

14 OCT -9 PM 4:33

Revision No. 24

Approved as to Form and Legality

DRAFT

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. Requirements related to City-provided notices shall not take effect until such notices are available to the public and effective. —As set out in Exhibit A, implementation of certain provisions 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: _____

Exhibit A – Revised – Oct. 9, 2014

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[Councilmember Dan Kalb's proposed edits 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 icreates 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. 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. 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. 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 as provided by 8.22.660, 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 written 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 written 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. 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 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. This shall not include settlement offers made in good faith and not accompanied with threats or intimidation in pending eviction actions;
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 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 subject to this ordinance 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.

F. Repairs and maintenance. Nothing in the TPO shall be construed as requiring different timelines or standards for repairs or maintenance, as required by contract or State, County or municipal housing, health, and safety laws, or according to appropriate industry protocols.

8.22.650 General Remedies.

~~A. Violations of the TPO.~~

~~4. 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.~~

B. Notice requirement for Tenants. Before a Tenant private party may file an administrative complaint or a civil suit alleging a violation of 8.22.640.A.2., 10., 11., or 12., anthe affected Tenant must first notify the Owner or his or her designated agent in writing regarding the problem and allow 15 days for the Owner to correct the problem, unless the Owner notifies the Tenant that the repairs will take more than 15 days and provides for a reasonable time period for completion. If the repair takes more than 15 days, the Tenant may file the administrative complaint or civil suit if the Owner does not take reasonable steps to commence addressing the problem or the Owner does not follow through to complete the repairs with reasonable diligence. If the problem is not

~~corrected within 15 calendar days of issuing the notice, a private party may file a complaint or suit.~~

C.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.

D.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.

8.22.660 General Administrative Remedies

A. General Administrative Remedies.

4. 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.

B. 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.

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

D. 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.

E. 5. Appeal of Administrative Citation or Civil Penalty.

1. 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.

2. 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.

3. 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.

F. 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.

G. Tenants who file repeated requests for Administrative Citations or Civil Penalties that lack merit may be given an Administrative Citation, pursuant to regulations.

8.22.670 Civil Remedies

A. General Civil Remedies.

1. Enforcement by Aggrieved Parties ~~Party~~ Tenant. An aggrieved ~~party~~ Tenant may bring a civil action for injunctive relief or damages, or both, for any violation of 8.22.540. An aggrieved ~~party~~ Tenant 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.

B. 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~~ Tenant (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.

C. Civil Remedies Inapplicable to Nonprofit Owned Rental Units. The civil remedies provided for in this subsection are not applicable to Rental Units noted under the Exemption described under 8.22.630.B.1. 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.

D. 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~~ Tenant, 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.

E. 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~~Tenant. 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.

8.22.6860 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, provided, however, that if the Rent Board has not issued initial regulations within such time as the City Council may proscribe, the City Administrator is authorized to make interim regulations.

Within ninety (90) days of the effective date of the TPO, the City Administrator ~~or his or her designee~~ shall develop forms to implement 8.22.640.~~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~~ City Administrator makes a finding that an earlier effective or later date is necessary. All Forms required by the TPO are 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 subsection.

D. Implementation Date – Administrative Remedies. The administrative remedies provided in subsection O.M.C. 8.22.6650B 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.~~