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OFFICE OF THE CITY ATTORNEY

## OAKLAND CITY COUNCIL

Ordinance No. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCIL PRESIDENT GIBSON MCELHANEY, PRESIDENT PRO  
TEMPORE LARRY REID, AND COUNCILMEMBERS GUILLEN AND KAPLAN

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**INTERIM ORDINANCE, ADOPTED AS AN URGENCY  
MEASURE PURSUANT TO CALIFORNIA GOVERNMENT  
CODE SECTION 65858, ESTABLISHING A TEMPORARY  
MORATORIUM ON THE CONVERSION, DEMOLITION,  
RECONFIGURATION, AND REHABILITATION OF  
RESIDENTIAL HOTELS, TO TAKE EFFECT  
IMMEDIATELY UPON ADOPTION**

**WHEREAS**, the City of Oakland is experiencing a severe housing affordability crisis that requires immediate emergency action by the City government; and

**WHEREAS**, residential hotels are often housing of last resort for the poor, especially in areas with extremely high costs of housing such as Oakland; and

**WHEREAS**, the housing affordability crisis continues to overwhelm Oakland residents and threatens the public health, safety and/or welfare of our citizenry; and

**WHEREAS**, a number of economic forces, including the dearth of hotels and the high cost of new construction in Oakland, create incentives for developers to purchase residential hotels and repurpose them for non-residential uses, such as boutique hotels, or reconfigure them for other residential uses that result in the displacement of existing tenants or the removal of rental units from the market; and

**WHEREAS**, the loss of residential hotels in Oakland would exacerbate the already overwhelming burden on public and non-profit agencies that provide protective, social, health, psychological, nutritional, and other important and necessary services to the tenant population of such hotels; and

**WHEREAS**, the City Council has determined that residential hotels are an essential component of the City's affordable housing supply as a flexible and easily accessible form of housing that provides low, very low, and extremely low-income residents the ability to remain in Oakland and to avoid homelessness; and

**WHEREAS**, the City of Oakland Housing and Community Development Department prepared a report in September of 2015 which states that from 1985 through 2015, the City lost approximately 799 residential hotel units; and

**WHEREAS**, the City of Oakland Housing and Community Development Department continues to monitor the status of the residential hotel units studied in the September 2015 report, and as of October 2016 an additional 712 units in the downtown area are at-risk of being lost or are already lost to the supply of Naturally Occurring Affordable Housing (NOAH) units; and

**WHEREAS**, on October 4, 2016, the Oakland City Council adopted Resolution No. 86408 C.M.S., which requested that the City Planning Commission initiate action to amend Oakland's Planning Code to preserve the supply of residential hotels within six months of the Resolution's passage; and

**WHEREAS**, Resolution No. 86408 C.M.S. directed the City Administrator to return with an informational report detailing what options the City may pursue to preserve the use of residential hotels to provide housing for extremely low, very low and low-income residents including how the City could purchase or master lease residential hotels; and

**WHEREAS**, Resolution No. 86408 C.M.S. also called for the City to immediately initiate action to amend Section 17.102.230(B) of the Oakland Planning Code to increase the relocation assistance amount to be equivalent to relocation assistance amounts adopted by the City Council for evictions authorized by the Ellis Act, California Government Code Section 7060, et seq., and any other amendments necessary to protect the tenants of residential hotels; and

**WHEREAS**, until such time that the City concludes its review and adopts amendments to the Oakland Planning Code, the City needs an interim moratorium on the approval of the rehabilitation, reconfiguration, conversion, or demolition of existing units that results in the displacement of tenants to prevent the removal of such units as housing for low, very low, and extremely low-income Oakland residents, except where such rehabilitation, reconfiguration, or conversion results in the creation of long-term assisted housing affordable to low, very low, and extremely low-income persons; and

**WHEREAS**, the California State Legislature has recognized the need for retaining residential hotels to provide housing for low, very low, and extremely low-income individuals in legislation, and in justifying such legislation:

