unit is no longer controlled, regulated, or subsidized, the dwelling unit ceases to be exempt and becomes a covered unit subject to this chapter, Article I. Such notice must be on a form prescribed by the Rent Adjustment Program.

D. Exemptions for Owner-Occupied Properties of Three or Fewer Units. Units in owner-occupied properties divided into three or fewer units will be exempt from this chapter, Article I under the following conditions:

1. Two-Year Minimum Owner Occupancy. A qualifying owner of record must first occupy one of the units continuously as his or her principal residence for at least two years. This requirement does not apply to any property in which the owner resides in the premises on or before August 1, 2016.
2. Continuation of Exemption. The owner-occupancy exemption continues until a qualifying owner of record no longer continuously occupies the property.
3. Rent Increases. The owner of record qualifying for this exemption may notice the first rent increase that is not regulated by this chapter, article I two years after the date the qualifying owner of record starts residing at the affected property as his or her principal place of residence.

4. An owner claiming such exemption must provide information to the Rent Program on when the owner occupancy began and documentation showing the minimum of two years continuous occupancy. Staff shall develop a form for this purpose.

(Ord. No. 13391, § 1, 9-20-2016; Ord. 12781 § 1 (part), 2007; Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)



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DIVISION 3. OBLIGATIONS [1427 - 3272.9] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273] (*Part 4 enacted 1872.*)

TITLE 5. HIRING [1925 - 1997.270] (*Title 5 enacted 1872.*)

CHAPTER 2.7. Residential Rent Control [1954.50 - 1954.535] (*Title 5 added by Stats. 1995, Ch. 331, Sec. 1.*)

1954.50. This chapter shall be known and may be cited as the Costa-Hawkins Rental Housing Act.

(*Added by Stats. 1995, Ch. 331, Sec. 1. Effective January 1, 1996.*)

1954.51. As used in this chapter, the following terms have the following meanings:

- (a) "Comparable units" means rental units that have approximately the same living space, have the same number of bedrooms, are located in the same or similar neighborhoods, and feature the same, similar, or equal amenities and housing services.
- (b) "Owner" includes any person, acting as principal or through an agent, having the right to offer residential real property for rent, and includes a predecessor in interest to the owner, except that this term does not include the owner or operator of a mobilehome park, or the owner of a mobilehome or his or her agent.
- (c) "Prevailing market rent" means the rental rate that would be authorized pursuant to 42 U.S.C.A. 1437 (f), as calculated by the United States Department of Housing and Urban Development pursuant to Part 888 of Title 24 of the Code of Federal Regulations.
- (d) "Public entity" has the same meaning as set forth in Section 811.2 of the Government Code.
- (e) "Residential real property" includes any dwelling or unit that is intended for human habitation.
- (f) "Tenancy" includes the lawful occupation of property and includes a lease or sublease.

(*Added by Stats. 1995, Ch. 331, Sec. 1. Effective January 1, 1996.*)

1954.52. (a) Notwithstanding any other provision of law, an owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or a unit about which any of the following is true:

- (1) It has a certificate of occupancy issued after February 1, 1995.
- (2) It has already been exempt from the residential rent control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units.
- (3) (A) It is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision, as specified in subdivision (b), (d), or (f) of Section 11004.5 of the Business and Professions Code.
- (B) This paragraph does not apply to either of the following:
 - (i) A dwelling or unit where the preceding tenancy has been terminated by the owner by notice pursuant to Section 1946.1 or has been terminated upon a change in the terms of the tenancy noticed pursuant to Section 827.
 - (ii) A condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value. The initial rent amount of the unit for purposes of this chapter shall be the lawful rent in effect on May 7, 2001, unless the rent amount is governed by a different provision of this chapter. However, if a condominium dwelling or unit meets the criteria of paragraph (1) or (2) of subdivision (a), or if all the dwellings or units except one have been sold separately by the subdivider to bona fide purchasers for value, and the subdivider has occupied that remaining unsold condominium dwelling or unit as his or her principal residence for at least one year after the subdivision occurred, then subparagraph (A) of paragraph (3) shall apply to that unsold condominium dwelling or unit.

(C) Where a dwelling or unit in which the initial or subsequent rental rates are controlled by an ordinance or charter provision in effect on January 1, 1995, the following shall apply:

(i) An owner of real property as described in this paragraph may establish the initial and all subsequent rental rates for all existing and new tenancies in effect on or after January 1, 1999, if the tenancy in effect on or after January 1, 1999, was created between January 1, 1996, and December 31, 1998.

(ii) Commencing on January 1, 1999, an owner of real property as described in this paragraph may establish the initial and all subsequent rental rates for all new tenancies if the previous tenancy was in effect on December 31, 1995.

(iii) The initial rental rate for a dwelling or unit as described in this paragraph in which the initial rental rate is controlled by an ordinance or charter provision in effect on January 1, 1995, may not, until January 1, 1999, exceed the amount calculated pursuant to subdivision (c) of Section 1954.53. An owner of residential real property as described in this paragraph may, until January 1, 1999, establish the initial rental rate for a dwelling or unit only where the tenant has voluntarily vacated, abandoned, or been evicted pursuant to paragraph (2) of Section 1161 of the Code of Civil Procedure.

(b) Subdivision (a) does not apply where the owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(c) Nothing in this section shall be construed to affect the authority of a public entity that may otherwise exist to regulate or monitor the basis for eviction.

(d) This section does not apply to any dwelling or unit that contains serious health, safety, fire, or building code violations, excluding those caused by disasters for which a citation has been issued by the appropriate governmental agency and which has remained unabated for six months or longer preceding the vacancy.

(Amended by Stats. 2004, Ch. 568, Sec. 4. Effective January 1, 2005.)

1954.53. (a) Notwithstanding any other provision of law, an owner of residential real property may establish the initial rental rate for a dwelling or unit, except where any of the following applies:

(1) The previous tenancy has been terminated by the owner by notice pursuant to Section 1946.1 or has been terminated upon a change in the terms of the tenancy noticed pursuant to Section 827, except a change permitted by law in the amount of rent or fees. For the purpose of this paragraph, the owner's termination or nonrenewal of a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant, shall be construed as a change in the terms of the tenancy pursuant to Section 827.

