

PASADENA RENTAL HOUSING BOARD
OCTOBER 11, 2023



**AGENDA ITEM 5:
MEASURE H BASICS TRAINING**



DISCLAIMER

3

The information provided in this presentation is not intended to be legal advice. Landlords, tenants and other affected parties should consult the Charter Amendment and any regulations issued by the PRHB and seek independent legal counsel prior to taking any action related to the Charter Amendment.

PURPOSE

4

- Provide the PRHB and the public with a general training on the Pasadena Fair and Equitable Housing Charter Amendment (Charter Amendment)

BACKGROUND

5

- Located at Article XVIII of the City of Pasadena Charter
- Effective Date: December 22, 2022
- Primary Purposes:
 - ▣ Rent Stabilization
 - ▣ Just Cause for Eviction Protections
 - ▣ Fair Rate of Return Guarantee

APPLICABILITY & EXEMPTIONS



RENT STABILIZATION & JUST CAUSE EXEMPTIONS

7

- **Covered Rental Units – all Rental Units not specifically exempted**
- **Units exempt from BOTH Rent Stabilization and Just Cause (1804(a))**
 - Hotels, motels, inns, tourist homes, lodging and rooming houses and boarding housing unless tenant resides in unit for more than 30 days as tenant’s primary residence
 - Rental units in hospitals, convents, monastery, extended medical facility, asylum, nonprofit home for the aged, dormitory owned by an accredited institution of higher learning, treatment or recovery facility*
 - Low Income housing tax credit units owned by a not-for-profit organization
 - Units owned, operated or managed by a government unit
 - Single Family Homes temporarily rented for no more than 12 months in any 36-month period (tenant must be informed in writing) (1805(a))
- Referred to as “Fully Exempt” units

RENT STABILIZATION EXEMPTIONS

8

- **Units exempt from Rent Stabilization but not Just Cause:**
 - ▣ Units exempted by Costa Hawkins: currently units with a certificate of occupancy after February 1, 1995 and units that can be sold separately from any other dwelling unit (1804(b)(1))
 - ▣ Units subject to the City of Pasadena Inclusionary Housing Requirements or Density Bonus requirements (1804(b)(2))
 - ▣ Units where the tenant shares a bathroom or kitchen with the owner if the unit is the owner's primary residence (1805(b))
- Referred to as “Partially Exempt” units

SUBSIDIZED UNITS

9

- **Subsidized Units are only exempt from Rent Stabilization and Just Cause if:**
 - ▣ Owned, operated or managed by a government unit, agency or authority(1804(a)(4); or
 - ▣ Low-income housing tax credit units if owned by a not-for-profit entity (1804(a)(3)); or
 - ▣ Units rented to tenants receiving government subsidies only if the applicable state or federal law or regulations specifically exempts the units from municipal rent control. Section 8/Housing Choice Voucher laws and regulations **do not** exempt the units from municipal rent control (1804(a)(4)).

JUST CAUSE FOR EVICTION



JUST CAUSE FOR EVICTION

11

- Tenants can only be evicted for one of 11 just causes (1806)
 - ▣ 7 at-fault causes
 - ▣ 4 no-fault causes
- Notices terminating tenancy must:
 - ▣ Be in writing
 - ▣ Provide sufficient notice per state law

AT FAULT JUST CAUSES FOR EVICTION

12

- ❑ Nonpayment of rent (1806(a)(1))
- ❑ Breach of Lease (1806(a)(2))
- ❑ Tenant commits a nuisance or damages the unit or common area (1806(a)(3))
- ❑ Illegal purpose- within unit, common area or within 300 feet of unit (1806(a)(4))
- ❑ Refusal to execute a substantially similar lease (1806(a)(5))
- ❑ Failure to give Landlord access after proper notice (1806(a)(6))
- ❑ Subtenant is the sole tenant in possession at end of term of lease (1806(a)(7))

AT FAULT JUST CAUSE – BREACH OF LEASE

13

- **Breach of Lease (1806(a)(2)):**
 - ▣ Must give tenant notice to cease
 - ▣ Breach of Lease does not include subleasing unit if
 - Tenant continues to reside in unit as primary residence
 - The sublease replaces one or more departed tenants on a one-for-one basis
 - The Landlord has unreasonably withheld the right to sublease. Landlord must respond to request within 14 days. Cannot base refusal on lack of credit if subtenant is not legally obligated to pay the rent
 - It is not a breach of the lease if additional occupant added that is tenant's child, parent, grandchild, grand parent, brother or sister or other dependent relative or spouse or domestic partner or such relative, spouse or domestic partner or the addition of one additional adult tenant if occupancy does not violate the Uniform Housing Code.

