

CITY OF OAKLAND



OFFICE OF THE CITY ATTORNEY

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December 5, 2006

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Honorable Members of the City Council

Re: Affordable Homes for Oaklanders Plan
(Condominium Conversions)
Amendments to Ellis Act Ordinance

Dear Honorable Councilmembers:

At its November 28, 2006 meeting, the Community and Economic Development Committee requested that the City Attorney's Office prepare a number of amendments to the proposed amendments to Chapter 16.36, the "Affordable Homes for Oaklanders Plan" responding to legal and policy issues. Attached are the amendments the Committee requested.

The Committee also requested amendments to O.M.C. 8.22.400, the Ellis Act Ordinance. Those amendments are also attached.

Also attached is a revision to Section 8 of the proposed Ordinance, one of the findings pertaining to the California Environmental Quality Act.

Very truly yours,

John A. Russo
City Attorney

By:

Richard F. Illgen
Deputy City Attorney

Attachments

2006 DEC - 1 AM 10:27

CITY ATTORNEY

DRAFT

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING O.M.C. CHAPTER
8.22.400 (ELLIS ACT ORDINANCE) TO INCREASE
RELOCATION PAYMENTS TO DISPLACED TENANTS
AND AMEND NOTICE REQUIREMENTS

Whereas, the Ellis Act (California Government Code Section 7060, et seq.) requires City's to permit landlords to evict tenants in order to withdraw residential rental units from the market, but permits City's to adopt restrictions on that right;

Whereas, in 2003, the City Council adopted O.M.C. 8.22.400 to enact restrictions on landlord's right to withdraw units from the rental market pursuant to the Ellis Act;

Whereas, in 2003, the state Legislature amended the Ellis Act to broaden the City's ability to require mitigations when landlords withdraw units from the market so that mitigations are no longer limited to lower income tenants;

Whereas, when tenants are displaced from their homes as a result of evictions, they incur moving costs, require up front expenditures for first and last months' rent, and are frequently moving from a rental unit with a controlled, below market rent to a new rent that starts out at a much higher market rent;

Whereas, the City Council desires that Oakland tenants have the opportunity to purchase more affordable housing and tenants who are evicted without fault by the tenant, such as when a landlord withdraws rental units from the market, should have the same rights to purchase their former units that are converted to condominiums as if they were still tenants as a mitigation for their eviction; now therefore

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

Oakland Municipal Code Chapter 8.22 is hereby amended as follows:

8.22.430 When Withdrawal is Effective (except for eligible Elderly or Disabled Tenants).

A. For units not occupied by a tenant who has resided in the unit for at least one year and is either elderly (62 years or older) or disabled, the withdrawal of the rental units is effective not less than one hundred twenty (120) days from the

delivery in person or by first-class mail to the Rent Adjustment Program all of the following (referred to together as the "Withdrawal Notices"):

1. Written notice to the Rent Adjustment Program of the intent to withdraw the Rental Units. The notice must be signed under penalty of perjury and must include the following:

- a. Address and legal description of the subject property;
- b. Number of rental units being removed;
- c. The names of all tenants residing in the units being withdrawn; and
- d. The lawful rent applicable to each such unit paid on the date of the notice.

2. A fee in an amount set by the City Council in the Master Fee Schedule to reimburse the city for the estimated direct and actual costs administering the withdrawal of the rental units.

3. A conformed copy of a written summary of the notice of intent (Paragraph 8.22.430 A.1) recorded with the Alameda County Recorder and in a form prepared by the Rent Adjustment Program. The summary must contain such information as is prescribed by the Rent Adjustment Program to summarize the owner's notice of intent. This summary must not contain any of the information deemed confidential pursuant to Subsection 8.22.430 E.

4. A certification under penalty of perjury that terminations of all tenancies for the units to be withdrawn have commenced in accordance with applicable law. Such notices may be served in any manner authorized for the service of a notice terminating tenancy under California Civil Code Section 1946. The notices terminating tenancy must contain the following information:

a. That the owner is terminating the tenancy pursuant to this O.M.C. Article 8.22.400 and will provide the Rent Adjustment Program with the withdrawal notices required in Paragraph 8.22.430A.

b. A summary of the specific information to be provided to the Rent Adjustment Program in that notice regarding the particular tenant's unit;

c. That within thirty (30) days of receipt of notice to terminate, the tenant may notify the owner in writing that the tenant would be interested in re-renting the unit if it is re-offered for rent at a future time and advising the tenant to notify the owner of future address changes;

d. A description of the following the includes the time frames for the tenant to provide notices to the owner:

- i. the right of a tenant to re-rent the withdrawn unit should it be re-offered for rent;
 - ii. the right of tenants who are elderly or disabled to an extended withdrawal period;
- and

e. The right of lower-income tenants to relocation payments.

f. The right to purchase a unit on the property should the property be converted to condominiums and sold, and any purchase discounts and other purchase benefits available to former tenants pursuant to O.M.C. Chapter 16.36 (Conversion to Homeowner Condominiums).

