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DAN KALB, Council Member

CITY OF OAKLAND



CITY HALL - ONE FRANK H. OGAWA PLAZA, 2ND FLOOR - OAKLAND - CALIFORNIA 94612

~ AGENDA REPORT ~

To: Members of the Oakland City Council
From: Councilmember Dan Kalb
Date: *September 25, 2014*

Subject: ADOPT AN ORDINANCE PROHIBITING VARIOUS HARASSING BEHAVIORS BY LANDLORDS AGAINST TENANTS, PROVIDING CIVIL AND ADMINISTRATIVE REMEDIES FOR VIOLATIONS, BUT DELAYING EFFECTIVE DATE OF ADMINISTRATIVE REMEDIES UNTIL SUFFICIENT FUNDING AND REGULATIONS ARE IN PLACE

RECOMMENDATION & INTRODUCTION

I recommend adoption of this Ordinance to prohibit various harassing behaviors by landlords against tenants and provide administrative and civil remedies, pursuant to the City Council's ongoing interest in ensuring that the City of Oakland remains a place where residents across a range of income levels can have access to stable, safe rental housing without being harassed by their landlord. This memorandum accompanies my revised Tenant Protection Ordinance (TPO), which would promptly create remedies that could be enforced by a private civil right of action and which would also later establish an administrative enforcement program, once sufficient funding, staffing and regulations are in place. The prompt establishment of civil remedies is necessary to immediately create deterrents to unlawful conduct, which is already acerbating resident displacement.

BACKGROUND/ANALYSIS

Per U.S. Census, Oakland has over 94,000 rental units, comprising nearly 60% of our housing stock. According to the City of Oakland's Rent Adjustment Program (RAP), 60,000 units are covered by RAP. A majority of Oakland residents are renters.

There is a very significant demand for rental housing in Oakland leading to rising rents, caused in part by the spillover of increasingly expensive housing costs in San Francisco and the portions of the Peninsula. Rents in Oakland increased 12% in 2012 and 15% in 2013 (Source: *East Bay Express*, February 12-18, 2014, "The Rise of the New LandLords," sourcing Oakland Department of Housing and Community Development). As noted by a February 8, 2014 *Oakland Tribune* article ("High prices sending Bay Area renters and homebuyers to outlying communities"), "Squeezed by astronomical home prices and

rents that are almost as unaffordable, a growing number of Bay Area residents are pulling up stakes and trading long commutes for cheaper housing.”

According to Oakland Department of Housing and Community Development citing to Zillow Real Estate Research, the estimated rent for all homes in Oakland for June 2014 (\$2,124) is nearly 11% higher than that for the same month last year (\$1,918), and rents have risen every month except for one since January 2013 (18 months total). If current patterns persist, the estimated rent for all homes in June 2015 will be \$2,386. By comparison, the estimated median rent for all Oakland homes for June 2012 was \$1,818, a 31% increase in only 36 months. On September 12, 2014, the *San Francisco Examiner* reported that “San Francisco and Oakland have the distinction of having some of the highest rental rate increases in the nation for the month of August,” with Oakland’s rents increasing 14.4% since last year, according to data collected by Trulia.

The rising market demand for rental housing in Oakland effectively creates an incentive for some landlords to engage in harassing behavior or fail to make repairs to pressure existing tenants in rent-controlled units to move so that rents can be raised. Numerous press articles have reported on the rise of tenant harassment in the Bay Area. All nonprofit service providers of legal services to tenants in Oakland have noted a rise in harassment. The Rent Adjustment Program office of the City of Oakland has conservatively estimated receiving 100 to 200 complaints each month from tenants claiming landlord harassment, many of which are completely outside the current jurisdiction of the Rent Adjustment Program.

Existing remedies for harassing behaviors, such as petitioning the Rent Adjustment Program to restore a rental rate or order repairs, or employing an attorney at great cost to file a lawsuit to enforce state law or lease provisions, are insufficient deterrents to engaging in the illegal conduct in the first place. In addition, the imbalance between supply and demand in Oakland’s rental housing market creates an imbalance of bargaining power between landlords and tenants, which has resulted in many tenants, especially those not in rent controlled units, being unwilling or unable to assert their legal rights..