NO FAULT JUST CAUSE – REPAIRS

14

- **Necessary and Substantial Repairs requiring temporary vacancy (1806(a)(8))**
 - ▣ Repairs must require that the tenant vacate the unit (City to verify)
 - ▣ Landlord has to offer tenant one of the following:
 - Right to comparable unit owned by landlord at same or lower rent
 - Right to return to unit upon completion of repairs at same rent
 - Tenant is not eligible for relocation assistance if elects comparable unit

NO FAULT JUST CAUSE – OWNER MOVE-IN

15

□ **Owner Move In (1806(a)(9))*-**

- Landlord, Landlord spouse, domestic partner, children grandchildren, parents or grandparents- included for Owner move in
- Landlord must be natural person and own at least 50% of the interest in property
- Landlord or relative must intend to move in within 60 days and to occupy the unit for 36 months
- Cannot evict if landlord/relative already occupies a unit or there is comparable unit vacant on the property
- * 6 month notice requirement in Charter Amended removed by court

NO FAULT JUST CAUSE – OWNER MOVE-IN

16

□ Owner Move In

- If landlord/relative does not move in within 60 days or occupy the unit for 36 months then landlord
 - has to offer the Unit to the displaced tenant at the rent paid by the tenant prior to vacating the unit
 - Pay the tenants reasonable expenses for moving
- Landlord cannot evict a tenant for an owner move in if tenant has resided in unit for at least five years and
 - is over 60
 - Disabled
 - Terminally ill

NO FAULT JUST CAUSES – WITHDRAWALS

17

- **Ellis Act – withdrawal of unit from the rental market (1806(a)(10))**
 - ▣ May include demolition of unit which requires all permits
- **Government Order to vacate (1806(a)(11))**
 - ▣ Tenant must be given right to occupy any vacant unit owned by landlord
 - ▣ Right to reoccupy the unit at same rent

GENERAL EVICTION REQUIREMENTS

18

- ❑ Relocation assistance required for no-fault just causes (1806(b))
- ❑ Retaliation Prohibited (1806(g))
- ❑ Harassment Prohibited (1806(h))
- ❑ Notices of termination must specify cause (1806(i))
- ❑ Landlord must file notices of termination with PRHB within 3 days of service on the tenant (1806(k))
- ❑ Failure to comply is an affirmative defense to eviction. (1806(l))

RENT STABILIZATION



SECTION 1807: RENT STABILIZATION

20

- Landlords cannot charge Rent for a Covered Rental Unit in amount that exceeds sum of Base Rent plus any lawful Rent increases
- Base Rent:
 - ▣ **Base Rent for Tenancies Commencing on or before May 17, 2021:** The Rent in effect on May 17, 2021.
 - ▣ **Base Rent for Tenancies Commencing after May 17, 2021:** The rental rate paid by the Tenant upon initial occupancy.
- Lawful Rent increases
 - ▣ Annual General Adjustment (Section 1808.)
 - ▣ Petitions for Upward Adjustment (Sections 1813 and 1814.)

SECTION 1807: RENT STABILIZATION

21

- Notice of Charter Amendment
 - ▣ Must be provided on or before commencement of tenancy
 - ▣ Must be in writing on form provided by PRHB
 - ▣ Must be in language used to negotiate lease or other language requested by the tenant
 - ▣ Must include
 - Existence and scope of Charter Amendment
 - Tenant's right to petition rent increases
 - Instructions for accessing rental registry

SECTION 1808: ANNUAL GENERAL ADJUSTMENT

22

- “The Annual General Adjustment is the percentage by which the Rent for existing tenancies in Covered Rental Units may be increased each year, subject to the limitations of” the Charter Amendment.
- The Rental Board shall:
 - ▣ “Set allowable Rent increases at fair and equitable levels to achieve the purposes of” the Charter Amendment. (Section 1811(e)(1).)
 - ▣ “Determine and publicize the Annual General Adjustment pursuant to” the Charter Amendment. (Section 1811(e)(3).)

SECTION 1808: ANNUAL GENERAL ADJUSTMENT

23

- AGAs are to be calculated as 75% of CPI percentage increase over 12-month period from March to March
 - ▣ If CPI increase is negative, then the AGA is 0%
- AGA must be adopted by PRHB by September 1 annually
- May be imposed from October 1 through September 30 of following year
 - ▣ No “banking” permitted: If not taken by September 30, the AGA increase cannot be imposed in later years

SECTION 1808: ANNUAL GENERAL ADJUSTMENT

24

- No more than one Rent increase per 12-month period (1808(b))
- At least 30 days' written notice required before implementing a rent increase (1808(c))
- Notice of Charter Amendment required with any rent increase or change in terms of tenancy (1808(d))
- No rent increases permitted if Landlord noncompliant with Charter Amendment (1808(e))

