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CITY OF OAKLAND



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**TO:** The Oakland City Council

**DATE:** December 21, 2017

**SUBJECT:** Tenant Move Out Agreement Ordinance

**FROM:** Barbara Parker  
*City Attorney*

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### **RECOMMENDATION**

**Enact an Ordinance Creating a New Article in O.M.C. Chapter 8.22 to (1) Regulate Tenant Move Out Negotiations and Agreements, (2) Create Disclosure and Reporting Requirements for Such Agreements and Negotiations, and (3) Provide Remedies for Violations.**

### **EXECUTIVE SUMMARY**

This ordinance will improve the fairness and transparency of move out negotiations and move out agreements by regulating the terms of move out agreements, requiring owners to make disclosures to tenants before entering into move out negotiations and move out agreements, and allowing tenants to rescind move out agreements within thirty days of execution under certain circumstances. It will also enable the City to collect data on the location, frequency, and terms of move out agreements and assess their impacts on Oakland's housing market should the City develop a mechanism to do so.

### **BACKGROUND**

Oakland's rising rents have exacerbated tensions between property owners and tenants residing in units that are rent-controlled or covered by Oakland's Just Cause for Eviction Ordinance (JCO). By emptying their units, property owners can attempt to increase their return on their investment by selling the property or re-renting the units at a higher rate. Property owners who seek to expedite this process may enter into move out agreements with tenants who are not aware of the full extent of their legal rights under state and local law.

The City has received numerous reports of low-income tenants entering into one-sided move out agreements from community members and legal service providers. While some of these move out agreements fail to cover even the costs of relocation, others require tenants to give up their legal rights or options to return to the unit. Tenants who inadvertently waive these rights or options are then left with the near-impossible task of finding affordable housing in their communities at an equivalent rent, as state law permits vacant units to be rented at market rate or at entirely uncontrolled rents.

Move out agreements have lasting effects on Oakland's residents and neighborhoods. Many Oakland residents are not able to find or afford suitable housing in their neighborhoods after they accept move out offers. Tenants who are elderly, disabled, or catastrophically ill face especially significant barriers in securing new housing and can be particularly susceptible to intimidation or manipulation by property owners.

At least four other cities – Santa Monica, Berkeley, Los Angeles, and San Francisco – have enacted ordinances that regulate move out negotiations and agreements and facilitate data collection on move out agreements. In 2016 alone, property owners in San Francisco filed 838 declarations of intent to enter into buyout negotiations and 320 executed buyout agreements with the City's Rent Board. Because San Francisco has approximately twice the number of rental units as Oakland, we estimate that Oakland will get between 400 to 500 declarations of intent and 150 to 180 agreements filed per year.

### **PROCEDURE & OBJECTIVES**

This ordinance will better assist Oakland renters to avoid move out agreements that are exploitative or deprive them of their rights under state and local law, including any rights to return to their unit that they may have. Prior to entering into move out negotiations, property owners will be required to make disclosures to tenants in order to inform them of their rights and direct them towards useful resources. These disclosures will include, but are not limited to:

- A statement that the tenant has the right to refuse to enter into a move out agreement, and the property owner cannot retaliate against them for this decision;
- A statement that the tenant may choose to consult with an attorney before entering into move out agreements or negotiations, and referrals to relevant resources;
- A statement that the tenant may rescind the move out agreement for up to thirty days under certain circumstances;
- Descriptions of eligibility for relocation payments and when tenants have rights to return to their units under state and local law, as well as a statement that waiver of rights to return may make move out agreements more valuable; and
- A statement that property owners who fail to comply with the ordinance may be subject to more significant penalties if the tenant is elderly, disabled, or catastrophically ill, and a space for tenants to indicate whether they fall within any of these categories as defined in the ordinance.

Property owners will also be responsible for submitting notifications of their intent to enter into move out negotiations – as well as copies of any fully-executed move out agreements – to the Rent Program. Tenants will have the option to rescind the agreement within thirty days of execution, provided that the unit does not have a new occupant, or the property owner or their family members have not taken steps to move into the unit. Unless the unit is no longer available, the rescission period gives tenants additional time to consult with an attorney and determine whether entering into the move out agreement is in their best interest before they are bound by its terms.

If the tenant chooses to enter into a move out agreement, the property owner will need to pay the tenant at least the amount they are entitled to in relocation, if the tenant is eligible for relocation payments, and provide them with a copy of the agreement in the language in which it was negotiated or in English, Spanish, or Chinese, depending on the language(s) in which the tenant is proficient. According to data from the 2000 census, over 26% of Oakland residents speak either Spanish or Chinese at home.

