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APPROVED AS TO FORM AND LEGALITY

  
CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBERS CAMPBELL WASHINGTON, GIBSON MCELHANEY, GUILLEN AND KALB

## OAKLAND CITY COUNCIL

### RESOLUTION NO. 86320 C.M.S.

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A RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE NOVEMBER 8, 2016 STATEWIDE GENERAL ELECTION PROPOSED AMENDMENTS TO O.M.C. CHAPTER 8.22 (RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS) TO: (1) REQUIRE OWNERS FILE PETITIONS FOR RENT INCREASES OTHER THAN THOSE BASED ON THE ANNUAL CONSUMER PRICE INDEX INCREASE OR BANKING; (2) INCREASE TRANSPARENCY, INCLUDING REGULAR PUBLIC REPORTS FROM THE RENT PROGRAM TO THE CITY COUNCIL; (3) MODIFY THE NEW CONSTRUCTION EXEMPTION IN THE JUST CAUSE FOR EVICTION ORDINANCE TO APPLY TO UNITS CONSTRUCTED ON OR AFTER DECEMBER 31, 1995; AND (4) PERMIT THE CITY COUNCIL LIMITED AUTHORITY TO MODIFY THE ORDINANCES; AND TO DIRECT THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH THE NOVEMBER 8, 2016 STATEWIDE GENERAL ELECTION

**WHEREAS**, Oakland has a Rent Adjustment Program that presently permits landlords to petition for rent increases, but in most cases requires tenants to petition to contest rent increases over an annual rent increase allowance; and

**WHEREAS**, On November 5, 2002, Oakland voters passed the Just Cause for Eviction Ordinance (Measure EE), codified as Article II of Title 8 of the Oakland Municipal Code; and

**WHEREAS**, the City of Oakland is experiencing a severe housing supply and affordability crisis that requires action by the City government; and

**WHEREAS**, the housing affordability crisis threatens the public health, safety and/or welfare of our residents; and

**WHEREAS**, 60 percent of Oakland residents are renters, who would not be able to locate affordable housing within the city if displaced (U.S. Census Bureau, ACS 2014 Table S1101); and

**WHEREAS**, in February 2016 the median rental price for a one-bedroom unit in Oakland was \$2,250 per month (\$27,000 per year), a 13.6 percent increase in costs over February 2015, and the median rental price for a two-bedroom unit in February 2016 was \$2,700 per month (\$32,400 per year), an 18.9 percent increase over costs in February 2015 (Zumper National Rent Report: March 2016); and

**WHEREAS**, Oakland's rental housing costs are the fourth highest in the nation, behind San Francisco, New York, and Boston (Zumper National Rent Report: March 2016); and

**WHEREAS**, in 2014 the estimated annual median household income for households that rented in Oakland was \$36,657, which would result in a household renting the median priced unit paying 74 percent of household income for a one-bedroom unit or 85 percent of household income for a two-bedroom unit (U.S. Census Bureau, ACS 2014, Table S2503); and

**WHEREAS**, the affordable rent for a family earning \$36,657 is defined as only paying thirty percent of income on housing, which is approximately \$916 per month; and

**WHEREAS**, the median rent for all apartments rented in February of 2016 reached an all-time high of just over \$3,000 per month according to research from Trulia; and

**WHEREAS**, 22.5% of Oakland's households are "housing insecure," defined as facing high housing costs, poor housing quality, unstable neighborhoods, overcrowding, or homelessness; and

**WHEREAS**, over 26,000 Oakland households are severely rent burdened, which is defined as spending 50 percent or more of monthly household income on rent (Oakland Consolidated Housing Needs Assessment 2015 Analysis of HUD Data, as reported in the City's March 2016 Oakland at Home report, pp. 10-11); and

