

Attachment B



June 13, 2024

Mayor Victor M. Gordo
Pasadena City Council Members
Pasadena City Hall
100 North Garfield Ave.
Pasadena, CA 91101
Tel: 805-654-3744

RE: 2024 Charter Amendments

To the Honorable Mayor, Victor M. Gordo and members of the City Council,

I have been retained by the Pasadena Housing Providers, (PHP), PAC, to represent them in presenting the enclosed, proposed, Charter Amendments. The PHP believes that enactment of the following amendments to Measure H will create a stronger bond between the city, the Pasadena Rental Housing Board, tenants and housing providers in the City of Pasadena.

The PHP believes that when Pasadena voters were presented with Measure H, in November of 2022, it was sold as a simple rent control measure. Most voters never read the comprehensive legislation, and few have been able to identify the implementation and operational problems generated by the 43-page ordinance.

A year and a half later, Pasadena tenants, landlords and constituents are frustrated with the Rental Board's inability to meet implementation deadlines, respond to basic questions about the ordinance and its rules, and create any sort of cordial relationship with landlords.

Measure H was written by "tenant activists" with little or no experience in property ownership, economics, or rental housing operation. Many of the provisions are unclear and difficult to interpret. In addition, the drafters applied controls to rental units which disproportionately impact small "mom and pop" owners and Section 8 housing providers. In its current form, the Measure acts to discourage individuals from entering the Pasadena rental property market altogether.

There are dozens of provisions in Measure H deserving of discussion. The purpose of the attached, proposed amendments is to improve its implementation. Because any changes must be approved by the voters, the Pasadena Housing Providers have limited our suggestion to five modifications that we believe will correct the most serious flaws and facilitate the implementation of a sustainable and accountable rent control program.

Our recommendations are as follows:

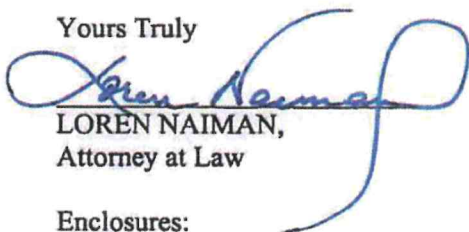
1. Create a more diverse, inclusive and equitable Rental Board by expanding it with the addition of landlords and other Pasadena voters.
2. Exclude from the measure, governmentally subsidized units, (such as Section 8), single family homes; (including condominiums and co-op units), accessory dwelling units and all properties with four or fewer units.
3. Allow for the pass-thru of one half of the housing registration fee/tax to tenants. This shares the payment responsibility for services provided and ensures that spending will be subject to reasonable community oversight and constraints.
4. Modify the penal provisions to provide a more workable enforcement mechanism.
5. Adequately provide for the Constitutionally protected "right of fair return" through the removal of language which is unfair, hard to understand, and which has the potential to breed unnecessary litigation.

We believe that these changes will bring a balanced and more diversely experienced approach to the board and its decisions; exempt small property owners and Section 8 housing providers from the most onerous provisions of the measure; give tenants and landlords a real financial stake in the actions of the Rental Housing Board; simplify enforcement of the board's regulations and provide for the Constitutionally guaranteed right of fair return.

We hope that the City Council will include these changes in the city charter amendments, to be submitted to the voters this November. We are ready to work with the Council to promote these and other changes to the Charter.

The PAC of the Pasadena Housing Providers has attached proposed, amendments to the ordinance. We believe these changes will advance reasonable regulation of the industry, produce good will in the community and achieve beneficial ordinance revisions. We are happy to discuss these proposals at your convenience.

