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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

AGENDA REPORT

TO: 2010 JUL 13 9:59 AM 2010 JUL 13 9:59 AM La Fuente and Members of the City Council's Community and Development Committee

FROM: John A. Russo, City Attorney

DATE: July 13, 2010

RE: **Resolution Submitting Amendments to the Just Cause for Eviction Ordinance, On The City Council's Own Motion, To The Electors At The November 2, 2010 Statewide General Election, To Clarify the Original Intent of that Ordinance Regarding Vacating Tenants From Nonconforming (Illegal) Rental Units and Adding Additional Requirements Thereto, To Set Out the Rent Board's Existing Implied Regulatory Authority into the Ordinance, and To Expand the City Council's Authority to Revise the Ordinance in the Event Any Provision is Prospectively Found Invalid by a Court or Is Affected by State Law; Consolidating The Election With The Statewide General Election; And Directing The City Clerk To Fix The Date For Submission Of Arguments And Provide For Notice And Publication In Accordance With The November 2, 2010, Statewide General Election**

SUMMARY

The City Attorney's Office recommends that the City Council put on the November 2010 municipal ballot an amendment to the Just Cause for Eviction Ordinance (Measured EE, O.M.C. 8.22 300) ("JCO"). This amendment would primarily clarify the original intent of the JCO regarding how tenants may be evicted from rental units that landlords created in violation of the building or zoning codes and that the landlords have illegally placed on the rental market. Although the JCO covers illegal units, some landlords have been improperly using a 3-day notice to evict the tenant on the basis that the tenant is using the premises for an unlawful purpose (a provision normally reserved for illegal activity by the tenant such as drug dealing, prostitution) despite that it was the landlord who unlawfully created and placed the unit on the market. Although the Rent Board has adopted a regulation clarifying how landlords can evict tenants from units that cannot be legalized, our office believes that a more comprehensive approach through an ordinance amendment is the best way of addressing the issue.

In addition, the proposed JCO amendment would set out the ordinance's implied original intent to permit the Rent Board to adopt general regulations to clarify, fill in ordinance details, and interpret the ordinance. The amendment would also expand the City Council's ability to amend the JCO without going back to the voters in the event a future lawsuit invalidates a provision in the ordinance or a change in state law affects a provision.

Because the JCO was enacted as a voter initiative, it can only be amended by going back to the voters. For these reasons, the City Attorney believes the best approach is to present this amendment to the voters to more specifically address evictions from illegal units.

Item: 1

Community and Economic Development Committee

July 13, 2010

FISCAL IMPACT

The City will initially bear the cost of placing the measure on the ballot, which is not known at this time. If the measure passes, the City might see some savings in future litigation costs and in avoiding future ballot measures to amend the JCO.

BACKGROUND

In November 2002, the voters adopted the JCO. The JCO is similar to good cause for eviction ordinances enacted by most major California cities. The JCO requires landlords to have specified causes to evict tenants. Some of the causes are for when the tenant is at fault (nonpayment of rent, breach of the rental agreement, illegal activity such as drug dealing). Other causes include when the landlord needs recover possession for owner occupancy, removing the unit from the market, or for code enforcement purposes.

The JCO applies to units that do not conform to building or zoning codes, were improved without permits, have deteriorated to a substandard condition, or lack a certificate of occupancy. The municipal code refers to these as “nonconforming” units, and they are sometimes referred to as “illegal” units. At some point City code inspectors may discover that a landlord placed a nonconforming unit on the rental market and the unit is occupied by a tenant. Inspectors may learn about the unit because neighbors, a visitor to the unit, or the tenant may report the unit or deficiencies in the unit. When a tenant reports the unit, it is generally because the unit has a substandard condition that the landlord has failed to correct. The inspector may issue an order to the landlord to cure the nonconformity. The nonconformity may be cured by correcting the code violations, obtaining a certificate of occupancy, or obtaining the zoning approvals. In such a case the JCO allows a landlord to temporarily affect a tenant, with the tenant having a right to return when the work is complete.

However, in some cases, the landlord may not be able to legalize the unit either because it cannot be legalized or because the landlord lacks the resources to do so. For example, a basement unit that lacks required ceiling height or ventilation may not physically be able to be legalized. Or a single family unit divided into multiple units may be improper in a single-family zone or where it cannot meet parking requirements for multiple units. Even in circumstances in which a unit could be brought into conformity, the landlord may lack the financial resources to afford the necessary work, or it may not be financially feasible to do so. In such a case the landlord may elect to remove the illegal unit.