B. Confidential Information. The following information submitted to the Rent Adjustment Program in compliance with this O.M.C. Article 8.22.400 is deemed confidential for purposes of the California Information Practices Act of 1977 (California Civil Code

Section 1798, et seq.)

1. The name or names of the tenants;
2. The rent applicable to any residential rental unit to be withdrawn; and
3. The total number of rental units to be withdrawn.

8.22.450 Relocation Payments to Mitigate Tenant Displacement for Lower Income Households.

A. ~~Tenants households whose income is not more than that permitted for lower income households, as defined by California Health and Safety Code Section 50079.5, are entitled to receive payments to mitigate the adverse impact of displacement from withdrawal of the unit.~~

B. ~~The relocation payment is the sum of the following:~~

1. ~~The set amount of one thousand dollars for moving expenses incurred by the Tenant when moving from the withdrawn unit;~~
2. ~~TwoSix months of the tenant's rent in effect at the time owner issues the notice of termination of tenancy under this O.M.C. Article 8.22.400;~~
3. ~~The amount of two thousand dollars or the first and last month's rent on the Tenants new rental unit, if any, occupied immediately after moving from the subject property, whichever is greater.-~~

C. ~~A tenant whose household qualifies as lower income may request relocation payments from the owner, provided the tenant gives written notice of his or her entitlement to such payments to the owner within sixty (60) days of the date of delivery to the Rent Adjustment Program of the Withdrawal Documents.~~

D. ~~An owner who, reasonably and in good faith, believes that a tenant does not meet the income standards as a household may request documentation from the tenant demonstrating the tenant's income. Such documentation may not include any document that is protected as private or confidential under any state, local, or federal law. The owner's request must be made within fifteen (15) days after receipt of the tenant's notification of eligibility for relocation benefits. The tenant has thirty (30) days following receipt of the owner's request for documentation to submit documentation. The owner must keep the documents submitted by the tenant confidential unless there is litigation or administrative proceedings regarding the tenant's eligibility for relocation payments or the documents must be produced in response to a subpoena or court order, in which case the tenant may seek an order from the court or administrative body to keep the documents confidential.~~

E. ~~Time for payment. The owner must make the relocation payment within fifteen (15) days of the tenant's notice of eligibility or the tenant supplying documentation of the tenant's eligibility, being served with the notice terminating tenancy, provided that the tenant agrees not to contest an unlawful detainer based on the notice to terminate~~

tenancy for the withdrawal of the tenant's rental unit. If the tenant does not so agree, then the relocation payment is not due unless the owner prevails in the unlawful detainer. If the owner prevails in the unlawful detainer, the relocation payment must be paid to the tenant prior to the owner seeking a writ of possession for the tenant to vacate the withdrawn unit.

F. Failure to make the relocation payments in the manner and within such times as prescribed in this Section 8.22.450 is not a defense to an unlawful detainer action. However, if an owner fails to make the relocation payment as prescribed, the tenant may file an action against the owner and, if the tenant is found eligible for the relocation payments, the tenant will be entitled to recover the amount of the relocation payments plus an equal amount as damages and the tenant's attorney's fees. Should the owner's failure to make the payments as prescribed be found to be in bad faith, the tenant shall be entitled to the relocation payments plus an additional amount of three times the amount of the relocation payments and the tenant's attorney's fees.

G. A tenant who is eligible for relocation payments under state or federal law, is not also entitled to relocation under this section. A tenant who is also eligible for relocation under the City of Oakland's Code Enforcement Relocation Program (O.M.C. Chapter 15.60), must elect for either relocation payments under this section or O.M.C. Chapter 15.60, and may not collect relocation payments under both.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN,
REID AND
PRESIDENT DE LA FUENTE

NOES-
ABSENT-
ABSTENTION-

ATTEST:

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

DRAFT

Item: **32**_____