Yours Truly



LOREN NAIMAN,
Attorney at Law

June 13, 2024
Dated

Enclosures:

Chapter 1811 (a)

1811 (a) Composition. There shall be in the City of Pasadena an appointed Rental Housing Board comprised of Pasadena residents as set forth in this section. The Rental Board will consist of ~~eleven (11)~~ fifteen (15) members. Seven (7) members must be Tenants, None of whom may have Material Interest in Rental Property at the time of their appointment or at any later time during their service. The City Council shall appoint one Tenant member from each of the seven (7) districts of Pasadena. Seven (7) members must be Landlords of rental properties in Pasadena. The City Council shall appoint one Landlord member from each of the seven (7) districts of Pasadena. The remaining Rental Board member, henceforth referred to as the "at-large" member, shall be appointed by the City Council, and may reside in any district of Pasadena, and shall be neither a Landlord or a Tenant. ~~The remaining four (4) Rental Board members, henceforth referred to as "at-large" members, shall be appointed by the City Council, and may reside in any district of Pasadena, may or may not be Tenants, and may or may not have Material Interest in Rental Property. In addition, the City Council shall appoint two (2) alternate Board members, one of whom will serve as the alternate to the group of seven (7) Tenants, and the other of whom will serve as the alternate to the group of four (4) at-large members. The alternate member for the Tenant group must be a Tenant and must not have Material Interest in Rental Property at the time of their appointment or at any later time during their service. The alternate Tenant Member may reside in any district of Pasadena. The alternate member for the at large group will be appointed, as with the other at large members, without restrictions on district of residency within Pasadena, Tenant status, or Material Interest in Rental Property. The alternate Board Members will be permitted to attend all Board meetings, and to speak, but will not be authorized to vote unless a regular member of their corresponding group is absent from that meeting or is disqualified or recused from voting on one or more agenda items, or has resigned or been removed from the Rental Board.~~

If any one of the Tenant Members ~~or the Alternate Tenant Member~~ becomes aware that they have gained Material Interest in Rental Property at any time during their service, they must resign their position on the Rental Board and notify City Council within five (5) business days. If any member resigns or is removed from the Rental Board, this will be considered a vacancy, and the member must be replaced in accordance with the procedure described in Section 1810(j) 1811(k). Anyone nominated to this Rental Board must be in compliance with this Article and all other local, state and federal laws regulating the provision of housing. Annually, the Rental Board shall elect one of its members to serve as chairperson.

[Note – other adjustments will be needed, including removal of "Alternate Member" from 1811c and other paragraphs]

Chapter 1804

1804 a (4) Rental Units which a government unit, agency or authority owns, operates, or manages, or in which government-subsidized Tenants reside, ~~if applicable federal or state law or administrative regulation specifically exempt such units from municipal rent control; and;~~

1804 a (6) Rental Units in Single-Family Homes, Single-Family Condominium, Single Family Unit in a Co-Op, Accessory Dwelling Units, or Multi Family Residential Units constituting four (4) or fewer units on one parcel.

Chapter 1811 (I)

1811 (I).1.a Pass-Through to Tenants. ~~No portion~~One half of the Rental Housing Fee may be passed through to Tenants in the year for which it is due. The Rental Housing Fee may be claimed as an operating expense for the purpose of a Petition for Individual Rent Adjustment.

NOTE: Oakland City Code 8.22.500: For rental properties that are covered by the rent adjustment program, a rental property owner may pass through one-half of the fee to a tenant in the year in which it is due, unless the owner does not pay the fee before the date it is deemed late. A rental property owner may not pass through any penalties, delinquent charges, or interest to a tenant.

West Hollywood and Santa Monica have similar 50% pass-throughs

Chapter 1817 (g) and (h)

1817 (g) Penalties for Violations. In addition to the affirmative defense or any other rights of a tenant under law, a violation of the ~~provisions of this article~~ the Rental Board's properly promulgated regulations shall be punishable as an infraction by way of a fine. The Rental Board may establish, and periodically modify, a schedule of fines for violations of ~~various provisions of this article~~ the properly promulgated regulations as they see fit, provided these amounts are reasonable, and are chosen in accordance with applicable law.

~~1817 (h) Criminal Penalties. Any Landlord that violates this Article shall be guilty of a misdemeanor and shall be punished in accordance with Section 1.24.010 of the Pasadena Municipal Code.~~

PROPOSED DRAFT REVISIONS.
Section 1813. - PETITIONS FOR INDIVIDUAL RENT ADJUSTMENT—BASES.

(5) Calculation of Net Operating Income.

(A) Net Operating Income. Net operating income shall be calculated by subtracting operating expenses from gross rental income.