The Legislature finds and declares that the need for decent housing among individuals of very low and low income is great, and that residential hotels are often the only form of housing affordable to these individuals. Many residential hotels are in poor condition and in need of rehabilitation, and many are being demolished or converted to other uses. California Health and Safety Code § 50519(a); and

**WHEREAS**, the California State Legislature has further recognized the need for retaining residential hotels in support of amendments to the Ellis Act exempting residential hotels in larger cities ("Residential hotels are considered a unique and important source of affordable housing in San Francisco and throughout California." AB 1217 Assembly Bill, Bill Analysis); and

**WHEREAS**, pursuant to Government Code Section 65858, the City Council may introduce and adopt, by an affirmative seven votes of the Council, as an urgency measure, an interim ordinance prohibiting the approval of any uses that may be in conflict with contemplated land use proposals that the City Council is considering; and

**WHEREAS**, pursuant to Government Code Section 65858, the City Council must state the reasons constituting the necessity of an urgency measure to protect the public health, safety, and welfare of the City; and

**WHEREAS**, the unrestricted rehabilitation, reconfiguration, conversion, and demolition of units in residential hotels exacerbates the housing crisis by making such units unaffordable to low, very low, and extremely low-income Oakland residents and may result in the displacement of Oakland residents from their homes and communities; and

**WHEREAS**, based on the findings above, the City finds that there is a current and immediate threat to the public health, safety, and/or welfare associated with the approvals of applications to rehabilitate, reconfigure, convert, and demolish units in residential hotels and that approval of additional rehabilitation, reconfiguration, conversion, and demolition of such units would result in that threat to the public health, safety, and/or welfare; and

**WHEREAS**, the City desires to further the public health, safety and/or welfare by temporarily prohibiting the rehabilitation, reconfiguration, conversion, and demolition of residential hotel units while it deliberates comprehensive and permanent reforms to the Oakland Municipal Code and/or the Oakland Planning Code; now, therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Urgency Finding.** The City Council finds the foregoing recitals to be true and correct and an integral part of the City Council's decision, and hereby adopts such recitals as findings. The City Council further finds that there is a necessity to adopt as an urgency measure an interim ordinance temporarily prohibiting the

rehabilitation, conversion, and demolition of residential hotel units while the City Council studies permanent revisions to the Oakland Municipal Code and/or the Oakland Planning Code because such unrestricted rehabilitations, conversions, and demolitions directly threaten the public health, safety, and/or welfare of the City.

**SECTION 2. Duration of Interim Ordinance.** This Ordinance shall remain in full force and effect for a period of forty-five (45) days from the date of its adoption. This 45-day period may only be extended by the City Council in accordance with the provisions of Government Code Section 65858.

**SECTION 3. Definitions.** The following terms, whenever used in this Ordinance, shall be construed as defined in this section. Words and phrases not defined here shall be construed as defined in the Oakland Municipal Code and/or the Oakland Planning Code.

(a) **Affordable Housing Organization** means a religious, hospital, scientific, or charitable fund, foundation, limited liability company, or corporation, including a limited partnership in which the managing general partner is an eligible nonprofit corporation or eligible limited liability company, or a veterans' organization, as described by California Revenue and Taxation Code Section 214, subsection (g).

(b) **Affordable Housing Project** means a property used exclusively for rental housing and related facilities, owned or operated by an affordable housing organization where, pursuant to legally binding restrictions, all of the units are restricted as affordable housing at an affordable rent or affordable housing cost, as those terms are defined in California Health & Safety Code Section 50053 and 50052.5, to occupancy by extremely low, very low, low, and/or moderate-income households, as those terms are defined California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106.

(c) **Conversion** means any action that converts one or more existing residential hotel units to be used for other Residential or Commercial Activities, as those terms are defined in Section 17.10.030 of the Oakland Planning Code, regardless of whether substantial improvements have been made to such units.

