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CITY OF OAKLAND



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March 27, 2014

RULES AND LEGISLATION COMMITTEE
Oakland, California

**Re: Resolution to Support California Assembly Bill No. 2310
Immediately Reinstating Section 3485 to the California Civil Code
Authorizing a City Attorney to File an Action for Unlawful Detainer
to Abate a Nuisance Caused by Illegal Conduct Involving
Weapons or Ammunition of Real Property**

Dear Chairperson Kernighan and Members of the Rules and Legislation Committee:

We ask that the City Council support Assembly Bill No. 2310, an urgency bill in the State Assembly that would immediately reenact California Civil Code Section 3485.

Prior to January 1, 2014, California Civil Code Section 3485 authorized City Attorneys to file a civil action for unlawful detainer to abate a nuisance caused by illegal conduct involving weapons or ammunition. The law expired on December 31, 2013.

Civil Code Section 3485 is similar to Oakland's Nuisance Eviction Ordinance (OMC 8.23.100), but will provides additional authority to the City Attorney's Office to bring an unlawful detainer (eviction) action against a nuisance tenant. The law also authorizes a lawsuit against the the owner of the property if the owner fails to initiate eviction proceedings and does not assign to the City their right to bring an unlawful detainer action against a nuisance tenant. The bill would also reinstate the city attorneys rights to recover the cost of investigation, discovery and reasonable attorney's fees.

Assembly Bill 2310 came to the attention of the City after the posting of the Rules March 27th 10-day agenda. This is an urgent bill on a fast track with legislative hearings commencing next Tuesday, March 25, 2014 and an Assembly vote is anticipated to occur very soon. Deferral to the next Rules Committee would delay Council action until April 22. Therefore, we recommend that the Rules and Legislation Committee review this item on March 27, 2014 and forward it to the April 1, 2014 City

President Kernighan and Members of the Rules and Legislation Committee
March 27, 2014

**Re: Resolution to Support California Assembly Bill No. 2310 Immediately Reinstating
Section 3485 to the California Civil Code Authorizing a City Attorney to File an
Action for Unlawful Detainer to Abate a Nuisance Caused by Illegal Conduct
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Council for approval and the City of Oakland can transmit support to the State
Assembly prior to its vote on the bill.

Very truly yours,



BARBARA J PARKER
City Attorney

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City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

INTRODUCED BY CITY ATTORNEY BARBARA J. PARKER

RESOLUTION TO SUPPORT CALIFORNIA ASSEMBLY BILL NO. 2310 IMMEDIATELY REINSTATING SECTION 3485 TO THE CALIFORNIA CIVIL CODE WHICH AUTHORIZES CITY ATTORNEYS TO FILE AN ACTION FOR UNLAWFUL DETAINER TO ABATE A NUISANCE CAUSED BY ILLEGAL CONDUCT INVOLVING WEAPONS OR AMMUNITION ON REAL PROPERTY

WHEREAS, existing law defines nuisance and includes within this definition anything which is injurious to health, including the illegal sales of controlled substances; and

WHEREAS, existing law provides that a tenant who permits a nuisance to be maintained on leased property is guilty of unlawful detainer and may be evicted; and

WHEREAS, until January 1, 2014, the state law (Civil Code Section 3485) authorized a city prosecutor or city attorney to file, in the name of the People, an action for unlawful detainer to abate nuisance caused by illegal conduct involving unlawful weapons or ammunition on real property; and

WHEREAS, this bill would reenact provisions authorizing a city prosecutor or city attorney in specified counties to file an action for unlawful detainer to abate a nuisance caused by illegal conduct involving unlawful weapons or ammunition on real property; and

WHEREAS, the bill would apply to the Counties of Alameda (only cases arising in Oakland), Los Angeles, San Diego, and Sacramento; and

WHEREAS, in Alameda County the bill would expressly apply only to the City of Oakland; and

WHEREAS, the bill would reinstate the authority to the City Attorney to bring actions against nuisance tenants that the Oakland Nuisance Eviction Ordinance (OMC 8.23.100) does not provide; and

WHEREAS, the bill would require the action to be based on an arrest report or other report as specified; and

WHEREAS, the bill would require that, prior to filing an action the City provide specified notice to the owner of the property, requiring removal of the person who is violating specified law, and the bill also would require that notice be served; and

WHEREAS, Oakland has experienced problems with violence, weapons, and the illegal possession of ammunition related criminal activity occurring on real property; and

WHEREAS, these illegal activities jeopardize the health, safety, and welfare of other occupants of the rental property and the surrounding community; and

WHEREAS, property owners have an obligation to keep their properties safe for all tenants and their visitors and to keep their properties free of nuisances; and

WHEREAS, the City Council believes that requiring real property owners to evict tenants engaged in illegal activity on the premises will assist the City in removing weapons and illegal ammunition from real properties and that owners who have safety concerns regarding the evictions are able to assign the evictions to the City Attorney, and owners who refuse to do either should be subject to citation, civil penalties, and other penalties or legal actions for failing to abate the nuisance of tenants engaging in illegal activities; and

WHEREAS, property owners have an obligation to remove tenants engaging in illegal activity that jeopardizes the health, safety, and welfare of other tenants and the surrounding community; and

WHEREAS, some rental property owners may be reluctant to evict tenants engaged in illegal activity fearing retribution towards the owners, their families, employees, or other tenants; and

WHEREAS, the City Attorney should be authorized to issue nuisance eviction notices to tenants that are keeping illegal weapons and ammunition on the premises of real properties; and

WHEREAS, the bill permits the recovery of the costs of investigations, discovery, and reasonable attorney's fees; now therefore be it

RESOLVED: that the City of Oakland supports Assembly Bill No. 2310 immediately reinstating Section 3485 to the California Civil Code authorizing a city attorney to file an action for unlawful detainer to abate a nuisance caused by illegal conduct involving weapons of ammunition on real property.

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