(B) Gross Rental Income.

(i) Gross rental income shall include all rental income of any kind received from a tenant in exchange for occupancy.

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~~(i)~~ Gross rental income shall include all rental income of any kind received from a tenant in exchange for occupancy.

~~(i)~~ Gross rental income shall include:

~~(I) Gross rents calculated as gross rental income at one hundred percent occupancy, adjusted for uncollected Rents due to vacancy and bad debts to the extent such vacancies or bad debt are beyond the control of the Landlord. Uncollected Rents in excess of three percent (3%) of gross rent shall be presumed to be unreasonable unless established otherwise by the Landlord and shall not be included in computing gross income.~~

~~(II) All other income or consideration received or receivable in connection with the use or occupancy of the Rental Unit, except as provided in Clause (ii) of this section.~~

~~(ii)~~ Gross rental income shall not include:

~~(I) Utility Charges for charges for sub-metered gas, electricity or water.~~

~~(II) Charges for refuse disposal, sewer service, and/or other services which are either provided solely on a cost pass-through basis~~

~~and/or are regulated by state or local law.~~

~~(III) Charges for laundry services.~~

~~(IV) Storage charges.~~

~~(V) Additional rents imposed upon Tenants which are supplementary to the primary Rent, such as "pet rent."~~

(6) Operating Expenses.

(A) Operating expenses shall include all reasonable expenses associated with the operation of the housing unit(s).

~~(6) Operating Expenses:~~

~~(A) Included in Operating Expenses. Operating expenses shall include the following:~~

~~(i) Reasonable costs of operation and maintenance.~~

~~(ii) Management Expenses. It shall be presumed that management expenses have increased by the percentage increase in Rents or the CPI, whichever is greater, between the Base Year and the current year unless the level of management services has either increased or decreased significantly between the Base Year and the current year.~~

~~(iii) Utility Costs. Utility Costs except utility where the consideration of the income associated with the provision of the utility service is regulated by state law and consideration of the costs associated with the provision of the utility service is preempted by state law.~~

~~(iv) Real Property Taxes. Property taxes are an allowable expense, subject to the limitation that property taxes attributable to an assessment in a year other than the Base Year or current year shall not be considered in calculating Base Year and/or current year operating expenses.~~

~~(v) License and registration fees. License and registration fees required by law to the extent these expenses are not otherwise paid or reimbursed by Tenants.~~

~~(vi) Landlord performed labor. Landlord performed labor compensated at reasonable hourly rates. However, no Landlord performed labor shall be included as an operating expense unless the Landlord submits documentation showing the date, time, and nature of the work performed. There shall be a maximum allowed under this provision of five percent (5%) of gross income unless the Landlord shows greater services were performed for the benefit of the residents.~~

~~(vii) Costs of Capital Replacements. Costs of capital replacements plus an interest allowance to cover the amortization of those costs where all of the following conditions are met:~~

~~(I) The costs, less any insurance proceeds or other applicable recovery, are averaged on a per unit basis for each Rental Unit actually benefited by the improvement.~~

~~(II) The costs are amortized over a period of not less than thirty six months.~~

~~(III) The costs do not include any additional costs incurred for Property damage or deterioration that result from any unreasonable delay in undertaking or completing any repair or improvement.~~

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~~(IV) The costs do not include costs incurred to bring the Rental Unit into compliance with a provision of the Pasadena Municipal Code or state law where the original installation of the improvement was not in compliance with code requirements.~~

~~(V) At the end of the amortization period, the allowable monthly Rent is decreased by any amount it was increased because of the application of this provision.~~

~~(VI) The amortization period shall be in conformance with a schedule adopted by the Rental Board unless it is determined that an alternate period is justified based on the evidence presented in the hearing.~~

~~(viii) Legal Expenses. Attorneys' fees and costs incurred in connection with successful good faith attempts to recover Rents owing, successful good faith unlawful detainer actions not in derogation of applicable law, and legal expenses necessarily incurred in dealings with respect to the normal operation of the Property. Reasonable fees, expenses, and other costs incurred in the course of successfully pursuing rights under or in relationship to this Chapter and regulations adopted pursuant to this Chapter shall be amortized over a five year period, unless the Rental Board concludes that a different period is more reasonable.~~

