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OAKLAND

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AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Michele Byrd
Director

SUBJECT: Supplemental Report on
Amendments To Ellis Act Ordinance

DATE: January 11, 2016

City Administrator Approval

Date:

1/14/16

RECOMMENDATION

A Report Recommending That The City Council Adopt An Ordinance To Amend The Ellis Act Ordinance O.M.C. 12539 C.M.C. to (1) Extend Relocation Payments To All Households Regardless Of Income; (2) Set The Base Amount Of Relocation Payments At \$8,000 Per Unit; (3) Require An Additional Payment Of \$2,500 Per Unit For Units With Tenants Who Are Seniors, Disabled, Low-Income, Or Families With Minor Children; And (4) Require That Half Of The Payment Is Issued When The Termination Notice Is Given And The Other Half Of The Payment Made Upon Tenant's Move Out.

REASON FOR SUPPLEMENTAL REPORT

A report recommending amendments to the Ellis Act Ordinance was presented to the Community and Economic Development Committee (CED) on December 15, 2015 (**See Attachment A**). The Committee requested that staff present for their consideration an alternative recommendation, tying the base amount of relocation payments to the number of bedrooms in the unit.

The Committee also requested that the Ordinance make clear that if a tenant accepts relocation payments, s/he must sign a statement agreeing that s/he will not contest an unlawful detainer based on the notice to terminate tenancy for the withdrawal of the tenant's rental unit. The phrase "in writing" has therefore been added to subsection 8.22.450(E)(1) in both ordinance alternatives presented.

At the December 15, 2015 CED meeting, staff orally noted that the Ordinance should include language increasing the amount of the payments by the CPI every year, as well as a Grandparent clause. These changes are reflected in both Ordinances presented with this report. No other changes recommended in the report presented on December 15, 2015 are affected.

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January 26, 2016

ANALYSIS AND POLICY ALTERNATIVE

Original Base Relocation Payment Proposal

Staff recommended a set relocation payment of \$8,000 per unit. This number was calculated by adding three times an average monthly rent of \$2,500 plus average moving expenses of \$500. Staff recommended that this amount automatically increase on July 1 of each year by the Consumer Price Index formula in the Rent Ordinance¹

Alternative Proposal Based on Average Rents for 1, 2 and 3-bedroom Units

Of the six major jurisdictions in California, Santa Monica and West Hollywood set relocation payments according to number of bedrooms, as shown in **Table 1** below.

TABLE 1

Santa Monica	\$8,300 for studio \$12,800 for one bedroom \$17,350 for 2(+) bedroom
West Hollywood	\$5,100 for studio; \$7,200 for one bedroom \$9,700 for two bedroom \$12,800 for three (+) bedroom

Santa Monica and West Hollywood arrived at their relocation amounts based on an analysis of the average market rate rents².

According to the Zumper Report for November, 2015, the average rent for one-bedroom units in Oakland is approximately \$2,000 and for two-bedroom units is approximately \$2,500. Three-bedroom units are not surveyed in the Zumper Report for any major city because there are so few. The percentage difference between one and two-bedroom units is 25 percent. Applying that same percentage to determine the cost differential between a two-bedroom and a three-bedroom unit places the average rent of a three-bedroom unit at \$3,125. Based on this calculation, a rent amount of \$3,125 can reasonably be applied as the average rent for a three-bedroom unit in Oakland.

Tenants evicted in Oakland are forced to incur substantial costs to relocate to new housing. These costs include, but are not limited to, move-in costs (first and last month's rent and security deposit), actual moving costs, new utility hook-ups, payment for temporary housing, and costs due to lost work time. The methodology underlying staff's original recommendation was to set relocation payments at an amount sufficient to cover the average move in costs of first, last and security deposit as well as actual moving costs.

¹ O.M.C. 8.22.070 (B)(3).

² The information derived from Staff reports and telephone contact with Staff.

Employing that same methodology to setting relocation payments by bedroom size, relocation payments would be set at:

- \$6,500 for studio/ one-bedroom units (three times \$2,000 plus \$500 moving costs).
- \$8,000 for two-bedroom units (three times \$2,500 plus \$500 moving costs).
- \$9,875 for three or more bedroom units (three times \$3,125 plus \$500 moving costs).

