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7-18-03

INTRODUCED BY COUNCILMEMBER _____

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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY

ORDINANCE NO. 12539 C.M.S.

AN ORDINANCE ADOPTING REQUIRMENTS PURSUANT TO THE ELLIS ACT (CALIFORNIA GOVERNMENT CODE SECTIONS 7060, *ET SEQ.*) AND THE JUST CAUSE FOR EVICTION ORDINANCE FOR LANDLORDS DESIRING TO EVICT TENANTS IN ORDER TO WITHDRAW RESIDENTIAL RENTAL UNITS FROM THE MARKET

Whereas, on November 5, 2002, the voters of Oakland adopted Measure EE, the Just Cause for Eviction Ordinance;

Whereas, the Just Cause for Eviction Ordinance permits landlords to evict tenants in order to remove rental property from the rental market in accordance with the Ellis Act (California Government Code 7060, *et seq.*) when landlords do so "in good faith, without ulterior reasons and with honest intent" (Measure EE, Section 6A(11));

Whereas, the Ellis Act permits cities to adopt procedural requirements for landlords to evict tenants to withdraw units, requirements for re-renting withdraw units, and protections for tenants whose units are withdrawn;

Whereas, Measure EE's requirements for landlords to act "in good faith, without ulterior reasons and with honest intent" are essentially embodied in the Ellis Act's procedures, restrictions on re-renting withdrawn units and protections for tenants, thus by adopting the Ellis Act restrictions the City Council is setting out the standards for determining whether a landlord acts "in good faith, without ulterior reasons and with honest intent" in evicting tenants to withdraw units from the market as stated in Measure EE, Section 6A(11);

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN THAT CHAPTER 8.22 OF THE OAKLAND MUNICIPAL CODE IS HEREBY AMENDED TO ADD ARTICLE III AS FOLLOWS:

CHAPTER 8.22

RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS

ARTICLE III

TERMINATING TENANCY TO WITHDRAW RESIDENTIAL RENTAL UNITS) FROM THE RENTAL MARKET

8.22.400 Statement of Purpose.

Measure EE, the Just Cause for Eviction Ordinance adopted by the electorate on November 5, 2002, includes the withdrawal of Rental Units from the rental market as one of the allowable causes for eviction of Tenants (Measure EE, Section 6A(11)). The purpose of this Municipal Code Section is to enact and implement the constraints on and procedures for such withdrawals as authorized by the Ellis Act (Government Code 7060, *et seq.*). This Section shall be interpreted so as to provide the City with the broadest range of authority permitted under these provisions and to intrude the least into the City's authority in all other applications of its power. This Section O.M.C. 8.22.400 shall not be construed to permit the conversion of any rental housing to condominiums, hotels or any other use, which conversions are otherwise regulated by the City of Oakland, the State of California, or other applicable law.

8.22.410 Definitions.

"Disabled" means a person with a disability, as defined in Section 12955.3 of the Government Code.

"Elderly" means a person 62 years old or older.

"Owner" means an owner of record of the real property on which the Rent Units to be withdrawn are located.

"Rent Adjustment Program" means the Rent Adjustment Program as that term is defined in O.M.C. 8.22.020.

"Tenant" means a Tenant as that term is defined in O.M.C. 8.22.020 and also includes a lessee.

"Unit or Rental Unit" means a Covered Rental Unit as that term is defined in O.M.C. 8.22.020 and also includes Rental Units that may be conditionally exempt while occupied by a Tenant who is receiving assistance with rent payments through the federal Section 8 voucher program or any successor or similar program providing rent assistance to low income persons.

"Withdrawal Notices" means those documents an Owner is required to be filed with the Rent Adjustment Program pursuant to Paragraph 8.22.430A.

"Withdrawn Unit" means a Rental Unit that has been withdrawn from the rental market in accordance with this O.M.C. Article 8.22.400.

8.22.420 Application of Chapter 8.22, Article III.

A. This O.M.C. Article 8.22.400 shall only apply to and shall only be exercised for the concurrent withdrawal of all Rental Units in the following (also referred to as "Accommodations" in California Government Code § 7060, et seq):

1. The Rental Units (as defined in O.M.C. 8.22.020) in any detached physical structure containing four or more residential rental units or,
2. With respect to a detached physical structure containing three or fewer residential rental units, the Rental Units in that structure and in any other structure located on the same parcel of land, including any detached physical structure specified in Paragraph 8.22.420 1.