(A) In a jurisdiction that controls by ordinance or charter provision the rental rate for a dwelling or unit, an owner who terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant may not set an initial rent for three years following the date of the termination or nonrenewal of the contract or agreement. For any new tenancy established during the three-year period, the rental rate for a new tenancy established in that vacated dwelling or unit shall be at the same rate as the rent under the terminated or nonrenewed contract or recorded agreement with a governmental agency that provided for a rent limitation to a qualified tenant, plus any increases authorized after the termination or cancellation of the contract or recorded agreement.

(B) Subparagraph (A) does not apply to any new tenancy of 12 months or more duration established after January 1, 2000, pursuant to the owner's contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant, unless the prior vacancy in that dwelling or unit was pursuant to a nonrenewed or canceled contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant as set forth in that subparagraph.

(2) The owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(3) The initial rental rate for a dwelling or unit whose initial rental rate is controlled by an ordinance or charter provision in effect on January 1, 1995, may not until January 1, 1999, exceed the amount calculated pursuant to subdivision (c).

(b) Subdivision (a) applies to, and includes, renewal of the initial hiring by the same tenant, lessee, authorized subtenant, or authorized sublessee for the entire period of his or her occupancy at the rental rate established for the initial hiring.

(c) The rental rate of a dwelling or unit whose initial rental rate is controlled by ordinance or charter provision in effect on January 1, 1995, shall, until January 1, 1999, be established in accordance with this subdivision. Where

the previous tenant has voluntarily vacated, abandoned, or been evicted pursuant to paragraph (2) of Section 1161 of Code of Civil Procedure, an owner of residential real property may, no more than twice, establish the initial rental rate for a dwelling or unit in an amount that is no greater than 15 percent more than the rental rate in effect for the immediately preceding tenancy or in an amount that is 70 percent of the prevailing market rent for comparable units, whichever amount is greater.

The initial rental rate established pursuant to this subdivision may not substitute for or replace increases in rental rates otherwise authorized pursuant to law.

(d) (1) Nothing in this section or any other provision of law shall be construed to preclude express establishment in a lease or rental agreement of the rental rates to be applicable in the event the rental unit subject thereto is sublet. Nothing in this section shall be construed to impair the obligations of contracts entered into prior to January 1, 1996.

(2) If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996.

(3) This subdivision does not apply to partial changes in occupancy of a dwelling or unit where one or more of the occupants of the premises, pursuant to the agreement with the owner provided for above, remains an occupant in lawful possession of the dwelling or unit, or where a lawful sublessee or assignee who resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit. Nothing contained in this section shall be construed to enlarge or diminish an owner's right to withhold consent to a sublease or assignment.

(4) Acceptance of rent by the owner does not operate as a waiver or otherwise prevent enforcement of a covenant prohibiting sublease or assignment or as a waiver of an owner's rights to establish the initial rental rate, unless the owner has received written notice from the tenant that is party to the agreement and thereafter accepted rent.

(e) Nothing in this section shall be construed to affect any authority of a public entity that may otherwise exist to regulate or monitor the grounds for eviction.

(f) This section does not apply to any dwelling or unit if all the following conditions are met:

(1) The dwelling or unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations, as defined by Section 17920.3 of the Health and Safety Code, excluding any violation caused by a disaster.

(2) The citation was issued at least 60 days prior to the date of the vacancy.

(3) The cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time. However, the 60-day time period may be extended by the appropriate governmental agency that issued the citation.

(Amended by Stats. 2004, Ch. 568, Sec. 5. Effective January 1, 2005.)

1954.535. Where an owner terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for rent limitations to a qualified tenant, the tenant or tenants who were the beneficiaries of the contract or recorded agreement shall be given at least 90 days' written notice of the effective date of the termination and shall not be obligated to pay more than the tenant's portion of the rent, as calculated under the contract or recorded agreement to be terminated, for 90 days following receipt of the notice of termination of nonrenewal of the contract.

(Added by Stats. 1999, Ch. 590, Sec. 3. Effective January 1, 2000.)

6-58.135. Exemptions

The following Rental Units shall be exempt from the provisions of Sections 6-58.100, 6-58.105, 6-58.110, 6-58.115, 6-58.120, 6-58.125 and 6-58.130 but are subject to all other Sections of this Article: Rental Units constructed after February 1, 1995; Rental Units that are separately alienable from the title of any other dwelling (e.g., single family residences, condominiums, etc.); and any other Rental Units exempt under the Costa-Hawkins Rental Housing Act (California Civil Code, sections 1954.50 and following) or under any other applicable state or federal law.

Section 6-58.140. Evictions and Terminations of Tenancies

No Landlord shall take action to terminate any tenancy including, but not limited to, making a demand for possession of a Rental Unit, threatening to terminate a tenancy, serving any notice to quit or other notice to terminate a tenancy, e.g. an eviction notice, bringing any action to recover possession or be granted possession of a Rental Unit except on one of the following grounds:

- A. Notice to Vacate. A Landlord may terminate a tenancy under Civil Code, section 1946.1 (a termination of tenancy for "no cause") but the following provisions shall apply:
1. The Landlord shall not impose on a new Tenant Rent that exceeds more than 5% of the amount of the Rent in effect at the time the Tenant was served with a Notice to Vacate, and the Landlord shall inform the new Tenant in writing of the amount of the Rent that was in effect at the time the prior Tenant was served with a Notice to Vacate and that the Rent imposed on the new Tenant does not exceed the prior Rent by more than 5%.
 2. The Landlord must provide to the Program Administrator a copy of the Notice to Vacate served on the Tenant and the amount of the Rent in effect at the time the Notice to Vacate was served and the amount of the Rent that the new Tenant will be charged.
 3. Except for Rent Increases as provided in this Article, if it is determined the Landlord imposes Rent on the new Tenant that exceeds that allowable under paragraph 1 of subsection A of this section 6-58.140, in addition to any other penalties or remedies available to the existing Tenant, the City or the previous Tenant, the Landlord shall reduce the Rent to that allowable under paragraph 1 of subsection A of this Section 6-58.140 and shall reimburse the existing Tenant, plus interest as provided by law, the difference between the amount of the Rent that exceeded the allowable Rent under paragraph 1 of subsection A of this Section 6-58.140 and the Rent in effect when the previous Tenant was served with a Notice to Vacate, retroactive to the date when the excessive Rent was first paid.
 4. As to any building or buildings with five or more Rental Units, a Landlord may use this subsection A of Section 6-58.140 for no more than 10% of all Rental Units in any month, and no more than 25% of all Rental Units (rounded up to the nearest

EXPANDS LOCAL GOVERNMENTS' AUTHORITY TO ENACT RENT CONTROL ON RESIDENTIAL PROPERTY. INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

The text of this measure can be found on the Secretary of State's website at <http://voterguide.sos.ca.gov>.