A proposal to prohibit harassing behaviors by landlords against tenants is not a new concept. The cities of San Francisco, Santa Monica, West Hollywood, and East Palo Alto have each passed ordinances prohibiting various forms of harassment by landlords and their agents against tenants.

The ongoing displacement of tenants is a major concern for the City of Oakland and across the Bay Area, necessitating putting forth policies that help to maintain the ability of people in all income categories to live in our city. The increased housing pressures for residents across a range of lower and middle income levels warrant improved rent stabilization and tenant protection policies.

The purpose of this policy, first and foremost, is to deter harassing behavior by landlords, to encourage landlords to follow the law and uphold their responsibility to provide habitable rental properties, and to give tenants legal recourse in instances where they are subjected to harassing behavior by landlords. The deterrent effect of the TPO on harassing behaviors is accomplished in several ways.

First, a plaintiff in a civil action may recover treble actual damages or a minimum of \$1,000. The rationale behind the minimum damages is similar to statutory minimums available in various state and federal consumer protection laws, where actual damages can be difficult to quantify or so low as to discourage plaintiffs from bringing suits against violators. Presently, the damages that are available in most suits for already illegal behaviors addressed by the TPO would be limited to actual damages. By increasing damages to treble or a minimum of \$1,000, this puts landlords on notice that the consequences of engaging in harassing behaviors are more severe, which functions to deter the injurious behavior from ever occurring in the first place.

Second, the TPO provides that a prevailing tenant in a civil action under the TPO is entitled to attorney's fees and costs. While tenants who prevail in court may presently receive attorney fees for certain types of claims, such as habitability violations, attorney's fees are not authorized for other types of suits. Consequently, tenants who wish to file claims are often faced with either filing without an attorney, hiring an attorney at great expense, or needing to suffer such significant damages that attorneys are willing to represent them on a percentage contingency fee basis, all of which discourage tenants from bringing suits.

Third, the TPO allows tenants to file complaints with the City regarding alleged violations, which can result in administrative citations or assessed civil penalties when violations have been determined to have occurred. Like with many complaint-based citation problems, this mechanism provides an additional means for violations to be addressed, especially for situations where tenants are reluctant to go through the burdens of filing a civil action.

Fourth, the TPO's prohibitions include not only behaviors that are already illegal but others for which there are no easy remedies, such as repeatedly making payment offers to a tenant urging them to vacate after they have informed the landlord that they no longer wish to receive such offers. In combination, these components provide a significant deterrent to engaging in the prohibited behaviors in the first place, thereby bolstering existing laws and leases that protect tenants and curbing harassing behaviors designed to encourage tenants to vacate or not assert their rights.

The TPO contains a partial exemption for housing owned by nonprofits. Since many affordable housing developments are financed in part through housing tax credits to investors in return for equity contributions to the development of the housing, the

exemption is extended to limited partnership managed by a nonprofit or a limited liability corporation comprised of nonprofits, to take into account those nonprofit management structures for existing rental housing. The nonprofit exemption is limited to the expanded civil remedies under the TPO, with nonprofit owned properties remaining subject to the TPO's administrative remedies. The partial exemption is justified by less problems being reported regarding nonprofit rental housing and heightened monitored of affordable housing developments by various government agencies (City, State, HUD), providing additional forums for tenants who feel that they are being harassed.

The proposal is balanced in many aspects. For example, it puts the burden of proof on the tenant to show that a harassing behavior was done in "bad faith." Furthermore, the TPO makes it explicitly clear that nothing in the ordinance prevents a landlord from lawfully evicting a tenant or raising a tenant's rent pursuant to state and local law. Additionally, in the case of a frivolous ('devoid of merit, brought in bad faith') suit brought by a tenant, the defendant landlord can be awarded attorney's fees.

PUBLIC INTEREST & OUTREACH

Tenant and landlord representative organizations were invited to provide input and consulted with regarding the content of the TPO. These organizations included Causa Justa: Just Cause, Centro Legal de la Raza, East Bay Community Law Center, Jobs & Housing Coalition, and East Bay Rental Housing Association. In addition, East Bay Housing Organizations was consulted. I met with landlord association representatives in an effort to discuss specifics in the proposed TPO, and had invited them to a negotiation meeting with tenant group representatives.

