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CITY OF OAKLAND



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July 9, 2019

HONORABLE CITY COUNCIL
Oakland, California 94612

**Re: EQUAL HOUSING ORDINANCE - SUPPLEMENTAL REPORT
REQUESTED BY COMMUNITY AND ECONOMIC DEVELOPMENT
COMMITTEE**

Dear President Kaplan and Members of the Council:

During the July 9, 2019 special City Council meeting, I will ask the Council to pass a motion introducing the Equitable Access to Low-Income ("EQUAL") Housing Ordinance.

During the June 25, 2019 Community and Economic Development Committee meeting, Councilmember Taylor expressed concerns about the use of term "prospective tenant" in the EQUAL Housing Ordinance. Councilmember Taylor was concerned the term was ambiguous and could be interpreted very broadly and include any member of the public. Based on our discussions of alternatives with the Councilmember, our Office is submitting with this memorandum a redlined version of the EQUAL Housing Ordinance. We believe that the amendment addresses Councilmember Taylor's concerns regarding the use of the term "prospective tenant." If the Council chooses to do so, I would support the amending of the EQUAL Housing Ordinance to be consistent with the enclosed redlined version.

The redlined version of the EQUAL Housing Ordinance seeks to clarify that Section 8.22.940D applies not to any member of the public, but only to current tenants or persons who have applied to rent a property. It also changes references from "aggrieved prospective tenant" to "aggrieved person" in Section 8.22.960 "Civil Remedies."

Respectfully submitted,


BARBARA J. PARKER
City Attorney

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Approved as to form and legality


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY CITY ATTORNEY PARKER, COUNCILMEMBER KALB,
AND COUNCILMEMBER FORTUNATO BAS

**ORDINANCE ADDING A NEW ARTICLE TO O.M.C. CHAPTER 8.22 TO
INCREASE ACCESS TO HOUSING FOR LOW-INCOME TENANTS
DEPENDENT ON HOUSING ASSISTANCE AND TO PROVIDE
REMEDIES FOR VIOLATIONS**

WHEREAS, increased demand for rental housing in Oakland has caused rents to skyrocket, destabilizing Oakland's rental housing market and triggering an affordable housing crisis; and

WHEREAS, Oakland's prolonged affordable housing crisis harms neighborhood stability and cohesion and disproportionately impacts populations at high-risk for homelessness, including low-income households, senior citizens, people of color, and people with disabilities; and

WHEREAS, many of the tenants most affected by Oakland's affordable housing crisis rely on housing assistance, such as Section 8 vouchers (also known as Housing Choice Vouchers), to pay rent;

WHEREAS, Oakland's low-vacancy, high-demand rental housing market incentivizes landlords to rent units to private market tenants and, in 2015 alone, the Oakland Housing Authority ("OHA") reported losing 824 units from the Housing Choice Voucher ("HCV") Program because property owners decided to leave the Program;

WHEREAS, OHA has cited HCV voucher underutilization as "the most significant challenge the agency is facing" and has attributed its declining utilization rate to decreased owner participation in the HCV Program;

WHEREAS, many landlords in Oakland openly refuse to rent to recipients of housing assistance, and blanket policies of this nature are both demoralizing to ~~families who rely on housing assistance to pay rent and perpetuate the very~~ disparities in access to safe and affordable housing that the HCV Program was designed to remedy; and

WHEREAS, as more landlords refuse to accept Section 8 vouchers, more voucher holders are displaced from their neighborhoods and forced to seek rental housing outside of Oakland;

WHEREAS, because Oakland presently offers no special legal protection for tenants seeking to pay rent with housing assistance, renters who rely on housing assistance may be denied equal consideration for access to housing; and

WHEREAS, the lack of protections for HCV recipients exacerbates Oakland's housing emergency, and the HCV Program's effectiveness as an affordable housing intervention depends upon landlords providing individualized consideration to each prospective tenant, regardless of whether they receive housing assistance; and

WHEREAS, at least eight other cities and counties in California—including Berkeley, Corte Madera, East Palo Alto, Los Angeles, Marin, San Francisco, Santa Clara, and Santa Monica—have enacted similar ordinances; and

WHEREAS, a study prepared for the Department of Housing and Urban Development found that laws preventing landlords from refusing to rent to Section 8 recipients increase voucher utilization rates by 4-11%; and