Should Council adopt this option, staff recommends that these amounts automatically increase on July 1 of each year by the Consumer Price Index formula in the Rent Ordinance.³

Summary

Amending the Ellis Ordinance to allow a set relocation payment based on the three months of the average rent for two-bedroom units, with an additional \$500 for moving expenses will offset the immediate costs of eviction. Allowing relocation payment based on number of bedrooms in a unit would also offset the immediate costs of eviction. However, Staff recommends a set base amount, the practice adopted by most jurisdictions, including Berkeley, San Francisco, and Los Angeles. Consistent with past practice, our goal is to both rely upon the criteria established by other jurisdictions and to also maintain simplicity for easy administration and implementation. In addition, it would avoid any potential conflicts over units that may have illegal bedrooms.

ALTERNATIVE RECOMMEDATION

An Ordinance to amend the Ellis Act Ordinance O.M.C. 12539 C.M.C. to: (1) extend relocation payments to all households regardless of income; (2) set base relocation payments at \$6,500 for studios and one bedrooms, \$8,000 for two bedrooms, and \$9,875 for three or more bedrooms; (3) require an additional payment of \$2,500 per unit for units with tenants who are seniors, disabled, low-income, or families with minor children; and (4) require that half of the payment is issued when the termination notice is given and the other half of the payment issued upon tenant move out.

FISCAL IMPACT

There is no fiscal impact; landlords are responsible for all relocations benefits in an Ellis Act eviction.

PUBLIC OUTREACH / INTEREST

This report did not require any additional public outreach further than the required posting on the City's website. However, the report and recommendations were discussed with the East Bay Rental Housing Association.

COORDINATION

This report was coordinated with the City Attorney's Office.

³ O.M.C. 8.22.070 (B)(3).

SUSTAINABLE OPPORTUNITIES

Economic:

- Preserve the affordable housing inventory for families, seniors, and disabled people in the City of Oakland;
- Protect tenants from exorbitant rent increases while encouraging owners to invest in the housing stock of the City.

Environmental:

- Mitigate adverse environmental impacts resulting from existing rental housing;
- Encourage cohesion and vested interest of owners and tenants in established neighborhoods

Social Equity:

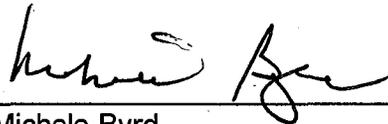
- Improve the landscape and climate of Oakland's neighborhoods by encouraging long-term tenancies in rental housing;
- Assist low and moderate income families to save money to become homeowners.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends the following amendments to the Ellis Act Ordinance.

1. That Oakland's relocation payments be extended to all tenants subject to eviction pursuant to O.M.C. 8.22.400 regardless of income status;
2. That payment for relocation be set at:
 - \$8,000 per unit, to be adjusted by the CPI each year on July 1 or, in the alternative,
 - \$6,500 for studios and one-bedroom units, \$8,000 for two-bedroom units, and \$9,875 for units with three or more bedrooms, all amounts to be adjusted by the CPI each year on July 1.
3. That the City Council set an additional one-time payment of \$2,500 per unit for units with vulnerable Oakland residents: low-income, seniors, disabled, and families with minor children;
4. That half of the payment due is given to the tenant at the time the termination notice is given and the other half upon move out;
5. That a grandparent clause be provided for Ellis Act evictions filed prior to the enactment of the amendments to the Ellis Act Ordinance;

Respectfully submitted,



Michele Byrd
Director
Department of Housing and Community
Development

Prepared by:
Connie Taylor, Rent Adjustment Manager
Rent Adjustment Program

Attachment:

Attachment A: Amendments to Ellis Act Report presented to
CED Committee December 15, 2015