- Repeals state law that currently restricts the scope of rent-control policies that cities and other local jurisdictions may impose.
- Allows policies that would limit the rental rates that residential-property owners may charge for new tenants, new construction, and single-family homes.
- In accordance with California law, provides that rent-control policies may not violate landlords' right to a fair financial return on their rental property.

SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Potential net reduction in state and local revenues of tens of millions of dollars per year in the long term. Depending on actions by local communities, revenue losses could be less or considerably more.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Rental Housing Is Expensive in California. Renters in California typically pay 50 percent more for housing than renters in other states. In some parts of the state, rent costs are more than double the national average. Rent is high in California because the state does not have enough housing for everyone who wants to live here. People who want to live here must compete for housing, which increases rents.

Several Cities Have Rent Control Laws. Several California cities—including Los Angeles, San Francisco, and San Jose—have laws that limit how much landlords can increase rents for housing from one year to the next. These laws often are called rent control. About one-fifth of Californians live in cities with rent control. Local rent boards administer rent control. These boards are funded through fees on landlords.

Court Rulings Limit Local Rent Control. Courts have ruled that rent control laws must allow landlords to receive a "fair rate of return." This means that landlords must be allowed to increase rents enough to receive some profit each year.

State Law Limits Local Rent Control. A state law, known as the Costa-Hawkins Rental Housing Act (Costa-Hawkins), limits local rent control laws.

Costa-Hawkins creates three main limitations. First, rent control cannot apply to any single-family homes. Second, rent control can never apply to any newly built housing completed on or after February 1, 1995. Third, rent control laws cannot tell landlords what they can charge a new renter when first moving in.

State and Local Government Tax Revenues. Three taxes are the largest sources of tax revenue for the state and local governments in California. The state collects a personal income tax on income—including rent received by landlords—earned within the state. Local governments levy property taxes on property owners based on the value of their property. The state and local governments collect sales taxes on the retail sale of goods.

PROPOSAL

Repeals Costa-Hawkins. The measure repeals the limits on local rent control laws in Costa-Hawkins. Under the measure, cities and counties can regulate rents for *any* housing. They also can limit how much a landlord may increase rents when a new renter moves in. The measure itself does not make any changes to local rent control laws. With a few exceptions, cities and

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

counties would have to take separate actions to change their local laws.

Requires Fair Rate of Return. The measure requires that rent control laws allow landlords a fair rate of return. This puts the results of past court rulings into state law.

FISCAL EFFECTS

Economic Effects. If communities respond to this measure by expanding their rent control laws, it could lead to several economic effects. The most likely effects are:

- To avoid rent regulation, some landlords would sell their rental housing to new owners who would live there.
- The value of rental housing would decline because potential landlords would not want to pay as much for these properties.
- Some renters would spend less on rent and some landlords would receive less rental income.
- Some renters would move less often.

These effects would depend on how many communities pass new laws, how many properties are covered, and how much rents are limited. Voters in some communities have proposed expanding rent control if this measure passes. If many localities enacted strong rent regulation, other economic effects (such as impacts on housing construction) could occur.

Changes in State and Local Revenues. The measure's economic effects would affect property tax, sales tax, and income tax revenues. The largest and most likely impacts are:

- **Less Property Taxes Paid by Landlords.** A decline in the value of rental properties would, over several years, lead to a decrease in property tax payments made by owners of those properties.
- **More Sales Taxes Paid by Renters.** Renters who pay less in rent would use some of their savings to buy taxable goods.
- **Change in Income Taxes Paid by Landlords.** Landlords' income tax payments would

change in several ways. Some landlords would receive less rental income. This would reduce their income tax payments. On the other hand, over time landlords would pay less to buy rental properties. This would reduce expenses they can claim to lower their income tax payments (such as mortgage interest, property taxes, and depreciation). This would increase their income tax payments. The measure's net effect on income taxes paid by landlords in the long term is not clear.

Overall, the measure likely would reduce state and local revenues in the long term, with the largest effect on property taxes. The amount of revenue loss would depend on many factors, most importantly how communities respond to this measure. If several communities expand moderate rent control to cover most of their rental housing, revenue losses could be in the tens of millions of dollars per year. If few communities make changes, revenue losses would be minor. If many communities pass strong rent control, revenue losses could be in the hundreds of millions of dollars per year.

Increased Local Government Costs. If cities or counties create new rent control laws or expand existing ones, local rent boards would face increased administrative and regulatory costs. Depending on local government choices, these costs could range from **very little to tens of millions of dollars** per year. These costs likely would be paid by fees on owners of rental housing.

Visit <http://www.sos.ca.gov/campaign-lobbying/cal-access-resources/measure-contributions/2018-ballot-measure-contribution-totals/> for a list of committees primarily formed to support or oppose this measure. Visit <http://www.fppc.ca.gov/transparency/top-contributors/nov-18-gen.html> to access the committee's top 10 contributors.

If you desire a copy of the full text of the state measure, please call the Secretary of State at (800) 345-VOTE (8683) or you can email vigfeedback@sos.ca.gov and a copy will be mailed at no cost to you.

★ ARGUMENT IN FAVOR OF PROPOSITION 10 ★

The rent is too damn high! Voting YES on Proposition 10 will free our local communities to decide what rent control protections are needed, if any, to tackle the housing crisis. Prop. TEN protects TENants.