**WHEREAS**, displacement through evictions has a direct impact on the health, safety and/or welfare of Oakland's citizens by uprooting children from their schools, disrupting longstanding community networks that are integral to citizens' welfare, forcing low-income residents to pay unaffordable relocation costs, segregating low-income residents into less healthy, less safe and more overcrowded housing that is often further removed from vital public services and leaving residents with unhealthy

levels of stress and anxiety as they attempt to cope with the threat of homelessness; and

**WHEREAS**, the requirement in the current Rent Adjustment Ordinance for tenants to file petitions to challenge rent increases discourages many tenants from contesting what might be invalid rent increase, and requiring landlords to file petitions to justify rent increases in excess of an annual allowance provides tenants with better protection against unjustified rent increases, particularly in the case of the most vulnerable elements of the renter population; and

**WHEREAS**, the current Just Cause for Eviction Ordinance (“JCO”) leaves a gap in its coverage for units subject to the Oakland’s Rent Adjustment Ordinance leaving some tenants whose rents are regulated without eviction protections and such tenants should be afforded better protection against arbitrary evictions and evictions intended to increase rent to market, so an extension of just cause coverage to additional newly constructed units is warranted, and

**WHEREAS**, in order to correct any provisions invalidated by state law or court decisions, and to make modifications to the JCO to further its intended purposes, the City Council should be able to make changes to it without the need to send the JCO to the ballot; and

**WHEREAS**, this action is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (no significant effect on the environment), and 15183 (projects consistent with a community plan, general plan, or zoning), each as a separate and independent basis, and when viewed collectively provide an overall basis for CEQA clearance;

**WHEREAS**, California Elections Code Section 9217 requires that an ordinance adopted by voters may be amended only by a vote of the people, unless provision is otherwise made in the original ordinance, and such provision for amendment by the City Council was not authorized by the voters in the Just Cause for Eviction Ordinance; now, therefore, be it:

**RESOLVED.** That the City Council hereby authorizes and directs the City Clerk, at least 88 days prior to the next general municipal election date, to file with the Alameda County Board of Supervisors and the Registrar of Voters certified copies of this resolution; and be it

**FURTHER RESOLVED:** That the proposed Amendments to the Rent Adjustment Ordinance (O.M.C. Chapter 8, Article I (8.22.100, et seq.) and the Just Cause for Eviction Ordinance (Measure EE)(O.M.C. Chapter 8, Article II (8.22.300,

et seq.) text is set out below. Added text is shown as double underlined type; deleted text is shown as ~~strikethrough~~ type.

The people of the City of Oakland do ordain as follows:

**Section 1.** Amendments to Rent Adjustment Ordinance (O.M.C. Chapter 8, Article I (8.22.100, et seq.). Added text is shown as double underlined type; deleted text is shown as ~~strikethrough~~ type.

**8.22.065 - Rent Adjustments In General.**

A. Notwithstanding any other provision of this Chapter, owners may increase rents only for increases based on the CPI Rent Adjustment or Banking, or by filing a petition to increase rent in excess of that amount. Any rent increase not based on the CPI Rent Adjustment or Banking that is not first approved by the Rent Adjustment Program is void and unenforceable.

B. Rent increases are subject to the requirements of this Chapter and Regulations.

C. The changes reflected in this O.M.C. subsection 8.22.065 only apply to rent increases noticed on or after February 1, 2017.

**8.22.250 – Administration, Reports, and Notices to Owners and Tenants.**

A. The City Administrator shall report annually on the status of the Rent Adjustment Program to the City Council or to such City Council Committee as the City Council may designate. Such reports shall include, but shall not be limited to the following:

1. Rent Board vacancies.
  2. Rent Board meeting cancellations.
  3. Statistics on the number and type of petitions filed and outcomes, including rent increases granted.
  4. The timeliness of petition hearings and appeals.
  5. Statistics on numbers and types of eviction notices filed pursuant to the Just Cause for Eviction Ordinance (Chapter 8, Article II, O.M.C. 822.300, et seq.)
  6. Number and types of rental units covered by this Chapter.
  7. Any other information the City Council or Committee may request.
- B. The City Administrator shall develop searchable data bases for ready public access to information on hearing decisions, appeals, and notices filed. To the extent consistent with state and City public records and sunshine laws,

names and personal information shall not be included in the database or otherwise shall be redacted from release of filed notices.