The property owner will also be required to state under penalty of perjury whether they recently made representations to the tenant-parties that they could evict them pursuant to JCO and, if so, indicate the relevant provision. Property owners' responses to this question will aid the City in identifying property owners who coerce tenants to accept move out agreements through misrepresentation and intimidation.

The ordinance does not apply to move-out agreements negotiated or agreed to during the course of an unlawful detainer (eviction) proceeding.

The ordinance contains penalties for failing to comply with it. It provides for administrative and civil remedies.

## **ANALYSIS**

In addition to informing tenants of their rights, the ordinance will assist with enforcement of other local laws – including the Just Cause for Eviction Ordinance (JCO) and the Tenant Protection Ordinance (TPO) – by providing for oversight of move out negotiations and agreements. Once the ordinance is enacted, property owners purporting to displace tenants pursuant to JCO will need to either initiate a formal eviction or notify the City of their grounds for eviction under JCO. Both options will require property owners to submit information that will help the City identify bad actors who are attempting to force tenants out of their units under false pretenses.

One of the downsides to the ordinance is that, because the ordinance does not apply to agreements made after the property owner files an unlawful detainer, property owners faced with the choice to either follow the ordinance's procedures for move out agreements or initiate a formal eviction may decide to start an eviction. By pursuing formal evictions, property owners can avoid the ordinance's requirements, in particular the filing of these agreements with the City, which may make them public documents. Many current unregulated move out agreements are confidential; they would not be under this ordinance. There are some indications in San Francisco that some property owners may file an unlawful detainer in order to get around the ordinance. However, unlawful detainer actions can be time-consuming and costly, and agreements to settle such actions are often approved by a court.

The ordinance's notice provision will streamline TPO enforcement by enabling the City to track property owners who repeatedly pursue move out agreements with uninterested tenants. Presenting a tenant with a move out offer more than once in six months after the tenant has expressed in writing that they do not desire to receive additional offers is a violation of the TPO, as is accompanying move out offers with threats or intimidation.

While this ordinance aims to help tenants make more informed and intelligent decisions regarding move out agreements, it may fall short of achieving this goal for tenants without access to legal services. To ensure the ordinance's effectiveness for these tenants, City Council should consider providing funding for legal assistance for high-risk tenants considering move out agreements.

### **SOCIAL IMPACT**

The City appreciates that move out agreements can be mutually beneficial for tenants and property owners. This ordinance is not intended to curtail the ability of property owners and tenants to enter into these agreements. It is a disclosure and reporting law that aims to prevent unscrupulous property owners from taking advantage of the significant bargaining power disparities that exist between them and their tenants, who may be uncertain of their legal rights in the context of move out agreements. While the ordinance's requirements may dissuade some property owners from pursuing move out agreements, the City believes it will not have a significant chilling effect on legitimate move out agreements in Oakland.

### **FISCAL IMPACT**

Recent amendments to the Rent Adjustment Ordinance and regulations have added filing requirements that, in turn, impose additional duties on Rent Program staff. The additional staff duties resulting from the filing requirements include:

- Processing the filed documents;
- Monitoring and following up on incomplete or late filings;
- Responding to public records act request, including redacting any non-disclosable information;
- Considering citations for non-compliance.

Staff estimates that the additional filing requirements recently added to the Rent Program, including those in the Tenant Move-Out Ordinance, if adopted, will necessitate the addition of one administrative analyst staff position. We estimate that the Tenant Move Out Ordinance alone will require one half an administrative analyst position. We base this on the activity for San Francisco's version of a tenant move-out ordinance. San Francisco receives on the order of 900 declarations of intent and 320 agreements per year. Because San Francisco has approximately twice the number of rental units as Oakland, we estimate that Oakland will get between 400 to 500 declarations of intent and 150 to 180 agreements filed per year.

These duties should be assigned to a Program Analyst I. The salary plus benefits for a Program Analyst I is \$149,469.35.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** Tenant displacement can lead to homelessness, which limits the individual's opportunity to improve their economic situation and strains City resources through service provision.

**Environmental:** Move out agreements have long-term impacts on the character and diversity of Oakland's neighborhoods. Many Oakland residents cannot afford market rate housing in their communities and would need to move to more affordable areas if they accepted a move out offer. This would lead to longer commutes and increased transportation needs for local workers.

**Social Equity:** (1) The disclosures and thirty-day rescission period will help level the playing field between property owners and tenants – who may not be aware of their rights or have immediate access to legal services – during move out agreement negotiations. (2) The enhanced penalties for violations against elderly, disabled, and catastrophically ill tenants will protect some of Oakland's most vulnerable renters. (3) The ordinance's language/translation requirements will undermine efforts by unprincipled property owners to exploit the language barriers that disadvantage Oakland's non-English-speaking residents in the context of move out agreements.

**ACTION REQUESTED OF CITY COUNCIL**

The Council is requested to enact the Tenant Move Out Agreement Ordinance.

