



AGENDA REPORT

TO: City Council

FROM: Barbara J. Parker
City Attorney

SUBJECT: Elevator Maintenance Ordinance

DATE: June 27, 2024

RECOMMENDATION

City Attorney Barbara J. Parker, Council President Nikki Fortunato Bas, President Pro Tempore Dan Kalb, and Councilmembers Carroll Fife and Treva Reid Recommend That the City Council Adopt the Following:

ORDINANCE REQUIRING OPERATORS OF RESIDENTIAL PROPERTIES WITH ELEVATORS TO MAINTAIN ELEVATORS IN AN OPERABLE CONDITION AND TO TEMPORARILY RELOCATE ANY RESIDENT WHOSE ACCESS TO AND FROM THEIR UNIT IS SUBSTANTIALLY RESTRICTED DUE TO THE RESIDENT'S DISABILITY OR OTHER PHYSICAL CONDITION LIMITING THEIR ABILITY TO USE STAIRS WHEN AN ELEVATOR IS INOPERABLE FOR MORE THAN 24 HOURS

EXECUTIVE SUMMARY

The proposed Ordinance sets out guidelines and requirements pertaining to the repair and maintenance of elevators in buildings with three or more residential units. Operators of buildings with three or more residential units must ensure that elevators are accessible, usable, and in good working order. The Ordinance clarifies that building operators have a duty to conduct regular maintenance of elevators and to complete any necessary repairs to elevators within the shortest practicable time period. The Ordinance also requires that residents be provided with notice of any scheduled repairs and that building operators provide alternative housing to any resident who relies on elevator use to access their unit due to the resident's disability in the event that an elevator malfunction cannot be repaired within twenty-four (24) hours.

BACKGROUND / LEGISLATIVE HISTORY

Although various regulations pertaining to elevator safety and operation exist, primarily under the California Labor ("Labor Code") and Building Codes ("Building Code") and elevator industry guidelines, current law fails to provide a clear and effective recourse for residents seeking to ensure that their building's elevator(s) remain in good working order. For residents with mobility disabilities, a functioning elevator plays a pivotal role in ensuring that such residents have access to housing.

CED Committee
July 9, 2024

Regulation of Elevators Generally

The California Division of Occupational Safety and Health, commonly referred to as Cal/OSHA, is the primary agency responsible for regulating elevators. Cal/OSHA's Elevator Unit oversees enforcement of California's elevator safety laws and regulations set forth in Labor Code sections 7300–7324.2. Cal/OSHA's Elevator Unit primarily regulates elevator safety through the permitting process. Elevators in residential buildings must have a current permit, which requires a yearly or biennial inspection by Cal/OSHA. Cal/OSHA also oversees enforcement of the Elevator Safety Orders, found in Title 8 of the California Code of Regulations, sections 3000-3146. These regulations set out installation and inspection specifications. Although both the Labor Code and the Elevator Safety Orders govern elevator safety, they do not address the responsibility of building operators to ensure that residents have continued access to an elevator or provide redress to residents when an elevator is out-of-service.

The California Building Code also contains numerous regulations and requirements regarding elevators under Chapter 30 (Elevators and Conveying Systems) and Chapter 11A (Housing Accessibility). Section 1124A requires that “provisions shall be made to ensure that [elevators] remain accessible and usable at all times that the building is occupied.” However, this provision only applies to multifamily dwellings that were constructed after March 13, 1991. This includes apartment buildings with three or more units and condominium buildings with four or more units. The Building Code requirements regarding maintenance and accessibility of elevators in residential buildings do not apply to buildings constructed prior to 1991, nor does the Building Code address procedures for noticing or relocating residents in the event of malfunction.

Anti-Discrimination Laws

State and federal laws prohibiting discrimination against persons with disabilities serve as the main vehicles through which building operators may be required to maintain elevators in a functional condition and provide alternative accommodations to tenants with mobility disabilities. The California Fair Employment and Housing Act (“FEHA”) and the Unruh Civil Rights Act (“Unruh”) generally require that housing providers accommodate persons with disabilities by ensuring equal access to housing, including ensuring that facilities are accessible. FEHA makes it unlawful “[for] the owner of any housing accommodation to discriminate against or harass any person because of the . . . disability . . . of that person.” Cal. Gov. Code § 12955. Similarly, Unruh states that “[all] persons within the jurisdiction of this state are free and equal, and no matter what their . . . disability, medical condition, . . . are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.” Cal. Civ. Code § 51. The Disabled Persons Act and Americans with Disabilities Act (“ADA”) also address elevator accessibility requirements and require housing providers to accommodate disabled residents.

Although existing anti-discrimination laws already require building operators to accommodate residents with disabilities in the event of an elevator outage, those laws are general in nature and do not contain guidelines specific to elevator maintenance, notice to residents, or resident recourse.