Too many families spend over half their income on housing. That's simply unacceptable. Living paycheck to paycheck means it's difficult for these families to make ends meet, much less save for an emergency. Seniors on fixed-incomes have less to spend on food and medicine. Many of the people who should be the foundation of our local communities—the teachers, nurses and firefighters—are forced to move far away from the communities they serve because corporate landlords are doubling or even tripling the rent. With so many families struggling, many are driven to move away from California altogether, leaving jobs, relatives and schools behind. Even worse, many are forced into homelessness and living on the streets. With every 5% rent increase, 2,000 more people are forced out of their homes—a devastating blow to them and an even worse homeless problem for California to cope with.

Voting YES on Prop. 10 will allow cities that need it to pass laws limiting rent increases. Prop. 10 does NOT mandate rent control. It does NOT force any community to adopt any rent control measures that would not be a good fit for their own housing situation. It does NOT force any one-size-fits-all solutions on any city. Instead, Prop. 10 simply allows communities that are struggling with skyrocketing housing costs to put an annual limit on how much rents can be raised. Communities are free to bring more fairness to housing, ensuring that tenants have protections against huge rent increases, while ensuring that landlords receive a fair rate of return with reasonable yearly increases.

Voters have heard a lot of confusing arguments about Proposition 10. Don't believe the attacks. Wall Street corporations like the Donald Trump-linked Blackstone have spent millions of dollars to fight this measure because they are terrified this will cut into the huge profits they make from the thousands of foreclosed homes they buy. They don't care that California families are being crushed by high rent. It's time to take a stand FOR affordable housing and against greedy Wall Street billionaires and corporate landlords by voting YES on Prop. 10.

Prop. 10 is a limited measure that answers one question: who decides housing policy—local communities or Sacramento special interests and powerful real estate investors? It doesn't establish new housing policies, it just lets local communities—which are closer to the people—decide what works best for them. It's time we had the power to tackle the problems of homelessness and skyrocketing rent within our own communities.

California nurses, teachers, seniors, organized labor, including SEIU State Council, housing advocates, civil rights groups, clergy and faith-based groups and other organizations you trust all urge YES on Proposition 10. Remember, Prop. TEN protects TENants.

Get the facts about Proposition 10:
www.VoteYesOnProp10.org

ZENEI CORTEZ, Co-President
California Nurses Association
NAN BRASMER, President
California Alliance for Retired Americans
ELENA POPP, Executive Director
Eviction Defense Network

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 10. ★

PROP. 10 WILL MAKE THE HOUSING CRISIS WORSE, NOT BETTER

The sponsors of Prop. 10 want you to believe it will "magically" solve our housing crisis, but it's badly flawed and will just make the housing crisis worse. Prop. 10:

- Allows regulation of single family homes
- Puts bureaucrats in charge of housing decisions
- Gives as many as 539 rental boards the power to add fees on top of rent
- Puts taxpayers at risk for millions in legal costs
- Adds tens of millions in new costs to local governments

AFFORDABLE HOUSING LEADERS AGREE: NO ON PROP. 10

"Prop. 10 prevents any future statewide housing solutions and handcuffs the legislature and governor from adopting tenant protections."—Alice Huffman, President, California State Conference NAACP

"Prop. 10 does nothing to build new affordable housing that families desperately need."—John Gamboa, Co-Founder, The Two Hundred—a coalition of 200+ social justice leaders

"Under Prop. 10, families searching for affordable housing will find themselves with even fewer choices and more

expensive housing options."—Robert Apodaca, Executive Director, United Latinos Vote

"For seniors on Social Security and fixed incomes, Prop. 10 could be devastating."—Marilyn H. Markham, Board Member, California Senior Advocates League

"Prop. 10 allows bureaucrats to tell homeowners what they can and cannot do with their own homes."—Stephen White, President, California Association of REALTORS

"Prop. 10 would allow unelected bureaucrats to impose fees on all housing, including single-family homes, with no vote of the people or local elected body."—Jon Coupal, President, Howard Jarvis Taxpayers Association

Join independents, Democrats, Republicans, renters and homeowners, seniors, taxpayers, and minority groups in voting NO on Prop. 10!

ALICE A. HUFFMAN, President
California State Conference of the National Association for the Advancement of Colored People (NAACP)

BETTY JO TOCCOLI, President
California Small Business Association
MARILYN H. MARKHAM, Board Member
California Senior Advocates League

★ ARGUMENT AGAINST PROPOSITION 10 ★

PROP. 10 IS BADLY FLAWED AND WILL MAKE OUR HOUSING CRISIS WORSE. VOTE NO:

• PROP. 10: BAD FOR CURRENT AND FUTURE HOMEOWNERS

"Prop. 10 could hurt homeowners by authorizing a new government bureaucracy that can tell homeowners what they can and cannot do with their own private residence. It could make homes more expensive for future buyers and hurt families trying to purchase their first home."

—Stephen White, President, California Association of REALTORS

• PROP. 10: BAD FOR RENTERS

"Tens of thousands of renters, INCLUDING SENIORS AND OTHERS ON FIXED INCOMES, could be forced out of their apartments and communities under Prop. 10, which allows wealthy corporate landlords to turn apartments into condos and short-term vacation rentals. It will increase the cost of renting and make it even harder to find affordable housing."—Alice Huffman, President, California State Conference NAACP

NO ON 10—TOO MANY FLAWS:

• ALLOWS REGULATION OF SINGLE FAMILY HOMES

Prop. 10 repeals protections homeowners have enjoyed for over 20 years, and lets the government dictate pricing for privately owned single-family homes, controlling how much homeowners can charge to rent out their home—or even just a room. Prop. 10 might even lead to bureaucrats charging homeowners a fee for taking their home off the rental market.

• PUTS BUREAUCRATS IN CHARGE OF HOUSING

Prop. 10 puts as many as 539 rental boards in charge of housing, giving government agencies unlimited power to add fees on housing, ultimately increasing rents and making homes and apartments more expensive. These boards may have unlimited power to set their salaries and benefits, while adding fees to housing that will be passed on to tenants in the form of higher rents.