For questions regarding this report, please contact Kent Qian at 238-4982 or Richard Illgen at 238-6517.

Very truly yours,

BARBARA J. PARKER  
City Attorney

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APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY CITY ATTORNEY PARKER, COUNCILMEMBERS GULLÉN AND KALB



CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE ADDING A NEW ARTICLE VI TO O.M.C. CHAPTER 8.22 TO (1) REGULATE TENANT MOVE OUT AGREEMENTS AND NEGOTIATIONS, (2) CREATE DISCLOSURE AND REPORTING REQUIREMENTS FOR SUCH AGREEMENTS AND NEGOTIATIONS, AND (3) PROVIDE REMEDIES FOR VIOLATIONS**

**WHEREAS**, the increased demand for rental housing in Oakland has caused rents to skyrocket, destabilizing Oakland's rental housing market and triggering an affordable housing crisis; and

**WHEREAS**, Oakland's rental housing costs were the fifth highest in the nation in August 2016, with median rental prices of \$2,210 per month for a one-bedroom unit (up 39.6% over the past three years) and \$2,730 per month for a two-bedroom unit (up 60.5% over the past three years) (Zumper National Rent Report: August 2016); and

**WHEREAS**, the majority of Oakland's residents are renters, many of whom live in rent-controlled units or units covered under Oakland's Just Cause for Eviction Ordinance; and

**WHEREAS**, the widening gap between prices for market value rental housing and rent-controlled units increasingly incentivizes property owners to deploy abusive tactics against tenants of rent-controlled units to force them to move; and

**WHEREAS**, property owners are incentivized to use similar tactics to encourage tenants of units covered under Oakland's Just Cause for Eviction Ordinance to move; and

**WHEREAS**, property owners may negotiate move out agreements to circumvent state and local legal requirements and restrictions for no-fault evictions, including

payment of relocation assistance, limitations on re-renting the unit, and reporting requirements. Oakland's recent amendments to its Ellis Act Ordinance and its Relocation Ordinance, which expanded eligibility for relocation payments and increased the amount property owners must pay, will only make move out agreements a more appealing option for property owners seeking to remove tenants; and

**WHEREAS**, cash move out agreements for thousands of dollars can prove cost-effective for property owners, who can recoup their investment by selling the building for a greater return with vacant units or re-renting the units at market rate; and

**WHEREAS**, many move out negotiations are conducted under circumstances where there are significant bargaining power disparities between property owners and tenants. This makes tenants vulnerable to property owners who resort to intimidation or manipulation to persuade tenants to accept move out offers that deprive them of the full extent of their legal rights to return to the unit or are in amounts below the minimum relocation benefits to which tenants may be entitled; and

**WHEREAS**, many Oakland residents are not able to afford suitable housing in their neighborhoods or communities after they accept move out offers (A Roadmap Towards Equity: Housing Solutions for Oakland, California: September 2015); and

**WHEREAS**, elderly, disabled, and catastrophically ill tenants can be particularly susceptible to property owners' high-pressure tactics and face more significant barriers in securing new housing; and

**WHEREAS**, with the exception of certain provisions of the Tenant Protection Ordinance (O.M.C. 8.22.600 et seq.), move out negotiations and agreements are not subject to regulation in Oakland. In the absence of data collection concerning the frequency, location, and terms of move out agreements, the City is not able to accurately assess their impact on tenant displacement in certain communities and on the local housing market as a whole; and

**WHEREAS**, the City Council of Oakland regards tenant displacement as one of the most significant challenges facing the City and is dedicated to pursuing policies that promote housing security for inhabitants of all income levels and preserve the integrity and character of the Oakland community; and

**WHEREAS**, in light of the increased housing pressures placed on low- and middle-income residents, the City Council finds that reasonable regulation of aspects of the property owner-tenant relationship is necessary to foster constructive communication, maintain an adequate supply of a variety of rental housing options, and protect the health, safety, and general welfare of the public; and

**WHEREAS**, this action is exempt from the California Environmental Quality Act ("CEQA") pursuant to sections of the CEQA Guidelines, taken together and each as a separate and independent basis, including but not limited to: Section 15378 (regulatory actions), Section 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), Section 15061(b)(3) (no significant environmental impact), and Section 15183 (consistent with the general plan or zoning); and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Addition of Article VI to Chapter 8.22 of the Oakland Municipal Code.** That the City Council hereby adopts the addition of Section 8.22.700 et. seq. as Article VI of Chapter 8.22 of the Oakland Municipal Code, as follows.