Local Tenant Protection Laws

In Oakland, a number of laws govern tenancies and landlord obligations generally, including the obligation to make repairs. The Tenant Protection Ordinance (“TPO”) (O.M.C. § 8.22.600 *et seq.*) prohibits landlords from “acting in bad faith” when “[interrupting], [terminating], or [failing] to provide housing services required by contract or by State, County or municipal housing, health or safety laws, or [threatening] to do so.” O.M.C. § 8.22.640. The TPO defines “housing services” as “all services provided by the owner related to the use or occupancy of a covered unit, including, but not limited to . . . elevator service.” O.M.C. § 8.22.020. Additionally, the TPO prevents landlords from “acting in bad faith” by failing to “perform repairs and maintenance required by contract or by State, County or municipal housing, health or safety laws, or threaten to do so.” O.M.C. § 8.22.640. Although the TPO clearly prohibits termination of elevator services done in “bad faith,” it does not directly impose an affirmative obligation to repair elevators or provide alternative housing. Furthermore, there remains some ambiguity as to whether elevator repair and maintenance is in fact “required” by law given that accessibility requirements only apply to buildings constructed after 1991.

The Rent Adjustment Ordinance (“RAO”) (O.M.C. § 8.22.010 *et seq.*) likewise defines “housing services” to include elevator service and allows tenants to seek a rent reduction in the event that elevator service is interrupted or discontinued. Relief provided by the RAO is limited to an adjustment in rent, however, and therefore does not provide tenants with a means of requiring repair or temporary relocation. The Code Compliance Relocation Program (“CCRP”) (O.M.C. § 15.60.010 *et seq.*) requires that property owners provide “relocation payment and assistance to residential tenants who are displaced due to compliance with building, housing and fire codes.” O.M.C. § 15.60.010. However, since local Code Enforcement officers do not cite out-of-service elevators as constituting a health and safety code violation, the CCRP does not provide redress for tenants in need of relocation due to an elevator malfunction.

Thus, although state laws and industry guidelines require that elevators be safe, fair housing laws require that building operators accommodate tenants with disabilities, and local tenant protections prohibit bad faith and may allow tenants to seek a rent reduction, there are gaps in the law meriting additional regulation. Specifically, existing law does not clarify what notice, if any, must be provided to tenants in the event of scheduled maintenance or elevator non-functionality. There are also no specific laws or guidelines pertaining to what is required in the event of elevator malfunction, such as requirements for tenant relocation in the event of elevator non-operation, or tenant recourse in the event that elevator malfunction prevents a tenant from accessing their unit.

In 1994, the City of Berkeley adopted an ordinance similar to the one proposed herein. The proposed Ordinance is the first legislation of its kind to be proposed in Oakland.

ANALYSIS AND POLICY ALTERNATIVES

People with ambulatory and other mobility-related disabilities frequently rely on elevators to access multi-floor buildings. Access to a safe and functional elevator is often a determining factor when persons with mobility disabilities choose their homes. In residential buildings that

contain elevators, regular elevator maintenance and expeditious repair of malfunctions are necessary to ensure that persons with mobility disabilities have continued access to their homes.

Adoption of the proposed Ordinance will help to ensure safe and continued access to housing for many residents with disabilities.

FISCAL IMPACT

There is no anticipated fiscal impact on the City associated with the adoption of the proposed Ordinance. The requirements set forth in the Ordinance are enforceable through private civil action and do not impose any additional requirements on City staff.

PUBLIC OUTREACH / INTEREST

An overview of the legislation was presented to the Mayor's Commission on Persons with Disabilities on October 16, 2023, and feedback from both the public and the Commission was incorporated thereafter.

COORDINATION

This legislation was developed in partnership with the City Attorney's Office, the Planning and Building Department, the Rent Adjustment Program, and the Mayor's Commission on Persons with Disabilities. The City Attorney's Office has also consulted with Cal/OSHA's Elevator Unit, the state Civil Rights Department, and other attorneys specializing in disability rights.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed Ordinance may reduce the displacement of persons with disabilities and ensure continued access to housing, thereby reducing risks of homelessness, loss of employment, and other economic detriments associated with unstable housing.

Environmental: No anticipated environmental opportunities are associated with adoption of the proposed Ordinance.

Race & Equity: The proposed Ordinance will promote housing stability for renters with disabilities.

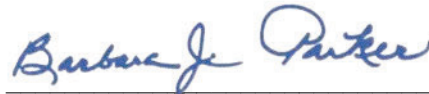
ACTION REQUESTED OF THE CITY COUNCIL

City Attorney Barbara J. Parker, Council President Nikki Fortunato Bas, and Councilmembers Dan Kalb, Carroll Fife, and Treva Reid recommend that the City Council adopt the following:

ORDINANCE REQUIRING OPERATORS OF RESIDENTIAL PROPERTIES WITH ELEVATORS TO MAINTAIN ELEVATORS IN AN OPERABLE CONDITION AND TO TEMPORARILY RELOCATE ANY RESIDENT WHOSE ACCESS TO AND FROM THEIR UNIT IS SUBSTANTIALLY RESTRICTED DUE TO THE RESIDENT'S ISABILITY OR OTHER PHYSICAL CONDITION LIMITING THEIR ABILITY TO USE STAIRS WHEN AN ELEVATOR IS INOPERABLE FOR MORE THAN 24 HOURS.

For questions regarding this report, please contact Braz Shabrell, Deputy City Attorney, at bshabrell@oaklandcityattorney.org.

Respectfully submitted,



BARBARA J. PARKER
City Attorney



NIKKI FORTUNATO BAS
Council President



DAN KALB
Council President Pro Tempore



CARROLL FIFE
Councilmember



TREVA REID
Councilmember

Attorney Assigned:
Braz Shabrell, Deputy City Attorney