FISCAL IMPACT

The new private right of action created by the TPO would have no direct fiscal impact on City government, other than the limited resources needed to update or create, as well as translate, forms utilized by landlords for certain notices required by the Ordinance. The private right of action may have an indirect beneficial fiscal impact on the City related to Code Enforcement and similar service provision that addresses issues related to blight, as the deterrence effect of the TPO's civil enforcement remedies for failure to make repairs or conduct maintenance will likely lead to a reduction in such problems and thereby a reduced need for Code Enforcement and related service provision by the City.

The new administrative remedy program of the TPO would likely be paid for by establishment of a new TPO service fee charged to owners of applicable units, either as an increase in the current fee for units under Rent Adjustment and Just Cause Ordinances or a new small fee for units subject to the TPO that are exempt under those ordinances (new construction and substantial rehabilitated units). Based on the number of harassment complaints currently received by the Rent Adjustment Program (RAP),

the TPO's administrative remedy program would create the potential for an influx of citation cases and require an estimate 5 to 7 additional staff in the RAP, according to estimates of the Department of Housing and Community Development, including 1 or 2 Program Analysts, 1 or 2 Hearing Officers, 1 additional Administrative Assistant, additional assistance from the City Attorney's office, and additional assistance from the Business Tax License office. The Department of Housing and Community Development estimates the following costs of additional staff, including benefits:

Position	Costs
One Program Analyst II	\$121,428
One Administrative Assistant II	\$96,374
One Hearing Officer	\$181,633
One Deputy City Attorney III	\$333,00
One Revenue Assistant	46,756
Total	779,191

The TPO delays implementation of such an administrative program until sufficient funding, staffing and regulations is in place. As an initial step, the TPO requires the City Administrator to conduct a fee analysis and develop an implementation plan by March of 2015. The administrative program costs would not be incurred until the City Council approves the necessary fee.

COORDINATION

Councilmember Kalb's office worked closely with the City Attorney's office in developing this legislation. Staff in the Department of Housing & Community Development and the Rent Adjustment Program were consulted multiple times. In addition, Human Resources Management was consulted regarding the drafting of the Equal Access translation requirement in the ordinance.

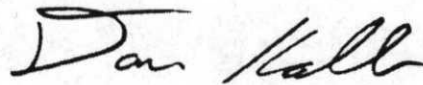
SUSTAINABLE OPPORTUNITIES

Economic: No significant impact.

Environmental: The TPO is unlikely to have any significant impact on environmental matters such as waste reduction, energy efficiency, or minimized use of toxic materials. However, to the extent that habitability violations or failure to conduct repairs or perform maintenance relate to issues of resource efficiency or exposure to environmental hazards, the TPO could help to ensure that existing standards are adhered to.

Social Equity: The TPO provides meaningful social equity benefits to a majority of Oakland's residents by deterring various harassing behaviors against tenants by landlords and providing remedies for tenants that have been subjected to those behaviors. The prohibitions and remedies will further encourage some existing rental laws to be followed and discourage economically-motivated efforts to pressure tenants to vacant rent controlled units, thereby helping to curb the rise in displacement. By prohibiting retaliation against tenants who exercise rights under the TPO, the TPO will also help to alleviate the reluctance of tenants who are not in rent-controlled units from exercising their rights.

Respectfully submitted,



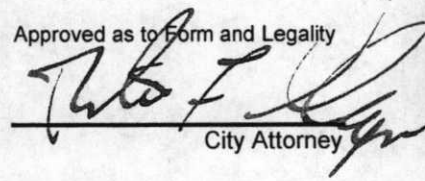
Dan Kalb, Councilmember

Prepared by:
Oliver Luby, Policy Manager
Office of Councilmember Dan Kalb

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Revision No. 1

Approved as to Form and Legality



City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No.

C.M.S.