**Article VI – Tenant Move Out Agreement Ordinance**

**8.22.700 Findings and Purpose**

- A. This Ordinance shall be known as the "Tenant Move Out Agreement Ordinance."
- B. The majority of Oakland's residents are renters, many of whom live in rent-controlled units or units covered by Oakland's Just Cause for Eviction Ordinance.
- C. The City of Oakland is dedicated to pursuing policies that protect its most vulnerable residents and promote housing security for inhabitants of all income levels.
- D. Oakland's affordable housing crisis has exacerbated bargaining power disparities between property owners and tenants, contributing to a dynamic whereby tenants may enter into move out agreements without full knowledge or understanding of their legal rights.
- E. The City Council finds that reasonable regulation of aspects of the property owner-tenant relationship is necessary to foster constructive communication, maintain an adequate supply of a variety of rental housing options, and protect the health, safety, and general welfare of the public.
- F. The main purposes of this Ordinance are to improve the fairness and transparency of move out negotiations and move out agreements, to ensure that tenants who enter into move out negotiations or move out agreements are aware of their rights, to prevent property owners from contracting around the legal rights and remedies available to tenants under existing law, and to equip the City with useful tools for monitoring the impacts of move out agreements on Oakland's residents and housing market.



## 8.22.710 Definitions

"Catastrophically Ill" has the same meaning as in O.M.C. 8.22.360 A.9.e.ii.

"City Administrator" means the Oakland City Administrator or their designee.

"City Attorney" means the Oakland City Attorney or their designee.

"Disabled" has the same meaning as in O.M.C. 8.22.360 A.9.e.i.b.

"Elderly" means sixty (60) years of age or older.

"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).

"Move Out Agreement" means a written agreement wherein the Owner pays the Tenant money or other consideration to vacate a Rental Unit. An agreement to settle an unlawful detainer action filed in Alameda County Superior Court shall not be a "Move Out Agreement" for purposes of this Ordinance.

"Move Out Negotiations" means any discussion or bargaining, whether oral or written, between a Tenant and an Owner regarding the possibility of entering into a Move Out Agreement. A Move Out Negotiation begins upon the Owner's initiation of such discussion or bargaining and ends at the earliest of the following events: when a Move Out Agreement is executed, when the Tenant vacates their unit, when the Tenant expresses to the Owner that the Tenant no longer wishes to engage in Move Out Negotiations, or when the Owner provides written notice to the Tenant that the Owner no longer wishes to engage in Move Out Negotiations. A counteroffer by the Tenant does not end a Move Out Negotiation.

"New Occupant" means a Tenant who has signed an enforceable rental agreement for a Rental Unit, paid a security deposit for the unit, and given their current landlord notice of their intent to vacate their current Rental Unit (if applicable). "New Occupant" may also refer to the Owner or the Owner's qualifying relative under 8.22.360 A.9, provided that they have incurred expenses or given notice to a current landlord in reasonable reliance on the Move Out Agreement.

"Owner" has the same meaning as "Landlord" in O.M.C. 8.22.340.

"Rent Adjustment Program" has the same meaning as in O.M.C. 8.22.020.

"Rent Board" has the same meaning as "Board" in O.M.C. 8.22.020.

"Rental Unit" as used in this Ordinance includes a "Rental Unit" as defined in O.M.C. 8.22.340 or a "Covered Unit" as defined in O.M.C. 8.22.020.

"Tenant" has the same meaning as in O.M.C. 8.22.340.

"Tenant Protection Ordinance" means the ordinance codified at O.M.C. 8.22.600 (O.M.C. Chapter 8.22, Article V).

#### **8.22.720 Applicability**

This Ordinance shall apply to all Rental Units, except Rental Units that are owned or operated by a public entity (e.g., the City of Oakland, the Redevelopment Agency of the City of Oakland, and the Oakland Housing Authority).

#### **8.22.730 Pre-Negotiation Disclosures and Notifications**

A. Prior to commencing Move Out Negotiations for a Rental Unit, an Owner shall provide each Tenant in that Rental Unit with a written disclosure on a form prescribed by the City, which shall include, but is not limited to, the following:

1. A statement that the Tenant has a right to refuse to enter into a Move Out Agreement or engage in Move Out Negotiations;
2. A statement that the Owner may not retaliate against the Tenant for refusing to enter into a Move Out Agreement or engage in Move Out Negotiations;
3. A statement that the Tenant may choose to consult with an attorney before entering into a Move Out Agreement or engaging in Move Out Negotiations;
4. A statement that offering payments to a Tenant to vacate more than once in six (6) months after the Tenant has notified the Owner in writing that the Tenant refuses to enter into a Move Out Agreement or engage in Move Out Negotiations constitutes harassment under the Tenant Protection Ordinance (O.M.C. 8.22.600, et seq.);
5. A statement that the Tenant may rescind the Move Out Agreement for up to thirty (30) days after it is fully executed by all parties, provided that a New Occupant does not already have rights to the occupy the Rental Unit and the decision to rescind is unanimous among the Tenants who are parties to the Move Out Agreement;