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 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 8.22.430A.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 8.22.430B.

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 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
- iii. the right of lower income Tenants to relocation payments.

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 Tentants;
2. The rent applicable to any residential Rental Unit to be withdrawn; and
3. The total number of Rental Units to be withdrawn.

8.22.440 Effective Date of Withdrawal for Units Occupied by Elderly or Disabled Tenants.

A. If a Tenant is Elderly or Disabled, and has lived in the Rental Unit for at least one year prior to the date of delivery to the Rent Adjustment Program of the Withdrawal Notices required by Paragraph 8.22.430A, then the date of withdrawal of the Rental Unit occupied by that Tenant shall be extended to one year from the date of delivery of the Withdrawal Notices, provided the Tenant gives written notice of his or her entitlement to an extension to the Owner within 60 days of the date of delivery to the Rent Adjustment Program of the Withdrawal Documents.

B. In the event the Tenant provides such notice to the Owner, the following provisions shall apply:

1. The tenancy shall be continued on the same terms and conditions as existed on the date of delivery of the Withdrawal Notices to the Rent Adjustment Program, subject to any CPI Rent Adjustments otherwise available;
2. No party shall be relieved of the duty to perform any obligation under the lease or rental agreement;

C. Within 30 days of the notification by the Tenant to the Owner of his or her entitlement to an extension, the Owner shall give written notice to the Rent Adjustment Program of the claim that the Tenant or lessee is entitled to stay in his/her Rental Unit for one year after the date of delivery to the withdrawal documents.

D. Within 15 days after notification by a Tenant that the Tenant claims status as Elderly or Disabled, an Owner who, reasonably and in good faith, believes that a Tenant does not meet the requirements of this O.M.C. Article 8.22.400 as being Elderly or Disabled may request the Tenant provide information demonstrating the Tenant is Elderly or Disabled. The Owner may not request nor should the Tenant provide any information demonstrating age or disability that is considered confidential by any local, state, or federal law. The Tenant must respond to the request for information within 30 days. The Owner must keep the documents submitted by the Tenant confidential unless there are litigation or administrative proceedings regarding the Tenant's eligibility for Elderly or Disabled status or the 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. The Owner may elect to extend the date of withdrawal on any other Rental Unit within the same building up to one year after the date of delivery of the Withdrawal Notices to the Rent Adjustment Program, subject to Subsection 8.22.440B

F. Within 90 days of the date of delivery of the Withdrawal Notices to the Rent Adjustment Program, the Owner must give written notice to the Rent Adjustment Program and the affected Tenant(s) or lessee(s) of the Owner's election to extend the date of withdrawal and the new date of withdrawal under Paragraph 8.22.440E.

8.22.450 Relocation Payments for Lower Income Households.

A. Tenant 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 two 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 .

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 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 15 days after receipt of the Tenant's notification of eligibility for relocation benefits. The Tenant has 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 15 days of the Tenant's notice of eligibility or the Tenant supplying documentation of the Tenant's eligibility, 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 O.M.C.8.22.450. 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 O.M.C.8.22.450 or O.M.C. Chapter 15.60, and may not collect relocation payments under both.

H. The Regulations may provide procedures for escrowing disputed relocation funds.

8.22.460 Re-Offering Withdrawn Units for Rent.

A. Requirements for all re-offers of Withdrawn Units for rental pursuant to this Subsection.

1. The Owner must provide written notice of the intention to re-offer a Withdrawn Unit to the Rent Adjustment Program not less than thirty days prior to re-offering a Withdrawn Unit for rent;

2. The Owner must offer each Withdrawn Unit at an amount of rent not in excess of the same rent as of the date of withdrawal plus any CPI Rent Adjustments that could have applied had the Units not been withdrawn;

3. Offer to former Tenant.

a. The Owner must first offer the Withdrawn Unit for rent or lease to the Tenant displaced from that unit by the withdrawal pursuant to this Section O.M.C. 8.22.460, if the Tenant advised the Owner in writing within 30 days of the displacement of the Tenant's desire to consider an offer to renew the tenancy and furnished the Owner with an address to which that offer is to be directed. Such Tenant must advise the Owner at any time during the eligibility of any change of address to which an offer is to be directed.