Item: _____
CED Committee
January 26, 2016

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE TO AMEND THE ELLIS ACT ORDINANCE O.M.C. 12530 C.M.C. TO (1) EXTEND RELOCATION PAYMENTS TO ALL HOUSEHOLDS REGARDLESS OF INCOME; (2) SET THE BASE AMOUNT OF RELOCATION PAYMENT AT \$8,000 PER UNIT; (3) REQUIRE AN ADDITIONAL PAYMENT OF \$2,500 PER UNIT FOR UNITS WITH TENANTS WHO ARE SENIORS, DISABLED, LOW-INCOME, OR FAMILIES WITH MINOR CHILDREN; AND (4) REQUIRE THAT HALF OF THE PAYMENT BE MADE WHEN THE TERMINATION NOTICE IS GIVEN AND THE OTHER HALF OF THE PAYMENT MADE UPON TENANT'S MOVE OUT

WHEREAS, in 2006, the state legislature amended the Ellis Act to remove language limiting the payment of relocation assistance to low-income tenants; and

WHEREAS, all California jurisdictions surveyed (including Los Angeles, San Francisco, Berkeley, Santa Monica and West Hollywood) have extended relocation allowance coverage to all tenants; and

WHEREAS, from FY 2003-04 through FY 2014-14, there were 47 Ellis Act filings in Oakland, affecting 98 units; and

WHEREAS, tenants who do not have adequate funds to move and who are forced to move pursuant to an Ellis Act eviction notice face displacement and great hardship; and

WHEREAS, tenants evicted in Oakland are forced to incur substantial costs related to new housing including, but not limited to, move-in costs to a new home, moving costs, new utility hook-ups, payments for temporary housing, and lost work time seeking housing; and

WHEREAS, tenants who find acceptable new housing commonly find themselves required to pay substantial move-in costs of first and last month's rent plus a security deposit equal to one month's rent; and

WHEREAS, according to the Zumper National Rent Report, the average rent for a vacant two bedroom apartment is over \$2,500 per month, resulting in an average move-in cost of over \$7,500; and

WHEREAS, a survey conducted by Staff of three moving companies in Oakland determined that the average cost of moving in Oakland is approximately \$500; and

WHEREAS, the impacts of these no-fault evictions are particularly significant on elderly, disabled, and low-income tenants and tenants with minor children, justifying an additional payment for households with these tenants; and

WHEREAS, all other California jurisdictions surveyed authorize additional payments to some or all listed vulnerable populations; and

WHEREAS, the City Council finds that the proposed expansion in coverage and increase in amount of the relocation fees for the Ellis Act evictions is justified and necessary for impacted tenants to find new housing and avoid displacement; and

WHEREAS, this action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: § 15378 (regulatory actions), § 15061(b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning);

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

SECTION 1. Modification of Chapter 8.22 of the Oakland Municipal Code. Chapter 8.22 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

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 sixty-two (62) years old or older.

"Lower-income tenant household" means 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.

"Minor Child(ren)" means a person(s) who is 18 years or younger at the time the notice of withdrawal of accommodations is served on the program.

"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. 8.22.020-340 with the exception of those units designated in Section 8.22.350 as exempt, 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 et seq.~~

8.22.420 - Application of this chapter, 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 (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 that 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 tenants;
 2. The rent applicable to any residential rental unit to be withdrawn; and
 3. The total number of rental units to be withdrawn.

8.22.440 - 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

Section 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 sixty (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 thirty (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 or her rental unit for one year after the date of delivery to the withdrawal documents.
- D. Within fifteen (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 thirty (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 8.22.440 (B).
- F. Within ninety (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 Section 8.22.440 (E).

8.22.450 - Relocation payments for lower income households.

- A. Tenant households who are required to move as a result of the owner's withdrawal of the accommodation from rent or lease shall be entitled to a relocation payment in the sum of \$8,000 per unit from the owner. The payment shall be divided equally among all tenants occupying the rental unit at the time of service on the tenants of the notice of intent to withdraw the unit from rent or lease. 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. Once notice of withdrawal of the accommodation from rent or lease has been given to the tenant, the owner is obligated to make the relocation payments.