6. General eligibility for relocation payments and the amounts Tenants may be entitled to;
7. A statement that the Tenant may find information regarding tenants' rights and contact information for tenants' assistance organizations at the City's Rent Adjustment Program office or on the Rent Adjustment Program website, as well information regarding the City's other relevant online resources;
8. A description of when Tenants have an option or right to return to their Rental Unit under state or local law and an explanation that waiver of these rights, if applicable, may make a Move Out Agreement more valuable;
9. A statement that market rate rents in the area may be significantly higher than the Tenant's current rent and that the Tenant may wish to check rents for comparable Rental Units before entering into a Move Out Agreement, particularly a Move Out Agreement that waives any options or rights to return to the Rental Unit that the Tenant may have;
10. A statement that payments pursuant to a Move Out Agreement may be subject to federal and/or state taxation and that the Tenant should consult taxing authorities or a tax professional for more information or advice on taxability;
11. A statement that Move Out Agreements and documents related to Move Out Agreements that are submitted to the City may be public, but that the City may redact personal information to the extent possible consistent with Oakland, state, and federal public records laws or policies. Parties to a potential Move Out Agreement should be advised that information a party believes to be private may be subject to public disclosure;
12. The names of all people authorized to conduct Move Out Negotiations and enter into Move Out Agreements on the Owner's behalf;
13. Any other information required by the Rent Adjustment Program consistent with the purposes and provisions of this Section;
14. The following statements and question in bold letters with a space for the Tenant to affix their initials next to each possible answer:

"Owners who fail to comply with the requirements of Oakland's Tenant Move Out Agreement Ordinance (O.M.C. 8.22.700, et seq.) may be subject to more significant penalties if the tenant is elderly, disabled, or catastrophically ill. As defined in the Ordinance, elderly tenants are sixty (60) years of age or older. Tenants are disabled if they are disabled under Section 12926 of the California

Government Code. Tenants are catastrophically ill if they are both disabled under Section 12926 of the California Government Code and suffering from a life-threatening illness, as certified by their primary care physician. Do you believe that you are elderly, disabled, or catastrophically ill as those terms are defined above? Yes \_\_\_\_\_ No \_\_\_\_\_ I don't know \_\_\_\_\_ I prefer not to say \_\_\_\_\_."

15. A space for the Owner to sign and write the date on which the Owner provided the Tenant with the disclosure form; and

16. A space for each Tenant to sign and write the date on which they received the disclosure form.

B. The Owner shall provide the Tenant with a fully executed copy of the disclosure form, or a copy of the disclosure form executed by the Owner, within three days of execution.

C. The Owner shall retain at least one copy of each executed disclosure form, or the disclosure form executed by the Owner along with a proof of service to the Tenant, for five (5) years after the date on which the Tenant executes the form or the Owner serves the form. The Owner shall maintain a record of the date(s) on which the Owner provided the disclosure form to each Tenant.

D. Prior to commencing Move Out Negotiations for a Rental Unit, the Owner shall provide the following information to the Rent Adjustment Program, on a form prescribed by the Rent Adjustment Program and signed by the Owner under penalty of perjury:

1. The Owner's name, business address, business email address, business telephone number, and authorized agent, if applicable;

2. The address of the Rental Unit that may be the subject of Move Out Negotiations;

3. A list of all dates on which the Owner initiated other Move Out Negotiations with any current or prior Tenants at the property and the Rental Units occupied by each Tenant, completed to the best of the Owner's recollection and knowledge; and

4. A statement that the Owner provided each Tenant with the disclosure form required under this Section.

E. The City may make the information included on this form publically available, except that the City may redact information from the forms, including personal

information, to the extent such redaction is consistent with Oakland, state, or federal laws or policy addressing disclosure of documents or information within the City's possession or control. The City does not warrant that information any party to the Move Out Negotiation or Agreement believes to be private will not be released.

F. The Owner and the Tenant may agree on the means of communicating and the service of notices pursuant to this Chapter.

#### **8.22.740 Requirements for Move Out Agreements**

A. Every Move Out Agreement shall be in writing.

1. If the Tenant is proficient in Spanish or Chinese and is not proficient in English, the Owner shall make a copy of the Move Out Agreement available in the Tenant's language of proficiency. If the Owner negotiated the terms of the rental agreement in a non-English language, the Owner shall make a copy of the Move Out Agreement available in that language. The Owner shall provide the Tenant with the non-English copy of the agreement at the same time that the Move Out Agreement is presented to the Tenant.

2. Immediately after the parties execute the Move Out Agreement, the Owner shall give each Tenant a copy of the fully executed agreement to retain for the Tenant's records. The Owner will provide and retain a proof of service of the executed Move Out Agreement.

