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APPROVED AS TO FORM AND LEGALITY

By: Brian J. O'Keefe
City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. 12707 C.M.S.

INTRODUCED BY COUNCILMEMBER _____

AN EMERGENCY ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (OAKLAND MUNICIPAL CODE CHAPTER 8.22) TO ALLOW RENTAL PROPERTY OWNERS TO (1) CHARGE TEMPORARY BELOW MARKET RATE RENT TO PERSONS DISPLACED BY HURRICANE KATRINA AND (2) INCREASE THE RENT TO MARKET RATES AT THE END OF THE TEMPORARY PERIOD, AND INVOKING THIS PROVISION FOR HURRICANE KATRINA

WHEREAS, in September 2005, Hurricane Katrina devastated the New Orleans area, parts of Mississippi and other areas of the southern United States requiring massive and unparalleled displacement of individuals and households from their homes and communities and many will not have homes to return to due to the destruction wreaked by Hurricane Katrina and the flooding and contamination of the homes that are still standing; and

WHEREAS, experts have predicted that it will take weeks and perhaps months simply to drain the flood waters from New Orleans, not to mention necessary demolition, clean up, restoration of water, power and other utilities and rebuilding; and

WHEREAS, also in September 2005 on the heels of Hurricane Katrina, Hurricane Rita may cause similar damage to Texas and other areas of the Gulf Coast displacing residents of those areas and further displacing evacuees from Hurricane Katrina from these areas of Texas as well as potentially causing additional flooding in New Orleans; and

WHEREAS, the New Orleans Mayor recently called for residents who had returned to the City to evacuate once again in the wake of Hurricane Rita and in anticipation of additional flooding; and

WHEREAS, local, state and federal authorities have declared a state of emergency in the areas hit by Hurricane Katrina and similar declarations are expected in the wake of Hurricane Rita; and

WHEREAS, certain cities in Texas have called upon their residents to evacuate in anticipation of Hurricane Rita and the federal government and a number of states, including California have already dispatched ambulances, planes, buses and other vehicles to Texas; and

WHEREAS, in an attempt to prepare for the potential devastation and disaster that Hurricane Rita may cause, the Federal Emergency Management Agency (FEMA) contacted Oakland officials requesting assistance for victims of that Hurricane, including requesting that Oakland advise the agency of the number of displaced individuals that Oakland can accommodate; and

WHEREAS, many individuals and households displaced by Hurricane Katrina have relocated or are now temporarily or permanently relocating to Oakland and the Bay Area; and

WHEREAS, the County of Alameda estimates that at least one thousand persons displaced by Hurricane Katrina are already in the area and more are expected from Hurricanes Katrina and Rita displacements; and a number of the families have been provided shelter by relatives, friends and others, in some cases in very cramped and overcrowded conditions; and the vast majority of displaces in the County have relocated to Oakland; and

WHEREAS, many of the displaced persons have lost their jobs, monetary resources, and even lack access to their own funds due to the closure of financial institutions in the areas Hurricane Katrina struck; and these individuals and households need temporary and possibly permanent housing and possibly jobs, medical care, food, resources to attend schools and a wide array of other services; and

WHEREAS, the foregoing conditions and circumstances and the migration of displaced persons to Oakland and the Bay Area creates health and safety risks if they are not provided adequate housing and other resources and services; and

WHEREAS, some rental property owners may have vacant rental units that they would be willing to offer to Hurricane displacees at rents substantially below market rates for temporary periods; and

WHEREAS, Oakland's Rent Adjustment Ordinance (O.M.C. Chapter 8.22) regulates rent increases to tenants after the owner establishes the initial rent to a new tenant and limits rent increases so that a landlord would be prohibited from increasing a rent that was initially substantially below market to a market rate rent without allowing

the tenant to contest the rent increase and force the landlord to justify the increase based on costs and other factors set out in the Ordinance; and

WHEREAS, the Just Cause for Eviction Ordinance (O.M.C. 8.22.300, et seq.) would preclude an owner from evicting a tenant at the end of a temporary tenancy unless the owner had a "just cause" to do so; and just cause would not include tenant's failure to pay rent that was increased in violation of the Rent Adjustment Ordinance; and