WHEREAS, providing low-income households with access to low-poverty neighborhoods and improving their residential stability may also lead to better educational and health outcomes for children and families that receive HCVs;

WHEREAS, protecting tenants from being denied housing because they receive housing assistance is consistent with the Housing Element of the Master Plan of the City of Oakland, which states that all residents have the right to decent housing in pleasant neighborhoods at prices they can afford; and

WHEREAS, the City Council is committed to maintaining the ability of people in all income categories to live in our city. Increased housing pressures for low-income residents warrant improved rent stabilization, tenant protection, and housing access policies. The City Council, further, finds that reasonable regulation of aspects of the landlord-tenant relationship is necessary to maintain an adequate supply of a

variety of rental housing options, and to protect the health, safety, and general welfare of the public; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Addition of Article IX to Chapter 8.22 of the Oakland Municipal Code. That the City Council hereby adopts the addition of Section 8.22.900 et. seq. as Article IX of Chapter 8.22 of the Oakland Municipal Code, as follows.

Article IX – Equitable Access to Low-income (“EQUAL”) Housing Ordinance

8.22.900 – Title.

This Ordinance shall be known as the Equitable Access to Low-income (“EQUAL”) Housing Ordinance.

8.22.910 – Purpose.

The purpose of this Ordinance is to redress the severe housing crisis in Oakland by ensuring that all persons with the ability to pay for housing are considered for housing, regardless of whether they receive a housing subsidy or housing assistance of any kind.

8.22.920 – Definitions.

“Housing Assistance” means any benefit or subsidy from any federal, state, local, or nonprofit-administered program, including, but not limited to, housing and rental assistance programs, homeless assistance programs, security deposit assistance programs, housing subsidy programs, and any requirement of any such programs. “Housing Assistance” does not include any benefit or subsidy that is paid directly to the Tenant.

“Owner” means an owner, real estate broker, trustee, receiver, or any person having any legal or equitable right of ownership or the right to rent or lease Rental Units, or an agent, representative, or successor of any of the foregoing.

“Rent” has the same meaning as in O.M.C. 8.22.340.

“Rental Agreement” has the same meaning as in O.M.C. 8.22.340.

“Rental Unit” means any unit in any real property, regardless of zoning status, including the land appurtenant thereto, that is rented or available for rent for residential use or occupancy (regardless of whether the unit is also used for other purposes), together with all housing services connected with use or occupancy of

such property, such as common areas and recreational facilities held out for use by the tenant.

"Tenant" has the same meaning as in O.M.C. 8.22.340.

8.22.930 – Applicability.

- A. This Ordinance shall apply to all Rental Units, except any Rental Unit as described in O.M.C. 8.22.630(B)(2)-(4) and accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses, provided that such accommodations are not occupied by the same tenant for thirty (30) or more continuous days.
- B. Nothing in this Ordinance shall be construed to apply to the renting or leasing of any Rental Unit that meets the following criteria:
 - 1. the Owner, or any member of his or her family, occupies the Rental Unit, and
 - 2. The Owner, or any member of his or her family, shares a bathroom or kitchen facility in common with the Tenant.

8.22.940 – Prohibited Activity.

It is unlawful for any Owner to do or attempt to do any of the following that is wholly or partially based on receipt of Housing Assistance:

- A. To refuse to rent; to require different terms for renting;
- B. To misrepresent that a Rental Unit is unavailable for rent;
- C. To include in the terms or conditions of a Rental Agreement any clause, condition, or restriction, unless those clauses, conditions, or restrictions are required from the source of Housing Assistance to receive such assistance;
- D. To refuse or restrict facilities, services, repairs, or improvements for any current Tenant or ~~prospective tenant~~applicant;
- E. To serve a notice of termination of tenancy; commence an unlawful detainer action; or otherwise deny or withhold the use of a Rental Unit;
- F. To make, print, publish, advertise, or disseminate in any way, or cause to be made printed or published, advertised or disseminated in any way, any notice, statement, or advertisement with respect to a rental, that unlawfully indicates preference, limitation, or prejudice based on receipt of Housing Assistance;

- G. To use a financial or income standard for rental housing that gives preferential treatment to income earned, or rental payments made, directly by an applicant over Housing Assistance, or that discounts or discriminates against Housing Assistance.