- B. Tenant households in rental units withdrawn from the residential market that include lower income, elderly or disabled tenants, and/or minor children shall be entitled to a single additional relocation payment of \$2,500 per unit from the owner. If a household qualifies for this additional payment, the payment shall be divided equally among eligible (lower-income, elderly, disabled, parents/guardians of minor children) tenants. The relocation amount 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~~ for the additional payment may request relocation payments it 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~~ qualify for the additional payment may request documentation from the tenant demonstrating the tenant's income qualification. 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 additional payment. 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. Examples of the types of evidence that may be used to present a claim that a household is entitled to an extra payment based on a tenant's disability status include evidence that a tenant has a qualifying disability may be in the form of a statement from a treating physician or other appropriate health care provider authorized to provide treatment, such as a psychologist. A tenant may also submit evidence of a medical determination from another forum, such as Social Security or worker's compensation, so long as it includes the fact that the tenant has a disability and its probable duration.
- E. Time for payment.
1. The owner must ~~make the pay the tenant half of~~ the relocation payment provided for in Section 8.22.450(A) within fifteen (15) days of the tenant's notice of eligibility when the termination notice is given to the household and the remaining half when the tenant vacates the unit provided that the tenant agrees, in writing, 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 entirety of 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.
 2. The owner must ~~pay the tenant the additional payment provided for in Section 8.22.450(B) within fifteen (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. 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.
- H. The regulations may provide procedures for escrowing disputed relocation funds.
- I. The relocation payments specified in subsection 8.22.450(A) shall increase annually on July 1 in accordance with the CPI Adjustment as calculated in OMC subsection 8.22.070(B)(3).

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 (30) 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, if the tenant advised the owner in writing within thirty (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 this section and the tenant advised the owner pursuant to subsection 8.22.460 A.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 section 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.

8. 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 ten (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 8.22.460 A.
 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 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 (90) 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 thirty (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 initial forms shall be effective thirty (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. Non-waiverability. 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 subsection (6)(A)(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. Sections 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 subsection (6)(A)(11) (Ellis Act) expired or the tenant vacated prior to the effective date of Section 8.22.400. In order for a tenant to be eligible to receive an offer to re-rent the Withdrawn Unit, the tenant must provide an address to the owner within thirty (30) days after the enactment of this section. The rent adjustment program is authorized to record a notice in accordance with subsection 8.22.460(F)(2) for all units where the rent adjustment program receives notice that the units were withdrawn in accordance with Measure EE subsection (6)(A)(11).

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 decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. 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 immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

SECTION 4. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: § 15378 (regulatory actions), § 15061(b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning).

SECTION 5. Grandparented Ellis Act evictions. The Ordinance amendments provided for in this Ordinance shall not apply to any eviction in which the Withdrawal Notices has been received by the Rent Adjustment Program prior to adoption of the Ordinance by City Council.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

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 TO AMEND THE ELLIS ACT ORDINANCE O.M.C. 12530 C.M.C. TO (1) EXTEND RELOCATION PAYMENTS TO ALL HOUSEHOLDS REGARDLESS OF INCOME; (2) SET THE BASE AMOUNT OF RELOCATION PAYMENT AT \$8,000 PER UNIT; (3) REQUIRE AN ADDITIONAL PAYMENT OF \$2,500 PER UNIT FOR UNITS WITH TENANTS WHO ARE SENIORS, DISABLED, LOW-INCOME, OR FAMILIES WITH MINOR CHILDREN; AND (4) REQUIRE THAT HALF OF THE PAYMENT BE MADE WHEN THE TERMINATION NOTICE IS GIVEN AND THE OTHER HALF OF THE PAYMENT MADE UPON TENANT'S MOVE OUT.

The Ordinance amends the City of Oakland Ellis Act Ordinance to extend relocation payment requirements to all households regardless of income; increase the relocation amount for Ellis Act evictions to a base amount of \$8000 per unit; and require an additional payment amount of \$2,500 to households with tenants who are seniors, low-income, disabled, or families with minor children.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 JAN 13 PM 5:47