b. If the Owner again offers a Withdrawn Unit for rent pursuant to Subsection 8.22.460 and the Tenant advised the Owner pursuant to Subparagraph 8.22.460A.3.a of a desire to consider an offer to consider an offer to renew the tenancy, then the Owner shall offer to reinstitute a rental agreement on terms permitted by law and this Subsection 8.22.460 to that displaced Tenant. This offer shall be deposited in the United States mail, by registered or certified mail with postage prepaid, addressed to the displaced Tenant or lessee at the address furnished to the Owner as provided in this Subparagraph, and shall describe the terms of the offer. The displaced Tenant shall have thirty (30) days from the deposit of the offer in the mail to accept the offer by personal delivery of that acceptance or by deposit of the acceptance in the United States mail by registered or certified mail with postage prepaid.

B. Re-Offering Withdrawn Units for Rent Within Two Years of Withdrawal. In the event that the Withdrawn Units are offered again for rent or lease for residential purposes by the Owner within two years from date the Rental Units were withdrawn from rent or lease, the following provisions shall govern:

1. An Owner who re-offers withdrawn Rental Units for residential rental within two years of the date of delivery of the Withdrawal Notices to the Rent Adjustment Program shall be liable to any Tenant who was displaced from the property by the withdrawal of the units for actual and punitive damages. Any action by a Tenant pursuant to this Subparagraph shall be brought within three years of the date of delivery of the Withdrawal Notices to the Rent Adjustment Program. Nothing in this Subparagraph precludes a Tenant from pursuing any alternative remedy available under the law.

2. The City Attorney may institute a civil proceeding against any owner who has again offered Withdrawn Units for rent within two years the date of delivery of the Withdrawal Notices to the Rent Adjustment Program, for exemplary damages for displacement of Tenants. Any action brought by the City Attorney shall be brought within three years of the date of delivery of the Withdrawal Notices to the Rent Adjustment Program.

C. Re-Offering Withdrawn Units for Rent Within Five Years of Withdrawal. For all tenancies commenced during the time periods described in Subparagraphs below, the Withdrawn Units shall be offered and rented at an amount not in excess of the lawful rent in effect on the date of delivery of the Withdrawal Documents to the Rent Adjustment Program, plus any CPI Rent Adjustments available. The provisions of this Paragraph apply to all tenancies commenced during either of the following time periods:

1. The five-year period after the date of delivery of the Withdrawal Notices to the Rent Adjustment Program, whether or not the withdrawal is rescinded or the withdrawal of the Rental Units is completed pursuant to Withdrawal Notices.

2. The five-year period after the units the date of delivery of the Withdrawal Notices to the Rent Adjustment Program.

D. Re-Offering Withdrawn Units for Rent Within Ten Years of Withdrawal.

1. An Owner who offers Withdrawn Units again for rent within a period not exceeding 10 years the date of delivery of the Withdrawal Notices to the Rent Adjustment Program shall first offer the unit to the Tenant displaced from that unit by the withdrawal, if that Tenant requests the offer in writing within thirty (30) days after the Owner has notified the Rent Adjustment Program of an intention to offer the Withdrawn Units again for residential rent pursuant to Subsection 8.22.460A.

2. The Owner of the Withdrawn Units shall be liable to any Tenant who was displaced by that action for failure to comply with this Subsection 8.22.460D for punitive damages in an amount not to exceed the contract rent for six months.

E. Demolition of Withdrawn Units and Construction of New Units. If the Withdrawn Units are demolished and new residential rental units are constructed on the same property, and are offered for rent within five years of the date the Withdrawn Units were withdrawn from rent, the newly constructed residential rental units shall be subject to controls pursuant to O.M.C. Chapter 8.22, Article I on the price at which they would be offered on the basis of a fair and reasonable return on the newly constructed residential Rental Units, notwithstanding any exemption in O.M.C. Chapter 8.22, Article I for newly constructed units.