~~Allowable legal expenses which are of a nature that does not recur annually shall be amortized over a reasonable period of time. At the end of the amortization period, the allowable monthly Rent shall be decreased by any amount it was increased because of the application of this provision.~~

~~(ix) Interest Allowance for Expenses that Are Amortized. An interest allowance shall be allowed on the cost of amortized expenses; the~~

~~allowance shall be the interest rate on the cost of the amortized expense equal to the "average rate" for thirty-year fixed rate on home mortgages plus two percent. The "average rate" shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the Petition. In the event that this rate is no longer published, the Rental Board shall designate by regulations an index which is most comparable to the PMMS index which shall be used.~~

~~(x) Rental Housing Fee, as defined in Section 181-0(k)(1) 1803(v) and 1811(1)(1).~~

~~(B) Exclusions from Operating Expenses. Operating expenses shall not include the following:~~

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~~(i) Mortgage principal or interest payments or other debt service costs;~~

~~(ii) Any penalties, fees or interest assessed or awarded for violation of any provision of this chapter or of any other provision of law;~~

~~(iii) Land lease expenses;~~

~~(iv) Political contributions;~~

~~(v) Payments to organizations which are substantially devoted to legislative lobbying purposes;~~

~~(vi) Depreciation;~~

~~(vii) Any expenses for which the Landlord has been reimbursed by any utility rebate or discount, Security Deposit, insurance settlement, judgment for damages, settlement or any other method or device;~~

~~(viii) Unreasonable increases in expenses since the Base Year;~~

~~(ix) Expenses associated with the provision of master metered gas and electricity services;~~

~~(x) Expenses which are attributable to unreasonable delays in performing necessary maintenance or repair work or the failure to complete necessary replacements (e.g., a roof replacement may be a reasonable expense, but if water damage occurred as a result of unreasonable delays in repairing or replacing the roof, it would not be reasonable to pass through the cost of repairing the water damage);~~

~~(C) Adjustments to Operating Expenses. Base Year and/or current operating expenses may be averaged with other expense levels for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an~~

~~expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of Base Year and current year expenses. Grounds for such adjustments include, but are not limited to:~~

~~(i) An expense item for a particular year that is not representative.~~

~~(ii) The Base Year expense is not a reasonable projection of average past expenditures for that item in the years immediately preceding or following the Base Year.~~

~~(iii) The current year expense is not a reasonable projection of expenditures for that item in recent years or of future expenditures for that item.~~

~~(iv) A particular expense exceeds the normal industry or other comparable standard for the area, the Landlord shall bear the burden of proving the reasonableness of the expense. To the extent that it is found that the expense is unreasonable it may be adjusted to reflect the normal industry standard.~~

~~(v) A Base Year expense is exceptionally low by industry standards and/or on an inflation adjusted basis is exceptionally low relative to current year expenses although the level or type of service has not changed significantly.~~

~~(vi) An increase in maintenance or management expenses is disproportionate to the percentage increase in the CPI, while the level of services has not changed significantly and/or is not justified by special circumstances.~~

~~(7) Rent Increases for Periods Preceding Date that a Landlord Implemented Rent Increases Pursuant to this Section. In the event that the period for determining the allowable Rent increase pursuant to this section exceeds 120 days, the Landlord may recover increases that would have been permitted if the Rent increase decision had been made within 120 days. The allowance for these increases may be amortized or may be factored into the prospective allowable increase in order to avoid undue hardship on the Tenants.~~

~~(8) (7) Assurance of a Fair Return. It shall be presumed that the MNOI standard provides a fair return. Nothing in this Article shall preclude the Rental Board or Hearing Officer from granting an increase that is necessary in order to meet constitutional fair return requirements.~~

~~(9) (8) Effective Date of Individual Rent Adjustment. Rent increases authorized pursuant to this subsection shall become effective only after the Landlord provides the Tenant written notice of such Rent increase pursuant to state law.~~

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