SECTION 1809: RENTS FOR NEW TENANCIES

25

- Landlords may set initial Rent for new Tenants without limitation (1809(a))
 - “Vacancy decontrol” - limitation of Costa-Hawkins Act
- PRHB may issue rules and regulations restricting Rent for new tenancies where such restrictions permitted by law (1809(b))
- After setting initial Rent, may only increase Rent in accordance with the Charter Amendment (1809(c))

RENT ADJUSTMENT PETITIONS



SECTION 1813: FAIR RETURN PETITION

27

- Petition for Upward Adjustment, or “Fair Return” Petition (1808(a))
 - ▣ Landlord must demonstrate greater increase required to receive “fair return”
- No Fair Return petition permitted where Landlord has failed:
 - ▣ To comply with Charter Amendment or regulations, after order of PRHB or other authority
 - ▣ To maintain Rental Unit in compliance with health and safety requirements (1808(a)(1))

SECTION 1813: FAIR RETURN STANDARD

28

- “Fair Return” standard maintains Net Operating Income (NOI)
- $\text{NOI} = \text{Gross rental income minus operating expenses (1813(b)(5)(A))}$
- Gross Rental Income (1813(b)(5)(B))
 - ▣ **Includes:** gross rents and all other income/consideration received in connection with use and occupancy of Rental Unit
 - ▣ **Excludes:** utility charges for sub-metered gas, electricity or water; charges for trash/sewer; charges for laundry services; storage charges; and additional rents that are supplementary to primary rent

SECTION 1813: FAIR RETURN STANDARD

29

- Operating Expenses (1813(b)(5)(C))
 - ▣ **Includes:** reasonable costs of operation and maintenance; management expenses; utility costs; real property taxes; license and registration fees; landlord-performed labor; costs of capital replacements; legal expenses; interest allowances for expenses that are amortized
 - ▣ **Excludes:** mortgage principal or interest payments or other debt service; any penalties pursuant to Charter Amendment; land lease expenses; political and lobbying contributions; depreciation; any expenses for which Landlord has been reimbursed unreasonable increases in expenses since Base Year; expenses associated with master-metered gas/electricity; expenses attributable to unreasonable delays in maintenance/repairs

SECTION 1813: FAIR RETURN STANDARD

30

- Fair Return Standard (1808(b))
 - ▣ Presumes Net Operating Income (NOI) in Base Year (2021) provided Landlord with fair return
 - ▣ Right to NOI = Base Year NOI plus 50% of CPI since Base Year
 - ▣ Base Year CPI = CPI for calendar year 2021
 - ▣ “Current year” CPI = annual CPI for calendar year before calendar year the application is filed
 - ▣ If subsequent Fair Return petition is filed, then Base Year will be the “current year” from the prior petition

SECTION 1813: FAIR RETURN STANDARD

31

- Adjustment to Base Year NOI (1813(b)(4))
 - ▣ Landlord may rebut presumption that Base Year NOI provided fair return
- Based on at least one of the following:
 - ▣ Exceptional expenses in Base Year
 - Base Year operating expenses unusually high or low compared to other years
 - ▣ Exceptional circumstances in Base Year
 - Gross income in Base Year was disproportionately low due to exceptional circumstances

SECTION 1813: DOWNWARD ADJUSTMENT PETITIONS

32

- Bases for Downward Adjustment of Rent Petitions –
 - ▣ Failure to Maintain Habitable Premises (1813(c))
 - ▣ Decrease in Housing Services or Maintenance (1813(d))
 - ▣ Unlawful Rent (1813(e))

SECTION 1813: HABITABILITY PETITIONS

33

- Failure to maintain Covered Rental Unit in compliance with health and safety and building codes
 - ▣ Civil Code Sections 1941.1 et seq.
 - ▣ Health and Safety Code Sections 17920.3 and 17920.10
- Constitutes a Rent increase
- Tenant may file petition to adjust Rent downward to loss in rental value due to Landlord's failure
- Must (i) specify conditions and (ii) demonstrate Landlord was provided reasonable notice and opportunity to correct issues

SECTION 1813: HOUSING SERVICE PETITIONS

34

- The following without corresponding Rent reduction are considered a Rent increase:
 - ▣ Decrease in Housing Services
 - ▣ Decrease in maintenance
 - ▣ Deterioration of Covered Rental Unit beyond ordinary wear and tear
- Tenant may file petition to adjust Rent downward to loss in rental value due to Landlord's failure
- Must (i) specify conditions and (ii) demonstrate Landlord was provided reasonable notice and opportunity to correct issues

SECTION 1813: HOUSING SERVICE PETITIONS

- “Housing Services include, but are not limited to, repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, Utility Charges that are paid by the Landlord, refuse removal, furnishings, telephone, parking, the right to have a specified number of occupants, and any other benefit, privilege, arrangement or facility provided or contracted for in connection with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building in which the Rental Unit is contained.” (1803(k))