F. Application of Withdrawal Constraints to Subsequent Owner.

1. The constraints on offering Withdrawn Units again for rent or demolition of the Withdrawn Units and construction of new units apply to the owner of record when the withdrawal is initiated and any subsequent owner of the real property on which the Withdrawn Units are located.

2. Ninety days after filing a notice of intent to withdraw units pursuant to this Section, the owner shall submit to the Rent Adjustment Program a notice that specifically describes the real property where the Withdrawn Units are located, the dates applicable to the constraints, and the name of the owner(s) of record of the real property. This notice must be signed under penalty of perjury. The Rent Adjustment Program shall record this notice with the Alameda County Recorder. The notice shall be indexed in the grantor grantee index.

3. A person who acquires title to the real property subsequent to the date upon which the Rental Units thereon have been withdrawn from rent or lease, as a bona fide purchaser for value, shall not be a successor in interest for the purposes of this O.M.C. Article 8.22.400, if the notice prescribed by this section has not been recorded with the county recorder at least one day before the transfer of title.

8.22.470 Defense to Unlawful Detainer.

If an owner seeks to displace a Tenant from a unit withdrawn from rent pursuant to this O.M.C. Article 8.22.400 by an unlawful detainer, the Tenant may appear and answer or demur pursuant to California Code of Civil Procedure Section 1170 and may assert by way of defense that the owner has not complied with the applicable provisions of California Government Code Sections 7060, et seq., this Section, or any Regulations promulgated by the City Council or Rent Board to implement this Section.

8.22.480 Miscellaneous

A. Compliance with Other Laws. This O.M.C. Article 8.22.400 shall in no respect relieve an Owner from complying with the requirements of any applicable state law or of any lease or rental agreement.

B. Notices to Owners by Tenant. Any notices sent by a Tenant to an Owner is deemed effective if sent or delivered to the Owner in the manner prescribed in this Article III at the location or address where the Tenant paid rent to the Owner unless the Owner notifies the Tenant in the manner Owners are required to notify Tenants in this Section to send such notices to another address at least 30 days prior to the effective date of such address or location change.

C. Regulations and Forms. The Rent Board has the authority to make such regulations to implement this O.M.C. Article 8.22.400 as are not inconsistent with this Section or with Government Code § 7060, et seq. The Rent Adjustment Program shall develop forms to implement this Section. Any changes to the initially forms shall be effective 30 days after they are made available to the public at the Rent Adjustment Program offices, unless the Rent Adjustment Program makes a finding that an earlier effective date is necessary.

D. Severability. This O.M.C. Chapter 8.22, Article III shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this Chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this O.M.C. Chapter 8.22, Article III which can be given effect without the invalid provision or application; and to this end the provisions of this Chapter are declared to be severable and are intended to have independent validity.

E. Nonwaiverability. Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this O.M.C. Article 8.22.400 is waived or modified, is against public policy and void.

F. Effective Date.

1. The ordinance codified in this O.M.C. Article 8.22.400 takes effect pursuant to Section 216 of the Oakland City Charter.

2. This O.M.C. Article 8.22.400 applies to all terminations of tenancy based on Measure EE Section 6A(11) (Ellis Act evictions) that commenced before the effective date of this ordinance, but where the notice period for the termination of tenancy has not expired.

3. Subsections 8.22.400 through 8.22.420, 8.22.460 and 8.22.480 apply to all Withdrawn Units where the termination of tenancy based on Measure EE Section 6A(11) (Ellis Act) expired or the Tenant vacated prior to the effective date of this Article 8.22.400. In order for a Tenant to be eligible receive an offer to re-rent the Withdrawn Unit, the Tenant must provide an address to the Owner within 30 days after the enactment of this Section. The Rent Adjustment Program is authorized to record a notice in accordance with Paragraph 8.22.460F.2 for all units where the Rent Adjustment Program receives notice that the units were withdrawn in accordance with Measure EE Section 6A(11).

IN COUNCIL, OAKLAND, CALIFORNIA, , 2003 **SEP 30 2003**

PASSED BY THE FOLLOWING VOTE:

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

NOES- *D*

ABSENT- *D*

ABSTENTION- *D*

Introduction Date:

JUL 15 2003

ATTEST:

Selma Kralj
for CEDA FLOYD
City Clerk And Clerk Of The Council
Of The City Of Oakland, California