B. Every Move Out Agreement shall include the following statements in a size equal to or at least fourteen (14) point type in close proximity to the space reserved for the signature of the Tenant(s):

1. "You, the tenant, may cancel this agreement in writing at any time up to and including the thirtieth (30<sup>th</sup>) day after all parties have signed this agreement, provided that a New Occupant does not have rights to occupy the Rental Unit. A New Occupant is a tenant who has signed an enforceable rental agreement for the Rental Unit, paid a security deposit for the unit, and given their current landlord notice of their intent to vacate their current rental unit (if applicable). The Owner, or their qualifying relative under O.M.C. 8.22.360 A.9, may also be considered a New Occupant, provided that they have incurred expenses or given notice to their current Owner in reasonable reliance on the Move Out Agreement. To cancel this agreement, send notification of your intent to rescind to the Owner by any means through which you have agreed to communicate. If you have not agreed to a particular mode of communication, either personally serve the Owner with the notice or send the notice by registered and first class mail to the last

known address of the property owner. If the document is returned undelivered, use reasonable means to notify the Owner of the rescission."

2. "You have a right not to enter into a Move Out Agreement."

3. "If you are entitled to relocation payments under federal, state, or local law, a Move Out Agreement for less than the amount of the relocation payments to which you are entitled violates Oakland's Tenant Move Out Agreement Ordinance (O.M.C. 8.22.700 et seq.) and is voidable by you."

4. "You may choose to consult with an attorney and/or a tenants' rights organization before signing this agreement."

5. "Owners who fail to comply with the requirements of Oakland's Tenant Move Out Agreement Ordinance (O.M.C. 8.22.700, et seq.) may be subject to more significant penalties if the tenant is elderly, disabled, or catastrophically ill. As defined in the Ordinance, elderly tenants are sixty (60) years of age or older. Tenants are disabled if they are disabled under Section 12926 of the California Government Code. Tenants are catastrophically ill if they are both disabled under Section 12926 of the California Government Code and suffering from a life-threatening illness, as certified by their primary care physician. Do you believe that you are elderly, disabled, or catastrophically ill as those terms are defined above? Yes \_\_\_\_\_ No \_\_\_\_\_ I don't know \_\_\_\_\_ I prefer not to say \_\_\_\_\_."

6. "Owners who recover possession of a rental unit pursuant to Sections 8.22.360 A.8 (owner move-back), A.9 (owner or relative occupancy), A.10 (repairs), and A.11 (taking the property off the rental market) of the Oakland Municipal Code must comply with certain requirements. In the 180 days preceding execution of this agreement, did you (the owner), or any of your agents or representatives either a) issue a notice terminating tenancy to any of the tenants who are parties to this agreement or b) otherwise communicate orally or in writing to any of those tenants that you intended to recover possession of the unit under any of these O.M.C. Sections? Yes \_\_\_\_\_ No \_\_\_\_\_. If so, which section? \_\_\_\_\_."

Immediately after Items 1-4, there shall be a line for each Tenant to affix their initials. The question listed as Item 5 shall appear in the Move Out Agreement once for each Tenant who is a party to the Move Out Agreement. A space for the Tenant to affix their initials shall be provided next to the question. The question listed as Item 6 shall be answered by the Owner under penalty of perjury.

C. Move Out Agreements must be for greater than the amount of the relocation payments to which the Tenant may be entitled under Oakland, state, or federal law. Move Out Agreements for less than the amount to which the Tenant is entitled in relocation payments are in violation of this Ordinance and can be regarded by the Tenant as non-compliant Move Out Agreements.

#### **8.22.750 Rescission of Move Out Agreements**

A. Rescission by Right. A Tenant shall have the right to rescind a Move Out Agreement for up to thirty (30) days after its execution by all parties, subject to the requirements in subsection C below. In order to rescind a Move Out Agreement under this Section, the Tenant(s) must notify the Owner that the Tenant(s) intend(s) to rescind the Move Out Agreement. If the Tenant(s) choose(s) to place the statement in the mail, it must be postmarked or otherwise served by the thirtieth (30<sup>th</sup>) day after execution of the Move Out Agreement to be effective.

B. Rescission of Non-Compliant Move Out Agreement.

1. A Move Out Agreement that does not satisfy all of the requirements of this Ordinance, including containing any required signatures or initials by the parties, may be rescinded by the Tenant within six (6) months of its execution, subject to the requirements of subsection C below. In any communication to the Owner rescinding a non-compliant Move Out Agreement, the Tenant must specifically set out the reasons why the Tenant believes the Move Out Agreement is non-compliant.

2. Within five (5) days of receiving a rescission notice, the Owner must either offer the unit back to the Tenant or respond with reasons why the Move Out Agreement may not be rescinded.