APPROVED AS TO FORM AND LEGALITY

DRAFT

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE TO AMEND THE ELLIS ACT ORDINANCE O.M.C. 12530 C.M.C. TO (1) EXTEND RELOCATION PAYMENTS TO ALL HOUSEHOLDS REGARDLESS OF INCOME; (2) SET THE BASE AMOUNT OF RELOCATION PAYMENT AT \$6,500 PER STUDIO/ONE-BEDROOM UNITS, \$8,000 PER TWO-BEDROOM UNITS, AND \$9,875 PER THREE OR MORE BEDROOM UNITS; (3) REQUIRE AN ADDITIONAL PAYMENT OF \$2,500 PER UNIT FOR UNITS WITH TENANTS WHO ARE SENIORS, DISABLED, LOW-INCOME, OR FAMILIES WITH MINOR CHILDREN; AND (4) REQUIRE THAT HALF OF THE PAYMENT BE MADE WHEN THE TERMINATION NOTICE IS GIVEN AND THE OTHER HALF OF THE PAYMENT MADE UPON TENANT'S MOVE OUT

WHEREAS, in 2006, the state legislature amended the Ellis Act to remove language limiting the payment of relocation assistance to low-income tenants; and

WHEREAS, all California jurisdictions surveyed (including Los Angeles, San Francisco, Berkeley, Santa Monica and West Hollywood) have extended relocation allowance coverage to all tenants; and

WHEREAS, from FY 2003-04 through FY 2014-14, there were 47 Ellis Act filings in Oakland, affecting 98 units; and

WHEREAS, tenants who do not have adequate funds to move and who are forced to move pursuant to an Ellis Act eviction notice face displacement and great hardship; and

WHEREAS, tenants evicted in Oakland are forced to incur substantial costs related to new housing including, but not limited to, move-in costs to a new home, moving costs, new utility hook-ups, payments for temporary housing, and lost work time seeking housing; and

WHEREAS, tenants who find acceptable new housing commonly find themselves required to pay substantial move-in costs of first and last month's rent plus a security deposit equal to one month's rent; and

WHEREAS, according to the Zumper National Rent Report, the average rent for a vacant one-bedroom apartment is \$2,000 per month, and the average rent for a two-bedroom apartment is \$2,500 per month, resulting in an average move-in costs of \$6,000 and \$7,500 respectively; and

WHEREAS, applying the percentage increase from one-bedroom to two-bedroom units results in a calculation of average rent for three-bedroom units of \$3,125 per month, resulting in average move-in costs of \$9,375; and

WHEREAS, a survey conducted by Staff of three moving companies in Oakland determined that the average cost of moving in Oakland is approximately \$500; and

WHEREAS, the impacts of these no-fault evictions are particularly significant on elderly, disabled, and low-income tenants and tenants with minor children, justifying an additional payment for households with these tenants; and

WHEREAS, all other California jurisdictions surveyed authorize additional payments to some or all listed vulnerable populations; and

WHEREAS, the City Council finds that the proposed expansion in coverage and increase in amount of the relocation fees for the Ellis Act evictions is justified and necessary for impacted tenants to find new housing and avoid displacement; and

WHEREAS, this action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: § 15378 (regulatory actions), § 15061(b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning);

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

SECTION 1. Modification of Chapter 8.22 of the Oakland Municipal Code. Chapter 8.22 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

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 sixty-two (62) years old or older.

"Lower-income tenant household" means 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.

"Minor Child(ren)" means a person(s) who is 18 years or younger at the time the notice of withdrawal of accommodations is served on the program.

"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. 8.22.020-340 with the exception of those units designated in Section 8.22.350 as exempt, 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 et seq.

8.22.420 - Application of this chapter, 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 (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 that 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 tenants;
 2. The rent applicable to any residential rental unit to be withdrawn; and
 3. The total number of rental units to be withdrawn.

8.22.440 - 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 Section 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 sixty (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 thirty (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 or her rental unit for one year after the date of delivery to the withdrawal documents.
- D. Within fifteen (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 thirty (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 8.22.440 (B).
- F. Within ninety (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 Section 8.22.440 (E).

8.22.450 - Relocation payments for lower income households.