AN ORDINANCE PROHIBITING VARIOUS HARASSING BEHAVIORS BY LANDLORDS AGAINST TENANTS, PROVIDING CIVIL AND ADMINISTRATIVE REMEDIES FOR VIOLATIONS, BUT DELAYING EFFECTIVE DATE OF ADMINISTRATIVE REMEDIES UNTIL SUFFICIENT FUNDING AND REGULATIONS ARE IN PLACE.

WHEREAS, The rental housing units in the City of Oakland include many subject to rent stabilization and some that are not; and

WHEREAS, The City of Oakland is interested in putting forth policies that help to maintain the ability of people in all income categories to live in our city; and

WHEREAS, There is a significant demand for rental housing in Oakland leading to rising rents, caused in part by the spillover of increasingly expensive housing costs in San Francisco, and the increased housing pressures for residents across a range of lower and middle income levels warrants improved rent stabilization and tenant protection policies; and

WHEREAS, The cities of San Francisco, Santa Monica, West Hollywood, and East Palo Alto have each passed ordinances prohibiting various forms of harassment by landlords and their agents against tenants; and

WHEREAS, The City Council finds that reasonable regulation of aspects of the landlord-tenant relationship is necessary in order to foster constructive communication, maintain an adequate supply of a variety of rental housing options, and protect health, safety, and the general welfare of the public; and

WHEREAS, This action is exempt from the California Environmental Quality Act ("CEQA") under the following, each as a separate and independent basis, including but not limited to, the following: CEQA Guidelines Section 15378 (regulatory actions), Section 15061 (b) (3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning);

Now, therefore, the Council of the City of Oakland does ordain:

Section 1. That the City Council hereby adopts the addition of Section 8.22.600 *et seq.* as Article V of Chapter 8.22 of the Oakland Municipal Code, attached as Exhibit A hereto, to prohibit various harassing behaviors by landlords against

tenants.

Section 2. This action is exempt from the California Environmental Quality Act ("CEQA") under the following, each as a separate and independent basis, including but not limited to, the following: CEQA Guideline Section 15378 (regulatory actions), Section 15061 (b) (3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning).

Section 3. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this 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 4. 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. As set out in Exhibit A, implementation of certain provision may be delayed.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and
PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

DATE OF ATTESTATION: _____

[Councilmember Dan Kalb's additional proposals are in underline or ~~strikethrough~~]

8.22.600 Tenant Protection Ordinance

This ordinance shall be known as the "Tenant Protection Ordinance" ("TPO").

8.22.610 Findings and Purpose

- A. There is a very significant demand for rental housing in Oakland leading to rising rents, caused in part by the spillover of increasingly expensive housing costs in San Francisco.
- B. Rents in Oakland increased 12% in 2012 and 15% in 2013 (Source: East Bay Express, February 12-18, 2014, "The Rise of the New Land Lords," sourcing Oakland Department of Housing and Community Development). As noted by a February 8, 2014 Oakland Tribune article ("High prices sending Bay Area renters and homebuyers to outlying communities"), "Squeezed by astronomical home prices and rents that are almost as unaffordable, a growing number of Bay Area residents are pulling up stakes and trading long commutes for cheaper housing."
- C. According to Oakland Department of Housing and Community Development citing to Zillow Real Estate Research, the estimated rent for all homes in Oakland for June 2014 (\$2,124) is nearly 11% higher than that for the same month last year (\$1,918), and rents have risen every month except for one since January 2013 (18 months total). If current patterns persist, the estimated rent for all homes in June 2015 will be \$2,386. By comparison, the estimated median rent for all Oakland homes for June 2012 was \$1,818, a 31% increase in only 36 months.
- D. On September 12, 2014, the San Francisco Examiner reported that "San Francisco and Oakland have the distinction of having some of the highest rental rate increases in the nation for the month of August," with Oakland's rents increasing 14.4% since last year, according to data collected by Trulia.
- E. The rising market demand for rental housing in Oakland creates an incentive for some landlords to engage in harassing behavior or fail to make repairs to pressure existing tenants in rent controlled units to move so that rents can be raised. Existing remedies, such as petitioning the Rent Adjustment Program to restore a rental rate or order repairs, or employing an attorney at great cost to file a lawsuit to enforce state law or lease provisions, are insufficient deterrents to engaging in the illegal conduct in the first place.
- F. The imbalance between supply and demand creates an imbalance of bargaining power between landlords and tenants, which has resulted in many tenants, especially those not in rent controlled units, being unwilling or unable to assert their legal rights, which is detrimental to the health, safety and general welfare of Oakland because the stability, security and quality of housing opportunities are reduced.