3. A Tenant who rescinds a Move Out Agreement because it is non-compliant and is unable to move back into the unit may seek other remedies against the Owner.

C. In order to rescind a Move Out Agreement, the following conditions must be met:

1. The decision to rescind must be unanimous by all Tenants who are parties to the Move Out Agreement;

2. The Tenant(s) must sign a document indicating their intent to rescind the Move Out Agreement and the basis for the rescission, including any non-compliance with this Ordinance by the Owner;

3. All Tenants who are parties to the Move Out Agreement must also agree to refund all monies paid to them under the Move Out Agreement; and

4. The notice of intent to rescind may be sent by any means through which the parties have agreed to communicate. If the parties have not agreed to a particular mode of communication, the Tenant(s) must either personally serve the property owner with the notice or send the notice by registered and first class mail to the last known address of the Owner. If the document is returned undelivered, the Tenant(s) must use reasonable means to notify the Owner of the rescission.

D. A rescission is not effective if the Rental Unit has a New Occupant. Notwithstanding any waivers in a Move Out Agreement, a Tenant who is unable to rescind because the Rental Unit has a New Occupant still retains rights to seek remedies under other laws should the Owner violate other laws that permit an Owner to seek recovery of a unit (e.g., Owner or relative move in (O.M.C. 8.22.360A.9), Ellis Act Ordinance (O.M.C. 8.22.400)).

E. Notice of New Occupant. If an Owner secures a New Occupant for the Rental Unit within the 30-day rescission period, the Owner must provide the Tenant with written notification of the New Occupant within five (5) days of meeting the criteria for a New Occupant by providing the Tenant with a written statement signed under penalty of perjury. This notification must state whether the New Occupant is a new Tenant, the Owner, or a qualifying relative under the owner-occupancy provisions of the Just Cause for Eviction Ordinance (O.M.C. 8.22.360A.9). The notice must also provide the Tenant with documentary evidence of the New Occupant. If the Owner is unable to provide documentary evidence of the New Occupant within five (5) days, the Tenant's right to rescind is extended by the number of days it takes the Owner to comply.

#### **8.22.760 Filing Move Out Agreements With City**

The Owner shall file a copy of the Move Out Agreement with the Rent Adjustment Program no sooner than the thirty-fifth (35<sup>th</sup>) and no later than the forty-fifth (45<sup>th</sup>) day after service of the executed Move Out Agreement. This filing requirement does not apply to Move Out Agreements rescinded by the Tenant pursuant to Section 8.22.750.

#### **8.22.770 Remedies**

A. Administrative Remedies

1. Administrative Citation. Any person violating any provision or failing to comply with any requirements of this Tenant Move Out Agreement Ordinance



may be assessed an administrative citation pursuant to O.M.C. Chapter 1.12 for the first offense.

2. Administrative Civil Penalties. Any person violating any provision or failing to comply with any requirements of this Tenant Move Out Agreement Ordinance multiple times may be assessed a civil penalty for each violation pursuant to O.M.C. Chapter 1.08.

## B. Civil Remedies

1. A Tenant who believes that an Owner has violated provisions of this Tenant Move Out Agreement Ordinance may file an action against the Owner for equitable relief (e.g., injunctions and restitution), actual damages or minimum damages, and recovery of costs and reasonable attorney's fees. The greater of actual damages or minimum damages of \$500 per violation shall be awarded for an Owner's failure to comply with the obligations established under this Ordinance. The greater of treble actual damages or minimum damages of \$1,000 per violation shall be awarded for an Owner's willful failure to comply with the obligations established under this Ordinance.

2. The City Attorney may file an action against an Owner that the City Attorney believes has violated provisions of this Ordinance. Such an action may include requests for equitable relief (e.g., injunctions and restitution), assessment and recovery of administrative citations and civil penalties, and recovery of costs and reasonable attorney's fees. The City Attorney has sole discretion to determine whether to bring such an action.

3. An Owner who violates subsection 8.22.730 A-C, 8.22.740, or 8.22.780 D of this Tenant Move Out Agreement Ordinance with respect to Elderly or Disabled Tenants is liable in a court action for each and every such offense for monetary damages of no less than three times the actual damages suffered by their aggrieved Tenant(s) (including damages for mental or emotional distress), or for minimum damages of one thousand dollars (\$1,000.00) per offense, whichever is greater. Any Owner who willfully violates subsection 8.22.730 A-C, 8.22.740, or 8.22.780 D of this Tenant Move Out Agreement Ordinance with respect to Elderly or Disabled Tenants is liable in a court action for each and every such offense for money damages of no less than three times the actual damages suffered by their aggrieved Tenant(s) (including damages for mental or emotional distress), or for minimum damages of one thousand five hundred dollars (\$1,500.00) per offense, whichever is greater.