- C. The City shall make available translation services in languages other than English, where requested in advance, to interpret and translate documents and procedures as needed related to Board Hearings and Appeals.
- D. Notices to Tenants and Owners.
  - 1. The City shall annually provide notification to all Covered Units information, including but not limited to, the amount of the annual CPI Rent Adjustment, Banking (as an allowable increase without landlord petitioning) and information on how to get information to challenge a rent increase, and other questions about rents and Rent Adjustment Program procedures.
  - 2. The City shall annually provide notification to all Owners with Covered Units, including but not limited to, the amount of the annual CPI Rent Adjustment, Banking (as an allowable increase without landlord petitioning), and information on how to get information to petition for a rent increase, and other questions about rents and Rent Adjustment Procedures.

**Section 2.** Amendments to the Just Cause for Eviction Ordinance (Measure EE)(O.M.C. Chapter 8, Article II (8.22.300, et seq.). Added text is shown as double underlined type; deleted text is shown as ~~strikethrough~~ type.

**8.22.350 – Applicability and Exemptions.**

The provisions of this chapter shall apply to all rental units in whole or in part, including where a notice to vacate/quit any such rental unit has been served as of the effective date of this chapter but where any such rental unit has not yet been vacated or an unlawful detainer judgment has not been issued as of the effective date of this chapter. However, Section 6 [8.22.360] and Section 7(A)-(E) [8.22.370(A) through 8.22.370(E)] of the chapter [O.M.C. Chapter 8.22, Article II] shall not apply to the following types of rental units:

- A. Rental units exempted from Part 4, Title 4, Chapter 2 of the California Civil Code (CCC) by CCC § 1940(b).
- B. Rental units in any hospital, skilled nursing facility, or health facility.
- C. 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.

- D. 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.
- E. Rental units in a residential property where the owner of record occupies a unit in the same property as his or her principal residence and regularly shares in the use of kitchen or bath facilities with the tenants of such rental units. 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.
- F. 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 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.
- G. A unit that is held in trust on behalf of a developmentally disabled individual who permanently occupies the unit, or a unit that is permanently occupied by a developmentally disabled parent, sibling, child, or grandparent of the owner of that unit.
- ~~H. Newly constructed rental units which are completed and offered for rent for the first time after the effective date of the initial Oakland Residential Rent, Relocation, and Arbitration Ordinance, provided that such new units were not created as a result of rehabilitation, improvement or conversion as opposed to new construction.~~
- I. A rental unit or rental units contained in a building that has a certificate of occupancy for the new construction of the unit or building in which the rental unit(s) is contained is issued on or after December 31, 1995:
  - 1. This exemption applies only to rental units that were newly constructed from the ground up and does not apply to units that were created as a result of rehabilitation, improvement or conversion of commercial space, or other residential rental space;
  - 2. If no certificate of occupancy was issued for the rental unit or building, in lieu of the date a certificate of occupancy, the date the last permit for the new construction was finalized prior to occupancy shall be used;

**Section 3. Rent Adjustment Ordinance** (O.M.C. Chapter 8, Article I (8.22.100, et seq.) miscellaneous.

A. The City Council may not modify or repeal the specific text of the Rent Adjustment Ordinance inserted, modified or deleted by Section 1 of this measure as shown in double underline for added text and strikethrough type for deleted text; however, the City Council may modify any other provisions in the Rent Adjustment Ordinance. The City Council may modify the specific text inserted, modified or deleted by this Measure only if required by a court decision or state law that invalidate or require modification. The Rent Board may make a recommendation for revisions to be forwarded to the City Council for consideration.