- G. The Rent Adjustment Program office of the City of Oakland has conservatively estimated receiving 100 to 200 complaints each month from tenants claiming landlord harassment, many of which are completely outside the jurisdiction of the Rent Adjustment Program.
- H. Numerous press articles have reported on the rise of tenant harassment throughout the Bay Area.
- I. Data from organizations providing services to low-income renters in Oakland, including East Bay Community Law Center and Centro Legal de la Raza, indicate that some of their clients live in housing with habitability problems and experience landlord harassment.
- J. Of the approximately 480 Oakland tenants who received legal services at Centro Legal de la Raza during fiscal year 2014 (July 1, 2013 through June 30, 2014), approximately 40% faced harassment by their landlords. The forms of harassment varied, but included one or more of the following in each case:
- Interrupting, terminating, failing to provide or threatening to interrupt, terminate or fail to provide housing services required by contract or by State, County or municipal housing, health or safety laws;
 - Failing to perform required repairs and/or maintenance or threatening to fail to do so;
 - Failing to exercise due diligence in completing repairs and maintenance once undertaken or failing to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts;
 - Abusing the owner's right of access into a rental housing unit as that right is provided by law;
 - Unlawfully removing from the rental unit personal property, furnishings, or any other items without the prior written consent of the tenant;
 - Influencing, or attempting to influence, a tenant to vacate a rental unit through fraud, intimidation or coercion;
 - Attempting to coerce a tenant to vacate with offer(s) of payments to vacate which are accompanied with threats or intimidation;
 - Threatening the tenant, by word or gesture, with physical harm;
 - Substantially and directly interfering with a Tenant's right to quiet use and enjoyment of a rental housing unit as that right is defined by California law;
 - Fraudulently refusing to accept or acknowledge receipt of a Tenant's lawful rent payment.
- K. ~~J~~. A majority of Oakland residents are renters. The rental housing units in the City of Oakland include many subject to rent stabilization and some that are not.

The cities of San Francisco, Santa Monica, West Hollywood, and East Palo Alto have each passed ordinances prohibiting various forms of harassment by landlords and their agents against tenants.

- L. ~~K.~~ The City Council of Oakland recognizes that displacement of tenants is a major concern and is interested in putting forth policies that help to maintain the ability of people in all income categories to live in our city. The increased housing pressures for residents across a range of lower and middle income levels warrants improved rent stabilization and tenant protection policies. The City Council finds that reasonable regulation of aspects of the landlord-tenant relationship is necessary in order to foster constructive communication, maintain an adequate supply of a variety of rental housing options, and protect health, safety, and the general welfare of the public.
- M. ~~L.~~ The purpose of this policy is to deter harassing behavior by landlords, to encourage landlords to follow the law and uphold their responsibility to provide habitable rental properties, and to give tenants legal recourse in instances where they are subjected to harassing behavior by landlords.

8.22.620 Definitions

"Owner" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Owner of Record" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Rent" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Rent Board" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Rental Agreement" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Rental Unit" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Tenant" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Skilled Nursing Facility" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Health Facility" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

8.22.630 Applicability and Exemptions

A. The TPO shall apply to all Rental Units where there is a Rental Agreement between an Owner and one or more Tenants, unless exempted herein. The application of the TPO includes units that may not be covered under the Rent Adjustment Ordinance (O.M.C. 8.22.100, et seq.) or the Just Cause for Eviction Ordinance (O.M.C. 8.22.300, et seq.)