8.22.950 – [Reserved].

8.22.960 – Civil Remedies.

- A. Enforcement of Civil Remedies. A civil action to enforce the provisions of this Ordinance may be filed by:
1. Any aggrieved current ~~or prospective~~ Tenant or person;
 2. The City Attorney; or
 3. Any organization that:
 - i. Has tax exempt status under 26 United States Code Section 501(c)(3) or 501(c)(4);
 - ii. Has a mission of protecting the rights of Tenants in Oakland or Alameda County; and
 - iii. Will fairly and adequately represent the interests of the aggrieved current ~~or prospective~~ Tenant or person or a protected class.
- B. Equitable Relief. Any Owner who commits, proposes to commit, or aids another in committing an act that violates this Ordinance may be enjoined therefrom by any court of competent jurisdiction. The court may also award any further relief it deems proper, including but not limited to restitution.
- C. Civil Liability. Any Owner who violates, or any person who aids another to violate, any provision of this Ordinance shall be liable for the following monetary damages:
1. In any action brought by any aggrieved current ~~or prospective~~ Tenant or person or any organization defined under O.M.C. 8.22.960(A)(3) or pursuant to this Ordinance, the Owner shall be liable for (a) three times the greater of either (1) actual damages, (2) one month's Rent that the Owner charges for the Rental Unit in question, or (3) the HUD Small Area Fair Market Rent of such Rental Unit, and (b) litigation costs and reasonable attorney's fees. All damages shall be awarded to the current ~~or prospective~~ Tenant or person whose rights were violated. The 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, pursuant to standards for punitive damages set~~ by state law.

2. The City Attorney may file an action against an Owner that the City Attorney believes has violated provisions of this Ordinance. Such an action may include requests for equitable relief (e.g., injunctions and restitution), and recovery of costs and reasonable attorney's fees. The City Attorney has sole discretion to determine whether to bring such an action.

D. Criminal Penalties.

1. Infraction. Any Owner who violates, or any person who aids another to violate, any provision of this Ordinance shall be guilty of an infraction for the first offense.
2. Misdemeanor. Any Owner who violates, or any person who aids another to violate, any provision of this ordinance multiple times shall be guilty of a misdemeanor.

- E. General Remedies. The remedies available in this Ordinance are not exclusive and may be used cumulatively with any other remedies in this Ordinance or at law.

8.22.970 – Miscellaneous.

- A. Non-waivability. The provisions of this Ordinance may not be waived. Any term of any Rental Agreement, lease, contract, application for rental of a unit, or other agreement which purports to waive or limit a current or ~~prospective~~ Tenant's or person's substantive or procedural rights under this Ordinance is contrary to public policy, unenforceable, and void.
- B. Retaliation Prohibited. Retaliation against a ~~prospective Tenant~~ person because of the ~~Tenant's~~ person's exercise of rights under this Ordinance is prohibited and constitutes a violation of this Ordinance. Retaliation claims may only be brought in court and may not be addressed administratively.
- C. Administrative Burden. While landlords may face some administrative burdens to receive Housing Assistance, new or greater administrative burden associated with receiving Housing Assistance is not a defense to any violation of this Ordinance.
- D. Rules and Regulations. The City Administrator is authorized to create and amend rules and regulations, and forms consistent with this Ordinance.

SECTION 3. Severability. 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 the 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. No Conflict with State or Federal Law. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or State law.

SECTION 5. 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.

SECTION 6. CEQA Exemption. This action is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA guidelines: § 15378 (regulatory actions), § 15061(b)(3) (no significant environmental impact), and §15183 (actions consistent with the general plan and zoning).

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

Date of Attestation: _____

2467213v6

NOTICE AND DIGEST

ORDINANCE ADDING A NEW ARTICLE TO O.M.C. CHAPTER 8.22 TO INCREASE ACCESS TO HOUSING FOR LOW-INCOME TENANTS DEPENDENT ON HOUSING ASSISTANCE AND TO PROVIDE REMEDIES FOR VIOLATIONS

This Ordinance adds a new Article to O.M.C. Chapter 8.22 to increase access to housing for low-income tenants dependent on housing assistance such as Section 8 Housing Choice Vouchers and to provide remedies for violations.

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