(d) **Demolition** means an action that reduces the number of existing residential hotel units in a residential hotel, either through complete or partial demolition of the building; or by combining two or more existing residential hotel units to make a larger new unit.

(e) **Owner** means an owner of record of a residential hotel or an entity or individual with a long-term lease or some form of equitable interest in a residential hotel.

(f) **Rehabilitation** means reconfiguration, reconstruction, renovation, repair, or other improvement to all or part of a residential hotel or a residential hotel unit which results in displacement of existing residents for more than two (2) weeks.

(g) **Residential Hotel** is defined in accordance with California Health and Safety Code Section 50519, and means any building containing six (6) or more residential hotel units, intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests, but does not mean any building in which every unit is rented exclusively on a less-than-weekly basis.

(h) **Residential Hotel Unit** means a rooming unit or efficiency dwelling unit, as those terms are defined in Section 17.09.040 of the Oakland Planning Code, which is used for permanent or semi-transient residential activities, as those terms are defined in Sections 17.10.110 and 17.10.120 of the Oakland Planning Code, and is located in a residential hotel.

**SECTION 4. Temporary Moratorium.** For a period of forty-five (45) days from the effective date of this Ordinance, or until such time as the City Council concludes the review described above and adopts new permanent regulations addressing the conversion, demolition, or rehabilitation of residential hotels or residential hotel units, whichever comes first, the City of Oakland hereby declares a moratorium on the conversion, demolition, and rehabilitation of residential hotels and residential hotel units (the "Moratorium"). During the term of this Moratorium:

(a) No permit shall be issued or approval granted to convert residential hotel units or residential hotels; and

(b) No permit shall be issued or approval granted to demolish residential hotel units or residential hotels; and

(c) No permit shall be issued or approval granted to rehabilitate residential hotel units or residential hotels; and

(d) No permit shall be issued for any new construction, demolition, or rehabilitation on a lot where a resident of a residential hotel unit has been or will be displaced for more than two (2) weeks.

**SECTION 5. Exceptions.** This Ordinance shall not apply to:

(a) Any residential unit or portion of a residential hotel to the extent an owner possesses an established, vested right not to be subject to this Ordinance, including without limitation, pursuant to Section 17.114.030 of the Oakland Planning Code; or

(b) Any residential hotel that has been or shall be turned into an Affordable Housing Project, as determined by the City of Oakland Housing and Community Development Department; or

(c) Any residential hotel that must comply with a City order (1) to repair or demolish an unsafe, uninhabitable or substandard condition; (2) to rebuild due to destruction by fire, earthquake, or other natural disaster; or (3) to comply with

administrative nuisance abatement proceedings, provided that no provision of the Oakland Municipal Code prohibits rebuilding. For the purpose of this exception, such repair or rebuilding will not amount to a "substantial rehabilitation" as that term is used in Section 8.22.030.B.2 of the Oakland Municipal Code.

**SECTION 6. Withdrawal of Residential Hotels from Rental Market.** This Ordinance shall not prevent the owner of a residential hotel from sending or delivering to the Rent Adjustment Program a notice of intent to withdraw all of the residential hotel units from rent or lease pursuant to California Government Code Section 7060, et seq. (the Ellis Act), provided that prior to the withdrawal, the owner has complied with Oakland Municipal Code Section 8.22.400, et seq. (the Ellis Act Ordinance), where applicable.

**SECTION 7. Petition for Relief from Moratorium.**

(a) The City Council, acting in its legislative capacity and by resolution, may grant an exemption from this Ordinance in cases (1) where the Moratorium's application would be unlawful under and/or conflict with Federal, State, or local law or regulation, or (2) where hardship has been duly established to the satisfaction of the City Council. An application for these exemptions shall be filed with the City Clerk on forms provided by the City.