SECTION 1813: UNLAWFUL RENT PETITIONS

36

- Landlord demands or retains Rent in excess of lawful Rent
- Tenant may file petition to adjust Rent to its lawful level (1813(e))
- Landlord will be required to return any excess Rent charged
 - ▣ If Landlord fails to return excess Rent within 30 days, Hearing Officer or PRHB can authorize Tenant to withhold Rent to recover
 - ▣ PRHB must adopt regulations related to rent withholding
 - ▣ Petition order serves as defense to eviction based on nonpayment of rent
 - ▣ Tenant may seek court enforcement of Petition order

SECTION 1814: PETITION PROCEDURES

37

- Hearing Officers (1814(a))
 - ▣ Conduct hearings on petitions
 - ▣ May administer oaths and affirmations
 - ▣ Issue final decision on the merits of the Petition
- Notice of Petition and Hearing (1814(b))
 - ▣ PRHB responsible for notifying affected parties of filing
 - ▣ Must provide copy of petition with notice
- Timing of Hearing (1814(c)). Requires advance notice of -
 - ▣ Bases, theories and relevant documents
 - ▣ Time, date and place of hearing

SECTION 1814: PETITION PROCEDURES

38

- Developing Record (1814(d))
 - ▣ Hearing Officer may require parties to provide books, records, papers
 - ▣ Hearing Officer may conduct inspection or request City conduct inspection
 - ▣ Tenant may request Hearing Officer order an inspection prior to hearing
 - ▣ All documents must be made available to parties before hearing
 - ▣ All parties to petition may be present during inspection
- Open Hearings (1814(e))
 - ▣ Petition hearings are open to the public
 - ▣ Unless prohibited by state/federal law

SECTION 1814: PETITION PROCEDURES

39

- Right to Assistance (1814(f))
 - ▣ All parties may have assistance at hearings
 - ▣ Attorneys, legal workers, Recognize Tenant Organization representatives, or any other persons designated by the party
- Hearing Record (1814(g))
 - ▣ Made available for inspection and copying
 - ▣ All hearings must be audio/video recorded
 - ▣ Must pay for copies of record and recording(s)
- Consolidation (1814(i))
 - ▣ Petitions from same property may be consolidated for hearing for good cause

SECTION 1814: PETITION PROCEDURES

40

- Standard of proof and notice of decision (1814(h))
 - ▣ Decision must be supported by preponderance of evidence submitted
 - ▣ All parties shall be sent notice of decision and copy of the findings of fact and law supporting the decision
 - ▣ Must be notified of right to appeal to PRHB and/or to judicial review
- Time for decision (1814(l))
 - ▣ Final decision on any petition must be made within reasonable time
 - ▣ Decisions decreasing Rent remain in effect until Landlord complies
 - ▣ PRHB must adopt regulations for making prompt compliance determinations

SECTION 1814: PETITION PROCEDURES

41

- Appeal (1814(j))
 - ▣ Any Party may appeal Hearing Officer's decision to full Board
 - ▣ Board may affirm, reverse or modify decision
- Finality of Decision (1814(k))
 - ▣ Decision of Hearing Officer final unless timely appealed to Board
 - ▣ Decision of board will be final unless judicial review is sought
- Fair Return Guaranteed (1814(m))
 - ▣ No part of Charter Amendment can be applied in manner that prevents granting of adjustment necessary to provide landlord with fair return

ENFORCEMENT & REMEDIES



TENANT ENFORCEMENT AND REMEDIES

43

- Tenant Remedies for Excessive Rent (1817(a) and (b))
 - ▣ Petition for a rent reduction
 - ▣ File a civil action
 - If tenant files a civil action and is successful tenant may recover excess rent, attorneys' fees and if the Landlord has acted willfully, or with oppression, fraud or malice, triple damages.

TENANT ENFORCEMENT AND REMEDIES

44

□ Remedies in evictions

- ▣ If Landlord has not initiated the event triggering the eviction within 2 months (i.e. rehabilitation, owner move in) or Landlord acted in bad faith, Tenant is entitled to regain possession of the Rental Unit (1817(c))
- ▣ Landlord violations of Charter Amendment are an affirmative defense to an eviction (1817(d))
- ▣ Domestic violence affirmative defense (1817(e))

PRHB/CITY ENFORCEMENT

45

- Civil Action on behalf of a tenant is tenant fails to bring an action. PRHB/City can recover costs from any monetary recovery from the Landlord (1817(f))
- PRHB can establish fines for violations (1817(g))
- Landlord violations are misdemeanors under City Code (1817(h))
- Injunctive relief (1818)