4. An Owner who violates subsection 8.22.730 A-C, 8.22.740, or 8.22.780 D of this Tenant Move Out Agreement Ordinance with respect to Catastrophically Ill Tenants is liable in a court action for each and every such offense for monetary damages of no less than three times the actual damages suffered by their aggrieved Tenant(s) (including damages for mental or emotional distress), or for minimum damages of one thousand five hundred dollars (\$1,500.00) per offense, whichever is greater. Any Owner who willfully violates subsection 8.22.730 A-C, 8.22.740, or 8.22.780 D of this Tenant Move Out Agreement Ordinance with respect to Catastrophically Ill Tenants is liable in a court action for each and every such offense for money damages of no less than three times the actual damages suffered by their aggrieved Tenant(s) (including damages for mental or emotional distress), or for minimum damages of two thousand dollars (\$2,000.00) per offense, whichever is greater.

C. Nonexclusive Remedies and Penalties. The remedies provided in this Ordinance are not exclusive, and nothing in this Ordinance shall preclude a party from seeking any other remedies, penalties, or procedures provided by law.

D. An Owner who believes a Tenant may not be eligible for enhanced penalties due to age, disability, or catastrophic illness may utilize the procedure set out in regulations for contesting similar status under the Just Cause for Eviction Ordinance (O.M.C. 8.22.300, et seq.). This subsection does not preclude an Owner from contesting eligibility in a later administrative or court proceeding.

#### **8.22.780 Miscellaneous**

A. Non-waivability. The provisions of this Tenant Move Out Agreement Ordinance may not be waived. Any term of any Move Out Agreement, lease, contract, or other agreement which purports to waive or limit a Tenant's substantive or procedural rights under this Tenant Move Out Agreement Ordinance is contrary to public policy, unenforceable, and void.

B. Waiver of Other Tenant Rights. Where a Tenant has a non-waivable right under other Oakland, state, or federal laws, a Tenant cannot waive such a right in a Move Out Agreement, including any rights or options to return to the Rental Unit.

C. Service of Notices. Notices under this Chapter must be served by registered and first class mail or by personal service, unless the Owner and Tenant agree on another form of service, such as email or facsimile. Notices served by mail are deemed received five (5) days after mailing. All other forms of service are deemed received on the date of receipt unless the Owner and Tenant agree otherwise.

D. **Retaliation Prohibited.** Retaliation against a Tenant because of the Tenant's exercise of rights under the Tenant Move Out Agreement Ordinance is prohibited and constitutes a violation of this Ordinance. Retaliation claims may only be brought in court and may not be addressed administratively.

E. **Rules and Regulations.** The Rent Board is authorized to create and amend rules and regulations consistent with this Ordinance.

F. **Forms and Informational Materials.** The City Administrator is authorized to develop forms, informational, and instructional materials to assist Owners and Tenants in complying with this Chapter.

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**SECTION 2. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decisions of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause, or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses, or phrases may be declared invalid or unconstitutional.

**SECTION 3. Effective Date.** This Ordinance shall become effective thirty (30) days after adoption. City Administration may extend this effective date if forms are not available within this time-frame.

**SECTION 4. Grandparented Move Out Negotiations and Agreements.** This Ordinance's requirements shall not apply to any Move Out Negotiations that were initiated or written Move Out Agreements that were fully executed by all parties and effective prior to the effective date of this Ordinance.

**SECTION 5. CEQA Compliance.** This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to sections of the CEQA Guidelines, taken together and each as a separate and independent basis, including but not limited to: Section 15378 (regulatory actions), Section 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), Section 15061(b)(3) (no significant environmental impact), and Section 15183 (consistent with the general plan or zoning).

**SECTION 6. Public Database Feasibility.** The City Administrator shall consider the feasibility of creating a public, searchable database with information based on filings

under O.M.C. Chapter 8.22.700. If the City creates such a database, the required disclosures shall contain a provision referring to the database and how to access it.

IN COUNCIL, OAKLAND, CALIFORNIA,  
PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN AND  
PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

**AN ORDINANCE ADDING A NEW ARTICLE VI TO O.M.C. CHAPTER 8.22 TO (1) REGULATE TENANT MOVE OUT AGREEMENTS AND NEGOTIATIONS, (2) CREATE DISCLOSURE AND REPORTING REQUIREMENTS FOR SUCH AGREEMENTS AND NEGOTIATIONS, AND (3) PROVIDE REMEDIES FOR VIOLATIONS**

The Ordinance enacts the Tenant Move Out Agreement Ordinance to regulate tenant move out agreements and negotiations; create disclosure and reporting requirements for such agreements and negotiations; and provide remedies for violations.