B. Exemptions.

1. Limited exemption for nonprofit owned rental housing. Any Rental Unit owned by (a) a corporation or organization exempt pursuant to United States Internal Revenue Code §501(c)(3) or any successor legislation exempting charitable organizations from federal income tax, (b) a limited partnership where the managing general partner is a corporation or organization exempt pursuant to United States Internal Revenue Code §501(c)(3) or any successor legislation exempting charitable organizations from federal income tax, or (c) a limited partnership where the managing general partner is a limited liability company whose sole members are corporations or organizations exempt pursuant to United States Internal Revenue Code §501(c)(3) or any successor legislation exempting charitable organizations from federal income tax shall have a limited exemption from the TPO and may be subject to administrative enforcement only, and not subject to civil enforcement pursuant to this article.

2. Rental Units in any Hospital, Skilled Nursing Facility, or Health Facility.

3. Rental Units in a nonprofit facility that has the primary purpose of providing short term treatment, assistance, or therapy for alcohol, drug, or other substance abuse and the housing is provided incident to the recovery program, and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception and is licensed for such purpose where such license is required.

4. Rental Units in a nonprofit facility which provides a structured living environment that has the primary purpose of helping homeless persons obtain the skills necessary for independent living in permanent housing and where occupancy is restricted to a limited and specific period of time of not more than twenty-four (24) months and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception and is licensed for such purpose where such license is required.

5. Rental Units exempted from Part 4, Title 4, Chapter 2 of the California Civil Code (CCC) by CCC § 1940(b) (transient occupancy in hotels/motels).

6. A rental unit in a residential property that is divided into a maximum of three units, one of which is occupied by the owner of record as his or her principal residence for a period of no less than twelve (12) months. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the State of California.

8.22.640 Tenant Harassment

A. No Owner or such Owner's agent, contractor, subcontractor, or employee, shall do any of the following, in bad faith.

1. Interrupt, terminate, or fail to provide housing services required by contract or by State, County or municipal housing, health or safety laws, or threaten to do so;

2. Fail to perform repairs and maintenance required by contract or by State, County or municipal housing, health or safety laws, or threaten to do so;

3. Fail to exercise due diligence in completing repairs and maintenance once undertaken or fail to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts;
4. Abuse the Owner's right of access into a rental housing unit as that right is provided by law;
5. Remove from the Rental Unit personal property, furnishings, or any other items without the prior written consent of the tenant, except when done pursuant to the procedure set forth in Civil Code section 1980, et seq. (disposition of tenant's property after termination of tenancy).
6. Influence or attempt to influence a Tenant to vacate a Rental Unit through fraud, intimidation or coercion, which shall include threatening to report a Tenant to U.S. Immigration and Customs Enforcement, though that prohibition shall not be construed as preventing communication with U.S. Immigration and Customs Enforcement regarding an alleged violation;
7. ~~More than once in six (6) months~~ Offer payments to a Tenant to vacate ~~more than once in six (6) months~~, after the Tenant has notified the Owner in writing the Tenant does not desire ~~no longer wishes~~ to receive further offers of payments to vacate;
8. Attempt to coerce a Tenant to vacate with offer(s) of payments to vacate which are accompanied with threats or intimidation;
9. Threaten the tenant, by word or gesture, with physical harm;
10. Substantially and directly interfere with a Tenant's right to quiet use and enjoyment of a rental housing unit as that right is defined by California law;
11. Refuse to accept or acknowledge receipt of a Tenant's lawful rent payment, except as such refusal may be permitted by state law after a notice to quit has been served on the Tenant and the time period for performance pursuant to the notice has expired;
12. Refuse to cash a rent check for over 30 days unless a written receipt for payment has been provided to the Tenant, except as such refusal may be permitted by state law after a notice to quit has been served on the Tenant and the time period for performance pursuant to the notice has expired;
13. Interfere with a Tenant's right to privacy;
14. Request information that violates a tenant's right to privacy, including but not limited to residence or citizenship status or social security number, except as required by law or, in the case of a social security number, for the purpose of obtaining information for the qualifications for a tenancy, but in any event, not release such information except as required or authorized by law;
15. Other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy;

16. Removing a housing service for the purpose of causing the Tenant to vacate the Rental Unit. For example, taking away a parking space knowing that a Tenant cannot find alternative parking and must move.