WHEREAS, in order to encourage owners to offer rental units to people displaced by the recent Hurricane disasters and future disasters, the City Council believes that owners renting to disaster displacees should have the option of increasing the rent to market at the end of the temporary rental period, provided that any subsequent rent increases would be regulated under the Rent Adjustment Ordinance, and City staff is instructed to give priority to processing petitions filed by tenants who have rental agreements pursuant to this ordinance; and

WHEREAS, the sudden influx of substantial numbers of Hurricane displacees has created an emergency in that the displacees may be forced to live in overcrowded, unhealthy, and unsanitary circumstances, and/or become homeless and they lack adequate food, shelter, medical and other services and resources that Oakland and other Bay Area cities will be called upon to provide; and .

WHEREAS, Oakland residents who take in Hurricane displacees who are relatives, friends, or strangers, thereby also may create overcrowded, unhealthy, and unsanitary living conditions; this influx of displacees is also expected to strain existing temporary and other housing resources thereby putting at risk other Oakland residents; and

WHEREAS, this ordinance would help to address the emergency by creating temporary housing opportunities for displacees who may be in dire living and financial circumstances; and

WHEREAS, for all of the reasons discussed above, this ordinance is necessary to help address the potential health and safety risks to the incoming Hurricane displacees and to the Oakland residents who may take them in as well as the larger community; and

WHEREAS, for all of the foregoing reasons the City Council declares that this ordinance is necessary to preserve the public health and safety of the City of Oakland and its residents during this emergency; and

WHEREAS, pursuant to Oakland City Charter section 213 this emergency ordinance, may be introduced and adopted at the same meeting if it receives six affirmative votes of the City Council;

NOW, THEREFORE, the Council of the City of Oakland does ordain as follows:

Section 1. Chapter 8.22 of the Oakland Municipal Code (Rent Adjustment Ordinance) is hereby amended to add the following a new Section 8.22.200 effective immediately upon passage with six votes of the City Council to read as follows:

8.22.200 Reduced Rents to Disaster Victims.

A. Purpose. The purpose of this Section 8.22.200 is to permit Owners to offer temporary below market Rent to certified displaced persons from areas hit by the Hurricane Katrina disaster ("Displacees") and to enable the Owners to increase the Rent to market rate at the end of the temporary period.

Invocation of Section and Period of Invocation. The provisions of this Section will remain in effect for six months after the date of action invoking this Section unless rescinded earlier by the City Council. The City Council may extend the time during which this section is in effect. After the end of the period during which the invocation of Section 8.22.200 was in effect, Owners and Displacees may not enter into new rental agreements pursuant to this Section, but may renew or extend rental agreements previously entered into under this Section during the invocation on the same terms.

B. Rent Increases to Displacees. During the period of invocation set out in subsection 8.22.200B, an Owner may enter into a rental agreement with a Displacee for an initial Rent at a below market rate fixed for a period of at least six months and may increase the Rent at the end of the six month period if the Owner has given the Displacee the notice required by subsection 8.22.200D. The Rent increase at the end of the six month period or other term is not subject to the limitations on Rent increases provided in this Chapter, but any subsequent Rent increases are subject to the limitations on Rent increases provided in this Chapter 8.22. The Rent increase must not exceed the amount stated in the notice the Owner gives to the Displacee prior to the commencement of the tenancy. If an Owner agrees to continue to rent to a Displacee at the reduced Rent for a period longer than one year, the Owner may increase the initial Rent pursuant to O.M.C. 8.22.070 (Rent Adjustments for Occupied Rental Units). In order for a rental agreement to be eligible under this Section 8.22.200, the below market Rent must be no greater than fifty percent (50%) of the HUD Fair Market Rents in effect in Oakland at the time this Section is invoked based on the number of bedrooms in the Rental Unit. The City Administrator will make available to the public the maximum rents for eligibility under this Section.