• PUTS TAXPAYERS AT RISK FOR MILLIONS IN LEGAL COSTS

If homeowners, tenants or voters challenge the law in court, Prop. 10 requires California taxpayers to pay the sponsors' legal bills. Taxpayers could be stuck paying millions of dollars for a poorly drafted and flawed measure.

• ADDS TENS OF MILLIONS IN NEW COSTS TO LOCAL GOVERNMENTS

The state's non-partisan Legislative Analyst says Prop. 10 could increase costs for local governments by tens of millions of dollars per year and cost the state millions more in lost revenue. This could result in less money for schools and emergency services, reduced new home construction, and a loss of thousands of well-paid construction jobs.

• DRIVES UP THE COST OF EXISTING HOUSING

New government fees and regulations will give homeowners a huge financial incentive to convert rental properties into more profitable uses like short-term vacation rentals, increasing the cost of existing housing and making it even harder for renters to find affordable housing in the future.

BOTTOM LINE: PROP. 10 HAS TOO MANY FLAWS AND WILL MAKE THE HOUSING CRISIS WORSE.

Learn why voters from every political persuasion and corner of California are voting NO on Prop. 10 at www.ReadItForYourself.com

American G.I. Forum of California, California Senior Advocates League, California State Conference NAACP, California Association of REALTORS, Family Business Association of California, Howard Jarvis Taxpayers Association, California Chamber of Commerce, California Business Roundtable, United Latinos Vote

ALICE A. HUFFMAN, President

California State Conference of the National Association for the Advancement of Colored People (NAACP)

FREDERICK A. ROMERO, State Commander

American G.I. Forum of California

STEPHEN WHITE, President

California Association of REALTORS

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 10 ★

Don't be fooled by the corporate special interests opposing Proposition 10. If they wanted to help renters afford housing, a basic human need, California wouldn't be in this housing crisis. Follow the money: Wealthy real estate interests, corporate landlords and Wall Street investors have profited from the current system for decades. These big corporations shamelessly double or even triple rent because they can get away with it. They make HUGE PROFITS from the housing crisis they helped create. No wonder they don't want to fix it!

Who Supports Prop. 10? Nonprofit organizations, teachers, nurses, retirees, labor, faith-based groups, housing advocates, and California Democratic Party all urge YES because Prop. TEN protects Tenants.

Tenants and homeowners should vote YES to keep communities strong. It enables working people—teachers, firefighters, long-term care workers, grocery clerks—to live in communities they serve, while still affording basic needs like food and childcare. Greedy corporate landlords are forcing too many disabled and seniors on fixed-incomes to choose between rent or medicine, and they're forcing more low-income families into homelessness—a growing, costly crisis.

Prop. 10 doesn't mandate new laws or bureaucracies for

any community—it just gives YOU, the people, the power to develop rent control policies for YOUR community. People win, not the greedy special interests. The rent is too damn high! YES on TEN to protect Tenants.

SUPPORTED BY CALIFORNIA DEMOCRATIC PARTY; California Nurses Association; Housing California; National Urban League; ACLU of California; AIDS Healthcare Foundation; Property Owners for Fair and Affordable Housing; Painters & Allied Trades 36; Service Employees International Union (SEIU); American Federation of State, County and Municipal Employees (AFSCME); Humboldt and Del Norte Counties Central Labor Council AFL-CIO; California Rural Legal Assistance Foundation; Western Center on Law and Poverty; National Action Network-Los Angeles; Central Coast Alliance United for a Sustainable Economy; and tenant organizations throughout the state.

www.VoteYesOnProp10.org

ERIC C. HEINS, President

California Teachers Association

REV. WILLIAM D. SMART, JR., President, Southern Christian Leadership Conference of Southern California

ROXANNE SANCHEZ, President

SEIU California



Article I. - Residential Rent Adjustment Program

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 housing situation is important for individuals and families in rental housing. In particular, tenants 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 tenants.
- 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 tenants.
- C. Among the purposes of this chapter are providing relief to residential tenants in Oakland by limiting rent increases for existing tenants; encouraging rehabilitation of rental units, 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 ("Section 1946") or where rental units are vacated on other grounds under state law Civil Code Sec. 1954.50, et seq. ("Costa-Hawkins") that permit the city to regulate initial rents to new tenants, and allowing efficient rental property owners the opportunity for both a fair return on their property and rental income sufficient to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities, and other costs of operation.
- D. The City Council also wishes to foster better relations between rental property owners and tenants and to reduce the cost and adversarial nature of rent adjustment proceedings under This chapter. For these reasons, This chapter includes options for rental property owners and tenants to mediate rent disputes that would otherwise be subject to a hearing process, and to mediate some evictions.
- E. Terminations of Tenancies. On November 5, 2002, Oakland voters passed the Just Cause for Eviction Ordinance (Measure EE). The enactment of the Just Cause for Eviction Ordinance by the electorate makes unnecessary the need for the eviction restrictions in This chapter, Article I (Rent Adjustment Ordinance) for a tenant whose tenancy is terminated by California Civil Code Section 1946 and also overrides portions of the Rent Adjustment Ordinance.
- F. The City Council believes that the relationship between landlords and tenants in smaller owner-occupied rental properties involve special relationships between the landlord and the tenants residing in the same smaller property. Smaller property owners also have a difficult time understanding and complying with rent and eviction regulation. 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 Rent Adjustment Program so long as the property is owner-occupied. In order to permit tenants to adjust to the possibility of unregulated rents and to address the potential for abuse of the owner-occupancy exemption by landlords who are motivated to move into a property to gain an exemption just to increase rent and not to reside in the property, this exemption should not take effect for one year after the amendment to This chapter exempting these rental units is adopted, or one year after the landlord begins owner-occupancy, whichever is later.
- G. The City Council desires to provide efficient and effective program services to rental property owners and tenants. The City Council recognizes there must be an adequate funding source in order to accomplish this objective. To provide adequate funding for the program and services provided to

rental property owners and tenants under This chapter, an annual fee has been established, as set out in the Master Fee Schedule. The funds provided from this fee shall be dedicated to the administrative, public outreach, enforcement, and legal needs of the programs and services set out in This chapter and not for any other purposes. This fee is to be paid by the rental property owner not as the owner of real property, but instead as the operator of the business of renting residential units, with a reimbursement of fifty (50) percent of the fee from the tenant as provided in This chapter. The fee will sunset after two years unless the City Council acts to extend it. With the enactment of the Just Cause for Eviction Ordinance, the City Council desires to extend the Rent Program Service Fee to all residential rental units covered by either Residential Rent Adjustment Program or the Just Cause for Eviction Ordinance and, therefore, moves the section of Article I pertaining to the fee to a new Chapter 8.22, Article IV.