B. The amendments set out in Section 1 (Rent Adjustment Ordinance) of this Measure do not apply to any valid rent increase notice given prior to the effective date of this Measure.

C. It is anticipated that the amendments to the Rent Adjustment Ordinance set out herein may require further amendments to the Rent Adjustment Ordinance and Rent Adjustment Regulations. The City Council may make such other changes to the Rent Adjustment Ordinance and the Rent Adjustment Board may make such changes necessary to conform the Rent Regulations to the Rent Adjustment Ordinance made herein.

**Section 4. Just Cause for Eviction Ordinance (Measure EE)(O.M.C. Chapter 8, Article II (8.22.300, et seq.)) miscellaneous.**

A. Should any provision of the Just Cause for Eviction Ordinance (Measure EE)(O.M.C. Chapter 8, Article II (8.22.300, et seq.)) (Section 2) or any provision of this Measure, be invalidated or required to be modified by a court decision or change in State or Federal law, the Rent Board may make a recommendation for revisions to be forwarded to the City Council for consideration. The City Council is authorized to make to such modifications to conform to the court decision or change in state law provided that such modifications effectuate the purpose of the Just Cause for Eviction Ordinance and the original text.

B. The amendments set out in Section 2 (Just Cause Ordinance) of this measure do not apply to any valid notice terminating tenancy given prior to the effective date of this measure.

**Section 5. Severability.** If any section, subsection, sentence, clause or phrase of this Measure is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Measure. The voters hereby declare that it would have passed this Measure 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. In lieu of severance, any section declared invalid or unconstitutional may be modified pursuant to Sections 3 or 4 above, as appropriate.

**Section 6. Effective Date.** This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council.

**FURTHER RESOLVED:** That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk will fix and determine a date for submission of arguments for or against said proposed amendment of the Just Cause for Eviction Ordinance, and said date will be posted by the Office of the City Clerk; and be it

**FURTHER RESOLVED:** That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk will provide for notice and publication of said proposed amendment of the Just Cause for Eviction Ordinance in the manner provided for by law; and be it

**FURTHER RESOLVED:** That each ballot used at said municipal election will have printed therein, in addition to any other matter required by law, the following:

PROPOSED AMENDMENTS TO OAKLAND'S JUST CAUSE FOR EVICTION AND RENT ADJUSTMENT ORDINANCES

**MEASURE \_\_\_\_**

Measure __. Shall Oakland's Just Cause For Eviction and Rent Adjustment Ordinances be amended by: (1) extending just-cause eviction requirements from residential rental units offered for rent on or before October 14, 1980 to those approved for occupancy before December 31, 1995; and (2) requiring landlords to request approval from the City before increasing rents by more than the cost-of-living adjustment allowed by City law?	Yes	
	No	

and be it

**FURTHER RESOLVED:** That the City Clerk and City Administrator are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the next municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the next municipal election consistent with law; and be it

**FURTHER RESOLVED:** That the City Council has reviewed the proposed amendments to the Oakland Municipal Code to be considered by the voters and independently finds and determines that this action is exempt from CEQA pursuant



to CEQA Guidelines sections 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (no significant effect on the environment), and 15183 (projects consistent with a community plan, general plan, or zoning), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

IN COUNCIL, OAKLAND, CALIFORNIA,  
PASSED BY THE FOLLOWING VOTE:

July 19, 2016

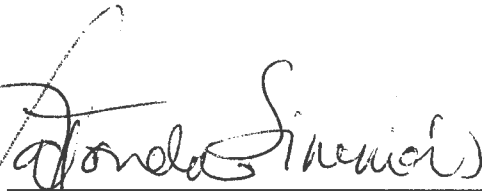
AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLÉN, KALB, KAPLAN, REID AND  
PRESIDENT GIBSON MCELHANEY -8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST.



LATONDA SIMMONS

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

Date of Attestation: \_\_\_\_\_