C. Notice to Displacee. An Owner who seeks to Rent to a Displacee, prior to entering into a rental agreement with a Displacee, must give the Displacee a notice provided by the Rent Adjustment Program. This notice must specify the amount of the Rent the Owner will charge after the end of the term of the temporary rental agreement; and at a minimum shall include information about the Rent Adjustment Ordinance and the Just Cause Ordinance.

D. Determination of Eligibility as Displacee.

1. The City Administrator will develop a list of public or private agencies, including but not limited to the Federal Emergency Management Agency, that will identify and certify that persons are Displacees and can provide documentation of certification as to whether a person is a Displacee.

2. The City Administrator may develop a procedure for Owners to receive approval in advance of entering into a rental agreement with a Displacee. A rental agreement that is approved in advance would not be subject to challenge on the ground that the agreement violates this Section 8.22.200 or Chapter 8.22, absent fraud by the Owner.

3. An Owner who enters into a rental agreement that is based on fraud or misrepresentation by the Tenant is not subject to any penalty under this Chapter 8.22 unless the Owner knew or should have known of the fraud or misrepresentation in advance of entering into the rental agreement with the Tenant.

4. Eligibility to receive benefits as a Displacee of the disaster for which this Section 8.22.200 is invoked is implied as material term of the tenancy created by a rental agreement entered into under this Section. The tenancy of an ineligible Tenant who knowingly or fraudulently enters into a rental agreement under this Section is subject to termination under subsection 8.22.360A(1) on the ground that s/he violated a material term of the tenancy and the Rent for the Rental unit may be increased to the rate given in the notice required by subsection 8.22.200D, unless the Owner knew or should have known of the Tenant's fraud or ineligibility. The Owner also may recover the difference in the Rent the Tenant actually paid and the Rent set out in the notice required by subsection 8.22.200D and such Owner's costs and reasonable attorney's fees.

E. Termination of Tenancy by Displacee. Any rental agreement entered into pursuant to this section must permit the Displacee to terminate the rental agreement pursuant to California Civil Code §1946.

F. Definitions. The following definitions are applicable to this Section 8.22.200.

1. For purposes of this Section, "Displacee" means a person or household who has been displaced as a result of the Katrina Hurricane disaster for which this Section has been invoked by City Council, and who has been certified as such by FEMA or other agency designated by the City Administrator pursuant to subsection 8.22.200E(1) of this Ordinance.

G. Procedures, Standards, and Regulations. The Rent Adjustment Board is authorized to develop regulations pursuant to O.M.C. 8.22.040D(2). The City Administrator is authorized to develop any procedures and standards to carry out this Section that are not in conflict with this Section 8.22.200 or any Regulations that may later be adopted.

H. Retroactivity. This Section 8.22.200 may be applied to rental agreements that Displacees and Owners executed before this Ordinance became effective if it meets all requirements of Section 8.22.200 including this subsection H. The City Administrator is authorized to develop the procedures and requirements that rental agreements must comply with to be eligible for the protections provided by this Section.

Section 2. This ordinance shall be effective immediately if passed by the affirmative vote of at least six City Council members.

Section 3. Section 8.22.200 of the Oakland Municipal Code is hereby invoked for persons or households who have been displaced as a result of Hurricane Katrina.

IN COUNCIL, OAKLAND, CALIFORNIA, OCT 04 2005

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID,

AND

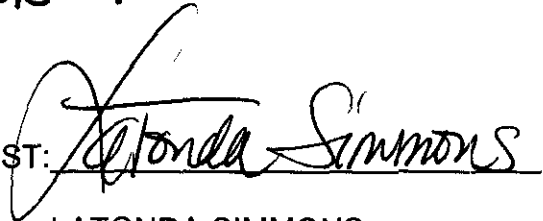
~~PRESIDENT DE LA FUENTE~~ - 7

NOES- *President De La Fuente* - 1

ABSENT- \emptyset

ABSTENTION- \emptyset

ATTEST:



LATONDA SIMMONS

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

Introduction Date: OCT 04 2005