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

8.22.020 - Definitions.

As used in this chapter, Article I:

"1946 notice" means any notice of termination of tenancy served pursuant to California Civil Code Section 1946. This notice is commonly referred to as a thirty (30) or sixty (60) 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 (Section 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.

"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 twelve (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 twelve (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 Section 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 Section 8.22.070B.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 Hawkins 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 Section 8.22.030A as exempt.

"Ellis Act Ordinance" means the ordinance codified at O.M.C. 8.22.400 (Chapter 8.22, Article III) setting out requirements for withdrawal of residential rental units from the market pursuant to California Government Code § 7060, et seq. (the Ellis Act).

"Fee" means the Rent Program Service Fee as set out in O.M.C. 8.22.500 (Chapter 8.22, Article IV).

"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.

"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.

"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, but not including any lessor, sublessor, or agent of the owner of record.

"Just Cause for Eviction Ordinance" means the ordinance adopted by the voters on November 5, 2002 (also known as Measure EE) and codified at O.M.C. 8.22.300 (O.M.C. Chapter 8.22, Article II).

"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 that administers this chapter and also includes the board.

"Regulations" means the regulations adopted by the board and approved by the City Council for implementation of this chapter, Article I (formerly known as "Rules and Procedures") (After regulations 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.

"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.

2. Appointment. A Board member is deemed appointed after confirmation by the City Council and upon taking the oath of office.

3. Board members serve without compensation.

B. Vacancies and Removal.

1. A vacancy on the Board exists whenever a Board member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the City Council within two City Council meetings of nomination by the Mayor.

2. Removal for Cause. A Board 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 consecutive regular meetings except on account of illness or when absent from the city by permission of the Board, constitute cause for removal.

3. Report of Attendance. To assure participation of Board members, attendance by the members of the Board at all regularly scheduled and special meetings of the Board shall be recorded, and such record shall be provided annually to the Office of the Mayor and to the City Council.

C. Terms and Holdover.

1. Terms. Board members' terms shall be for a period of three (3) years beginning on February 12 of each year and ending on February 11 three (3) years later. Board members shall be appointed to staggered terms so that only one-third ($\frac{1}{3}$) of the Board will have terms expiring each year, with no more than one Board member who is neither a residential rental property owner nor a tenant, and no more than one rental property owner and no more than one tenant expiring each year. Terms will commence upon the date of appointment, except that an appointment to fill a vacancy shall be for the unexpired portion of the term only. No person may serve more than two (2) consecutive terms as a board member, nor more than two (2) consecutive terms as an alternate. Time served as a board member shall be considered separately from time served as an alternate.

2. Holdover. A Board member whose term has expired may remain as a Board member for up to one year following the expiration of his or her term or until a replacement is appointed whichever is earlier. The City Clerk shall notify the Mayor, the Rent Program, the Board, and affected Board member when a Board member's holdover status expires. Prior to notification by the City Clerk of the end of holdover status, a Board member may fully participate in all decisions in which such Board member participates while on holdover status and such decisions are not invalid because of the Board member's holdover status.

D. Duties and Functions.

1. Appeals. The Board or an Appeal Panel hears appeals from decisions of hearing officers under the procedures set out in O.M.C. Section 8.22.120.

2. Regulations. The Board may develop or amend the regulations, subject to City Council approval.

3. 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 the City Council or City Council Committee.

4. Recommendations. The Board may make recommendations to the City Council or appropriate City Council committee pertaining to this chapter or City housing policy when requested to do so by the City Council or when the Board otherwise acts to do so.

5. Regular Meetings. The Board or an Appeal Panel shall meet regularly on the second and fourth Thursdays of each month unless cancelled. Rent Program staff is authorized to schedule these regular meetings either for the full Board or for an Appeal Panel.

6. Special Meetings. The Board or an Appeal Panel may meet at additional times as scheduled by the Board Chair or Rent Program staff.

E. Appeal Panels.

(Ord. No. 13391, § 1, 9-20-2016; Ord. No. 13373, § 1, 6-7-2016; Ord. No. 13221, § 1(Exh. A), 4-1-2014; Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

8.22.030 - Exemptions.

A. Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this chapter, Article I only (the Just Cause for Eviction Ordinance (Chapter 8.22, Article II) and the Ellis Act Ordinance (Chapter 8.22, Article II)) have different exemptions):

1. Dwelling 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, tourist houses, rooming houses, and boarding houses, provided that such accommodations are not occupied by the same tenant for thirty (30) or more continuous days.
3. Housing accommodations in any hospital, convent, monastery, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by an educational institution.
4. Dwelling units in a nonprofit cooperative, owned, occupied, and controlled by a majority of the residents.
5. Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. This exemption does not apply to any newly constructed dwelling units that replace covered units withdrawn from the rental market in accordance with O.M.C. 8.22.400, et seq. (Ellis Act Ordinance). To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential.
6. Substantially rehabilitated buildings.
7. Dwelling units exempt pursuant to Costa-Hawkins (California Civil Code § 1954.52).
8. A dwelling unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by an owner of record as his or her principal residence. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the state of California.