B. Retaliation Prohibited. Retaliation against a Tenant because of the Tenant's exercise of rights under the TPO is prohibited. Retaliation claims may only be brought in court and may not be addressed administratively. A court may consider the protections afforded by the TPO in evaluating a claim of retaliation.

C. Evictions. Nothing in the TPO shall be construed as to prevent an Owner from lawfully evicting a Tenant pursuant to state law or Oakland's Just Cause for Eviction Ordinance. (O.M.C. 8.22.300, et seq.).

D. Rent Adjustments. Nothing in the TPO shall be construed as to prevent an Owner from lawfully increasing a Tenant's rent pursuant to state law or Oakland's Rent Adjustment Ordinance (O.M.C. 8.22.100, et seq.).

E. Notice to Tenants.

1. Commencement.

a. For Rental Units covered by the Rent Adjustment Ordinance the Notice at Commencement of Tenancy required by O.M.C. 8.22.06 shall include a reference to the TPO.

b. For all Rental Units that are not covered by the Rent Adjustment Ordinance, Owners are required to provide a notice regarding the TPO to all Tenants ~~in a form~~ using the required form prescribed by the City staff.

c. Failure to provide the notice to tenants required by this subsection may subject the Owner to an administrative citation or civil penalty as set out in 8.22.550B.

2 Common area. If Rental Units are located in a building with an interior common area that all of the building's Tenants have access to, the Owner must post a notice in at least one such common area in the building via a form prescribed by the City staff.

8.22.650 General Remedies.

A. Violations of the TPO.

1. Violations of the TPO. Violations of 8.22.640 may be enforced administratively or by civil remedies as set forth in this section or as otherwise specifically set out in this O.M.C Article. Before a private party may file an administrative complaint or a civil suit alleging a violation of 8.22.640.A.2., 10., 11., or 12., an affected Tenant must first notify the Owner or his or her ~~designed~~ designated agent in writing regarding the problem. If the problem is not corrected within 15 calendar days of issuing the notice, a private party may file a complaint or suit.

2. In addition to the remedies provided in the TPO, a violator is liable for such costs, expenses, and disbursements paid or incurred by the City in abatement and prosecution of the violation.

3. The remedies available in the TPO are not exclusive and may be used cumulatively with any other remedies in this chapter or at law.

B. General Administrative Remedies.

1. Administrative Citation. Anyone who violates 8.22.640.A. or E may be issued an administrative citation. Administrative citations shall be issued in accordance with O.M.C Chapter 1.12 (Administrative Citations) , except that the cumulative annual limit shall be on a per unit basis rather than on a per individual parcel or separate structure basis.

2. Administrative Assessment of Civil Penalties. Anyone whose violation of 8.22.640.A. or E. results in a Tenant vacating her/his Rental Unit or who violates the TPO after receiving three or more administrative citations for TPO violations occurring during the preceding two year period may be administratively assessed a civil penalty. Civil penalties for violations are assessed in accordance with O.M.C Chapter 1.08 (Administrative Assessment of Civil Penalties) as a major violation under that Chapter 1.08, except that the cumulative limits shall be on a per unit basis rather than on per individual parcel or separate structure basis.

3. The City Administrator shall designate staff authorized to issue administrative citation and civil penalties under the TPO.

4. Each and every day or any portion of a day during which a violation of any provision of this chapter is committed, continued, or permitted is a separate violation and shall be punishable accordingly. Separate acts or omissions that violate the TPO are separate violations and shall be punishable accordingly.

5. Appeal of Administrative Citation or Civil Penalty.

a. A party who has received an Administrative Citation or Civil Penalty may appeal that action to a hearing officer designated by the City Administrator.

b. The appeal must be filed within twenty-one (21) days from the date of service of the Administrative Citation or Civil Penalty. The date of service is the date of delivery if personally served or five (5) days after the date of mailing if service is by mail.

c. The decision of the Hearing Officer shall be the final decision of the City. Any further review must be by writ of administrative mandamus to the Superior Court.

6. Private parties may file an administrative complaint alleging a violation of the TPO no later than 180 days after the complainant knew or reasonably should have known of the underlying conduct.