- A. Tenant households who are required to move as a result of the owner's withdrawal of the accommodation from rent or lease shall be entitled to a relocation payment from the owner in the sum of \$6,500 per unit for studios and one-bedroom apartments; \$8,000 per unit for two-bedroom apartments; and \$9,875 per unit for units with three or more bedrooms. The payment shall be divided equally among all tenants occupying the rental unit at the time of service on the tenants of the notice of intent to withdraw the unit from rent or lease. 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. Once notice of withdrawal of the accommodation from rent or lease has been given to the tenant, the owner is obligated to make the relocation payments.
- B. Tenant households in rental units withdrawn from the residential market that include lower income, elderly or disabled tenants, and/or minor children shall be entitled to a single additional relocation payment of \$2,500 per unit from the owner. If a household qualifies for this additional payment, the payment shall be divided equally among eligible (lower-income, elderly, disabled, parents/guardians of minor children) tenants. The relocation amount 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 for the additional payment may request relocation payments it 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 qualify for the additional payment may request documentation from the tenant demonstrating the tenant's income qualification. 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 additional payment. 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. Examples of the types of evidence that may be used to present a claim that a household is entitled to an extra payment based on a tenant's disability status include evidence that a tenant has a qualifying disability may be in the form of a statement from a treating physician or other appropriate health care provider authorized to provide treatment, such as a psychologist. A tenant may also submit evidence of a medical determination from another forum, such as Social Security or worker's compensation, so long as it includes the fact that the tenant has a disability and its probable duration.
- E. Time for payment.
1. The owner must make the pay the tenant half of the relocation payment provided for in Section 8.22.450(A) within fifteen (15) days of the tenant's notice of eligibility when the termination notice is given to the household and the remaining half when the tenant vacates the unit provided that the tenant agrees, in writing, 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 entirety of 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.

2. The owner must pay the tenant the additional payment provided for in Section 8.22.450(B) within fifteen (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. 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.
- H. The regulations may provide procedures for escrowing disputed relocation funds.
- I. The relocation payments specified in subsection 8.22.450(A) shall increase annually on July 1 in accordance with the CPI Adjustment as calculated in OMC subsection 8.22.070(B)(3).

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 (30) 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, if the tenant advised the owner in writing within thirty (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.

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 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 (90) 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 thirty (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 initial forms shall be effective thirty (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. Non-waiverability. 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 subsection (6)(A)(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. Sections 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 subsection (6)(A)(11) (Ellis Act) expired or the tenant vacated prior to the effective date of Section 8.22.400. In order for a tenant to be eligible to receive an offer to re-rent the Withdrawn Unit, the tenant must provide an address to the owner within thirty (30) days after the enactment of this section. The rent adjustment program is authorized to record a notice in accordance with subsection 8.22.460(F)(2) for all units where the rent adjustment program receives notice that the units were withdrawn in accordance with Measure EE subsection (6)(A)(11).

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 decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. 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 immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

SECTION 4. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: § 15378 (regulatory actions), § 15061(b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning).

SECTION 5. Grandparented Ellis Act evictions. The Ordinance amendments provided for in this Ordinance shall not apply to any eviction in which the Withdrawal Notices has been received by the Rent Adjustment Program prior to adoption of the Ordinance by City Council.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

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 TO AMEND THE ELLIS ACT ORDINANCE O.M.C. 12530 C.M.C. TO (1) EXTEND RELOCATION PAYMENTS TO ALL HOUSEHOLDS REGARDLESS OF INCOME; (2) SET THE BASE AMOUNT OF RELOCATION PAYMENT AT \$6,500 PER STUDIO/ONE-BEDROOM UNITS, \$8,000 PER TWO-BEDROOM UNITS, AND \$9,875 PER THREE OR MORE BEDROOM UNITS; (3) REQUIRE AN ADDITIONAL PAYMENT OF \$2,500 PER UNIT FOR UNITS WITH TENANTS WHO ARE SENIORS, DISABLED, LOW-INCOME, OR FAMILIES WITH MINOR CHILDREN; AND (4) REQUIRE THAT HALF OF THE PAYMENT BE MADE WHEN THE TERMINATION NOTICE IS GIVEN AND THE OTHER HALF OF THE PAYMENT MADE UPON TENANT'S MOVE OUT

The Ordinance amends the City of Oakland Ellis Act Ordinance to extend relocation payment requirements to all households regardless of income; increase the relocation amount for Ellis Act evictions to a base amount of \$6,500 per studio/one-bedroom units, \$8,000 per two-bedroom units, and \$9,875 per three-bedroom units; and require an additional payment amount of \$2,500 to households with tenants who are seniors, low-income, disabled, or families with minor children.