B. Exemption Procedures.

1. Certificate of Exemption:

- a. A certificate of exemption is a determination by the Rent Adjustment Program that a dwelling unit or units qualify for an exemption and, therefore, are not covered units. For units exempt as new construction, or by state law, an owner may obtain a certificate of exemption by claiming and proving an exemption in response to a tenant petition or by petitioning the Rent Adjustment Program for such exemption. For units exempt based on substantial rehabilitation, an owner must obtain a certificate of exemption by petitioning the Rent Adjustment Program for such an exemption. A certificate of exemption may be granted only for dwelling units that are permanently exempt from the Rent Adjustment Ordinance as new construction, substantial rehabilitation, or by state law (Costa Hawkins).
- b. For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner. A certificate of exemption is a final determination of exemption absent fraud or mistake.
- c. Timely submission of a certificate of exemption previously granted in response to a petition shall result in dismissal of the petition absent proof of fraud or mistake regarding the granting of the certificate. The burden of proving such fraud or mistake is on the tenant.

2. Exemptions for Substantially Rehabilitated Buildings.

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project and performed substantial work on each of the units in the building.
 - b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.
 - c. An owner seeking to exempt a property on the basis of substantial rehabilitation must first obtain a certificate of exemption after completion of all work and obtaining a certificate of occupancy. If no certificate of occupancy was required to be issued for the property, in lieu of the certificate of occupancy an owner may provide the last finalized permit. For any property that has a certificate of occupancy issued on or before the date of enactment of this subparagraph O.M.C. 8.22.30B.2.c. for which an owner claims exemption as substantially rehabilitated, the owner must apply for such exemption not later than June 30, 2017 or such exemption will be deemed to be vacated.
- C. **Controlled, Regulated, or Subsidized Units.** The owner of a dwelling unit that is exempt because it is controlled, regulated (other than by this chapter), or subsidized by a governmental agency (Section 8.22.030A.1) must file a notice with the Rent Adjustment Program within thirty (30) days after such dwelling unit is no longer otherwise controlled, regulated, or subsidized by the governmental agency. Once the dwelling unit is no longer controlled, regulated, or subsidized, the dwelling unit ceases to be exempt and becomes a covered unit subject to this chapter, Article I. Such notice must be on a form prescribed by the Rent Adjustment Program.
- D. **Exemptions for Owner-Occupied Properties of Three or Fewer Units.** Units in owner-occupied properties divided into three or fewer units will be exempt from this chapter, Article I under the following conditions:
1. **Two-Year Minimum Owner Occupancy.** A qualifying owner of record must first occupy one of the units continuously as his or her principal residence for at least two years. This requirement does not apply to any property in which the owner resides in the premises on or before August 1, 2016.
 2. **Continuation of Exemption.** The owner-occupancy exemption continues until a qualifying owner of record no longer continuously occupies the property.
 3. **Rent Increases.** The owner of record qualifying for this exemption may notice the first rent increase that is not regulated by this chapter, article I two years after the date the qualifying owner of record starts residing at the affected property as his or her principal place of residence.
 4. An owner claiming such exemption must provide information to the Rent Program on when the owner occupancy began and documentation showing the minimum of two years continuous occupancy. Staff shall develop a form for this purpose.

(Ord. No. 13418, § 1(Exh. A), 2-7-2017; Ord. No. 13391, § 1, 9-20-2016; Ord. 12781 § 1 (part), 2007; Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

8.22.040 - Composition and functions of the Board.

A. Composition.

1. **Members.** The Board shall consist of seven (7) regular members appointed pursuant to Section 601 of the City Charter. The Board shall be comprised of two (2) residential rental property owners, two (2) tenants, and three (3) persons who are neither tenants nor residential rental property owners. The Board shall also have six (6) alternate members, two (2) residential rental property owners, two (2) tenants and two (2) persons who are neither a tenants nor residential rental property owners appointed pursuant to Section 601 of the Charter. An alternate member may act at Board meetings in the absence of a regular Board member of the same category, and at appeal panels meetings without such an absence.

1. Appeal Panels shall hear appeals of Hearing Officer decisions.
2. Rent Program staff shall determine whether an appeal should be heard by an Appeal Panel or the full Board. A party to an appeal may, however, elect not to have his/her case heard by a panel and instead to be heard by the full Board. A party may so elect by notifying the Rent Adjustment Program not more than ten (10) days after the notice of the panel hearing is mailed.
3. All Appeal Panel members must be present for a quorum. A majority of the Appeal Panel is required to decide an appeal.
4. Membership on an Appeal Panel is determined by Rent Program staff. Membership need not be permanent, but may be selected for each panel meeting. Appeal Panels may be comprised solely of Alternate Board Members.

(Ord. No. 13418, § 1(Exh. A), 2-7-2017; Ord. No. 13373, § 1, 6-7-2016; Ord. 12706 § 1, 2005; Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

8.22.050 - Summary of notices required by this chapter, Article I.

The following is a summary of notices required by this chapter, Article I (the Just Cause for Eviction Ordinance (Chapter 8.22, Article II) and the Ellis Act Ordinance (Chapter 8.22, Article III) may require other or different notices). Details of the requirements for each notice are found in the applicable section.

- A. Notice at the Commencement of a Tenancy. Existence and scope of this chapter (Section 8.22.060).
- B. Change in Terms of Tenancy or Rent Increase. Notice of tenant's right to petition. (Section 8.22.070H).

(Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

Single-Family or Condominium (Costa-Hawkins): Applies to Single Family Residences and condominiums only. If claiming exemption under the Costa-Hawkins Rental Housing Act (Civ. C. §1954.50, et seq.), please answer the following questions on a separate sheet:

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being a notice of rent increase under Civil Code Section 827?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building, housing, fire, or safety codes in the unit or building?
5. Is the unit a single family dwelling or condominium that can be sold separately?
6. Did the current tenant have roommates when he/she moved in?
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?
8. When did the tenant move into the unit?

I (We) petition for exemption on the following grounds (Check all that apply):

	New Construction
	Substantial Rehabilitation
	Single Family Residence or Condominium (Costa-Hawkins)

Section 4. Verification Each petitioner must sign this section.

I declare under penalty of perjury pursuant to the laws of the State of California that everything I stated and responded in this petition is true and that all of the documents attached to the petition are correct and complete copies of the originals.

Owner's Signature

Date

Owner's Signature

Date

Important Information

Burden of Proof The burden of proving and producing evidence for the exemption is on the Owner. A Certificate of Exemption is a final determination of exemption absent fraud or mistake.