(b) Any person seeking approval that would be affected by this Moratorium, and who contends that the Moratorium as applied to him or her would be unlawful under and/or conflict with Federal, State, or local law or regulation or would amount to a hardship, must submit a petition to the City requesting relief from the Moratorium ("Petition"). Petitions must be on the Appeal Form provided by the City of Oakland and submitted at 250 Frank H. Ogawa Plaza, Suite 5313, to the attention of the Director of the Housing and Community Development Department. Failure to submit such a Petition will preclude such person from challenging the moratorium in court. The Petition shall identify the name and address of the applicant, the affected application number, and shall state specifically and completely how the Moratorium as applied to him or her would be unlawful under and/or in conflict with Federal, State, or local law or regulation, and shall include payment of fees in an amount of \$1,622.57. Failure to raise each and every issue that is contested in the Petition and provide appropriate supporting evidence will be grounds to deny the Petition and will also preclude the Petitioner from raising such issues in court. The City Administrator, or her designee, shall mail to the applicant a written determination accepting or rejecting the Petition.

(c) If a Petitioner seeks to challenge the written determination of the City Administrator, the Petitioner must appeal to the City Council and such appeal must be filed within ten (10) calendar days of the date from which the City Administrator's written determination was issued and by 4:00 p.m. Appeals must be on the form provided by the City of Oakland and submitted at 250 Frank H. Ogawa Plaza, Suite 5313, to the attention of the Director of the Housing and Community Development Department. The Appeal must state specifically wherein it is claimed there was error or abuse of discretion by the City Administrator or wherein the decision is not supported by

substantial evidence. The Appeal also must include payment of \$1,891.08. Failure to make a timely appeal will preclude a Petitioner from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all arguments and evidence in the record which supports the basis for the appeal. Failure to do so will preclude a Petitioner from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented in the Petition to the City Administrator.

**SECTION 8. Implementing Interpretations and Regulations.** The City Administrator has the authority to issue interpretations of and regulations to implement this Ordinance, including without limitation to develop a list of residential hotels that are subject to the Moratorium.

**SECTION 9. Environmental Review.** This Ordinance is exempt from the California Environmental Quality Act under CEQA Guidelines Section 15061(b)(3), because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment, in that this Ordinance temporarily prohibits the conversion, demolition, and rehabilitation of existing residential hotel units, which is solely an administrative process resulting in no physical changes to the environment. Accordingly, this Ordinance contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures.

**SECTION 10. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision 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 adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**SECTION 11. Effective Date/Certification by City Clerk.** Pursuant to Government Code Section 65858, this Ordinance shall become effective immediately on final adoption if it receives seven or more affirmative votes. The City Clerk shall certify to the passage and adoption of this Ordinance causing it to be posted, as required by law, and it shall thereafter be in full force and effect.

**SECTION 12. Term.** For the term of this Ordinance, as set forth in Section 2 hereof, the provisions of this Ordinance shall govern, to the extent there is any conflict between the provisions of this Ordinance and the provisions of any other City code, ordinance, resolution or policy, and all such conflicting provisions shall be suspended.

**SECTION 13. Authority.** This Ordinance is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, and Article XI of the California Constitution, Government Code Section 65858, and the Housing Element of the City's General Plan.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES:

ABSENT:

ABSTENTION:

ATTEST:

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

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



## NOTICE AND DIGEST

### **INTERIM ORDINANCE, ADOPTED AS AN URGENCY MEASURE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858, ESTABLISHING A TEMPORARY MORATORIUM ON THE CONVERSION, DEMOLITION, RECONFIGURATION, AND REHABILITATION OF RESIDENTIAL HOTELS, TO TAKE EFFECT IMMEDIATELY UPON ADOPTION**

This emergency ordinance proposes to place a 45-day moratorium on the conversion, demolition, reconfiguration, and rehabilitation of single room occupancy hotels throughout the City of Oakland pursuant to Government Code section 65858. The emergency ordinance is based on legislative findings that there is a current and immediate threat to the health, safety and welfare of Oakland's residents who will face displacement or homelessness in the absence of the temporary moratorium.