C. General Civil Remedies.

1. Enforcement by Aggrieved Parties. An aggrieved party may bring a civil action for injunctive relief or damages, or both, for any violation of 8.22.540. An aggrieved party may also request that an administrative citation or civil penalty be issued by the City.

2. Enforcement by City Attorney. The City Attorney may enforce the TPO through civil action for injunctive relief or damages, or both, for when the party against whom enforcement is sought has a pattern and practice of violating the TPO. The City Attorney may also request that an administrative citation or

civil penalty be issued by the City. The City Attorney has the sole discretion to determine the cases appropriate for enforcement by the City Attorney's Office.

D. Treble and Exemplary Damages.

1. Any person who violates, aids, or incites another person to violate 8.22.640.A or E. is liable in a court action for each and every such offense for money damages of not less than three times actual damages suffered by an aggrieved party (including damages for mental or emotional distress), or for minimum damages in the sum of one thousand dollars, whichever is greater, and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the Owner acted in knowing violation of or in reckless disregard of the TPO.

2. A court may award punitive damages in a proper case as set out in Civil Code section 3294 and pursuant to the standards set forth in that Code Section or any successor thereto, but may not award both punitive damages and treble damages.

E. Civil Remedies Inapplicable to Nonprofit Owned Rental Units. The civil remedies provided for in this subsection are not applicable to Rental Units owned by a corporation or organization exempt pursuant to United States Internal Revenue Code §501(c)(3) or any successor legislation exempting charitable organizations from federal income tax.

F. Injunctive Relief. Any person who commits an act, proposes to commit an act, or engages in any pattern and practice which violates the TPO may be enjoined therefrom by any court of competent jurisdiction. An action for injunction under this subsection may be brought by any aggrieved person, by the City Attorney (for a pattern and practice only), or by any person or entity who will fairly and adequately represent the interest of the protected class.

G. Attorney's Fees and Costs

1. **Action by City Attorney.** In any administrative, civil, or special proceeding brought pursuant to the TPO, the City may, at the initiation of the proceeding, seek an award of attorney's fees. If the City seeks an award of attorney's fees, the award shall be made to the prevailing party. Provided however, that no award may be made to a prevailing party that exceeds the amount of reasonable attorney's fees incurred by the City in the action or proceeding. Court costs may be awarded to a prevailing party pursuant to state law.

2. **Action by Private Party.** In any civil action brought pursuant to the TPO., the prevailing Tenant is entitled to recover the Tenant's reasonable attorney's fees. A defendant Owner may recover reasonable attorney's fees if the complaint brought by the Tenant was devoid of merit and brought in bad faith. Court costs may be awarded to a prevailing party pursuant to state law.

3. **Costs of Investigation.** In the event the City Attorney brings an administrative, civil, or special proceeding pursuant to the TPO, the City Attorney may recover its costs of investigation.

8.22.660 Miscellaneous

A. Regulations and Forms. The Rent Board has the authority to make such regulations to implement this O.M.C.8.22 Article V as are not inconsistent with the TPO. Within 90 days of the effective date of the TPO, the City Administrator or his or her

designee 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. All Forms required by the TPO shall include translations in all "group" languages, as specified for Tier 1 required translations in vital communication documents and shall be translated and distributed in accordance with the Equal Access to Services Ordinance, O.M.C Chapter 2.30.

B. Non-waiverability. Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of the TPO is waived or modified, is against public policy and void.

C. In proceedings with City staff, any party may be represented or assisted by a person of their choice. The Rent Board shall create a regulation to implement this section.

D. ~~G.~~ Implementation Date. The administrative remedies provided in subsection O.M.C. 8.22.650B shall not be implemented until funding and staffing sufficient to implement these remedies is in place. The City Administrator, or his or her designee, shall conduct a fee analysis and develop an implementation plan regarding the administrative remedies program of the TPO and shall present them to the City Council for approval no later than March 31, 2015. The City Administrator shall determine when the requirements for implementation of administrative remedies have been met and shall set the date for the start of implementation, reporting back to the City Council on the start of implementation. Requirements related to City-provided notices shall not take effect until such notices are available to the public and effective.