File Review Your tenant(s) will be given the opportunity to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the tenant's Response. Copies of attachments to the Response form will not be sent to you. However, you may review any attachments in the Rent Program Office. Files are available for review by appointment only. For an appointment to review a file, call (510) 238-3721. Please allow six weeks from the date of filing for notification processing and expiration of the tenant's response time before scheduling a file review.

Oakland → Resources → **Learn More About Exemptions from the Rent Adjustment Program**

Learn More About Exemptions from the Rent Adjustment Program

Properties exempt from the Rent Adjustment Program (RAP) have no limitations on rent increases. Rules about eviction (Just Cause for Evictions) may still apply.

[Read the Costa Hawkins Rental Housing Act](#)

The three most common exemptions from RAP are:

1. Government-subsidized housing
2. Units built after January 1, 1983
3. Single family homes or condominiums exempt under the Costa Hawkins Rental Housing Act

The following units are exempt from the RAP:

- Subsidized Housing.
- Motels, hotels if occupancy not more than 30 days.

- Hospital, dormitory, extended care facility, etc.
- Non-profit cooperative owned and occupied by majority of resider Menu
- New construction (built after January 1st, 1983)
- Substantial rehabilitation.
- 3 units or less owner occupied properties.
- The unit that an owner occupies in any building.
- Non-profit facility-homeless/substance abuse treatment.
- Unit in trust for the developmentally disabled.
- Shared facilities with owner and tenants (bath/kitchen).
- Costa Hawkins-Single family home or condominium.
- Vacant units

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311 or 510-615-5566

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components having the capacity to resist loads as identified in ASCE 7.

DWELLING. A building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

DWELLING UNIT. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. **[HCD 1-AC]** *For the purposes of Chapter 11A, a single unit of residence for a family of one or more persons. Examples of dwelling units covered by Chapter 11A include condominiums, an apartment unit within an apartment building, and other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as residences for homeless persons.*

DWELLING UNIT OR SLEEPING UNIT, MULTISTORY. See "Multistory unit."

EFFECTIVE PARTICLE SIZE. *The theoretical size of a sieve in mm that will pass 10 percent by weight of sand.*

EFFICIENCY DWELLING UNIT. [HCD 1] *A dwelling unit containing only one habitable room and includes an efficiency unit as defined by Health and Safety Code Section 17958.1. See Section 1208.4.*

EGRESS COURT. A court or yard which provides access to a public way for one or more exits.

ELECTRIC VEHICLE (EV) [DSA-AC & SFM]. *An automotive-type vehicle for on-road use, such as passenger automobiles, buses, trucks, vans, neighborhood electric vehicles, electric motorcycles, and the like, primarily powered by an electric motor that draws current from a rechargeable storage battery, fuel cell, photovoltaic array, or other source of electric current. Plug-in hybrid electric vehicles (PHEV) are considered electric vehicles. For the purpose of this code, off-road, self-propelled electric vehicles, such as industrial trucks, hoists, lifts, transports, golf carts, airline ground support equipment, tractors, boats, and the like, are not included.*

ELECTRIC VEHICLE (EV) CHARGER. *Off-board charging equipment used to charge an electric vehicle.*

ELECTRIC VEHICLE CHARGING SPACE (EV Space). *A space intended for charging electric vehicles.*

ELECTRIC VEHICLE CHARGING STATION (EVCS). *One or more electric vehicle charging spaces served by an electric vehicle charger or other charging equipment. Where a multiport electric vehicle charger can simultaneously charge more than one vehicle, the number of electric vehicle charging stations shall be considered equivalent to the number of electric vehicles that*

to multifaced Signs, the area of all such faces shall be included except where the context refers to only one face.

"Diagonal length" means a horizontal plan dimension between the two most separated points on the exterior walls at a given level of a building or structure.

"Dormer" means a roofed structure projecting from a sloping roof and containing a window or ventilating louver.

"Driveway" means the way or means of vehicular access from that portion of a street used for vehicular travel to the parking, loading, or other vehicular activity on the adjacent property, including the portion of the sidewalk lying within said way or means of access. (Note that this differs from the definition of "Driveway" at Section 12.04.240 of the Oakland Municipal Code, which only includes that portion lying within the street right-of-way.)

"Dwelling unit" means a room or suite of rooms including only one kitchen, except as otherwise provided in Section 17.102.270, and designed or occupied as separate living quarters for one person or family; or, where the facility occupied is a One-Family Dwelling, such family and not more than three (3) boarders, roomers, or lodgers where access to all rooms occupied by such boarders, roomers, or lodgers is had through the main entrance of the dwelling unit.

"Earthen berm" means a mound or embankment of earth, together with necessary retaining structures.

"Edge of the pavement" means the edge of that part of a street, alley, or private access easement described in Section 17.106.020, having an improved surface used for vehicle travel and parking, including gutters, but not including a raised curb or sidewalk.

"Efficiency dwelling unit" means a dwelling unit containing only a single habitable room other than a kitchen, or containing a total of less than five hundred (500) square feet of floor area.

"Electroplating activity" means the electrochemical process of depositing a thin metallic coating of one metal on top of a different metal by passing an electrical current into a piece of metal immersed in chemical solutions comprised of caustics, acids, cyanides or other bonding chemicals, and causing a metallic coating to bond with the object to be plated. Such activities are classified as General Manufacturing Industrial Activities and are subject to the provisions of Section 17.102.340.

"Enclosed retaining wall" means a retaining wall located on a lot such that it is visually shielded by other permanent structures and cannot be seen from public streets and adjacent lots.

"Existing grade" means the natural grade or the revised grade due to prior development of a lot.

"Facility" means a structure, open area, or other physical contrivance or object.

"Facility Type" means a type of facility which is specially described as such by the use classifications in Chapter 17.10 on the basis of common functional characteristics and similar effects on other uses, and which is designated throughout the zoning regulations by a special name each word of which starts with a capital letter.

"Family" means one person, or a group of people living together as a single housekeeping unit, together with any incidental domestic servants and temporary nonpaying guests.