In those instances when the unit cannot be legalized or the landlord does not wish to legalize the unit, the unit will have to be permanently vacated. If the unit has immediate health and safety problems, a City code inspector may declare the unit an imminent hazard in order to vacate within 72 hours. If it is not an imminent hazard, the code inspector may order the landlord to cure the violations or cause the unit to be vacated. In this circumstance, the landlord

would cause the unit to be vacated by giving the tenant a proper notice to quit and proceed to an unlawful detainer should the tenant not timely vacate.

Landlords Using 3-Day Notices to Evict. In evicting a tenant from an illegal unit the landlord placed on the market, some landlords have been using a three-day notice under O.M.C. 8.22.360A.6 (similar to Code of Civil Procedure 1161(4)) on the basis that the tenant is using the premises for an unlawful purpose. However, the City Attorney's Office believes section 360A.6 and CCP 1161(4) are intended for the situation where a tenant is committing an illegal act on the premises (such as drug dealing or prostitution), not the situation where the landlord committed the unlawful act by putting the unit on the rental market. Nonetheless some courts have permitted the eviction through the use of a three-day notice.

Moreover, evicting a tenant with a three-day notice for something that the tenant was not responsible for is particularly unjust. Not only is the tenant losing his/her home that the tenant may have had for a number of years, the tenant is forced to leave within three days. A tenant who cannot find replacement housing within three days would likely face an unlawful detainer. A tenant who has unlawful detainer showing on his or her credit may have great difficulty in renting a new home. Many landlords obtain credit records that include a listing of any of the tenant's unlawful detainers. Unlawful detainers are listed in the report even if the tenant prevails or the unlawful detainer is settled; and the reasons for the unlawful detainer generally never reported.

Rent Board Regulation 360A.10.b. Upon learning that some landlords were using a three-day notice to evict tenants from illegal units, the Rent Board adopted Regulation 8.22.360A.10.b. This regulation requires a landlord to use the section of the JCO that which permits evictions to correct code violations. O.M.C. 8.22.360A.10 requires a landlord to use a 30/60 day notice under Civil Code 1946.1 to evict when correcting code violations. The regulation also provides that if the landlord legalize the unit and restored it to the market, the tenant would have a right to re-rent the unit as O.M.C. 8.22.360A.10 requires. In the case where the landlord seeks to take all the units in the property off the market, the regulation directs the landlord to use the Ellis Act Ordinance (O.M.C. 8.22.400). The Ellis Act Ordinance sets out the state law procedures for when a landlord seeks to remove all the residential rental units in a building from the market. As an example, the Ellis Act Ordinance is the appropriate mechanism to use when the landlord has permitted a building of commercial units to be used illegally as live work units.

Notwithstanding the Rent Board's regulation, the proposed amendment to the JCO is a more comprehensive approach to the issue of vacating tenants from nonconforming units. It requires the landlord to attempt to legalize the unit before resorting to vacating the unit. This comports with City policy to retain existing housing. The proposed amendment requires relocation payments before the tenant can be evicted, so that the tenant has a better opportunity to relocate. And it requires the landlord to reoffer the vacated unit to the former tenant in the event that it is legalized and puts limitations on this requirement.

The Legal Challenge to the Rent Board's Regulation. Even though the Rent Board's approach to illegal unit evictions permits the landlord to evict the tenant, the Apartment Owners Association of California ("AOA"), a landlord organization, challenged Rent Board Regulation 360A.10.b. The complaint alleges that the Rent Board's regulation conflicts with section O.M.C. 8.22.360A.10 and that the Rent Board lacked the authority to adopt the regulation.¹

While the City Attorney's Office believes the City will ultimately prevail in the litigation, if there is an appeal, the way in which a landlord can evict a tenant from an illegal unit might remain in limbo for a year or more. In addition, the proposed JCO amendment adds additional requirements to preserve the housing and protect the tenant. Moreover, should AOA ultimately prevail and Reg. 360A.10.b is invalidated, the consequences could be harmful to tenants or the City's code enforcement efforts. Left undecided by the litigation would be the means for landlords to evict tenants from illegal units because that issue is not squarely before the Court in this lawsuit. It could be that landlords could use a 3-day notice to evict, but City Attorney's Office believes that is not permitted by the JCO or Code of Civil Procedure §1161. And, as discussed above, a 3-day notice to an innocent tenant is unfair to the tenant and a draconian remedy under the circumstances.

However, if the Court invalidates Reg. 360A.10.b, the more likely outcome is that there would be no basis to evict a tenant from an illegal unit unless the tenant is evicted for some other cause where the tenant is at fault (non-payment of rent, breach of the rental agreement, etc).² Under an eviction for good cause system, a landlord can only evict for the causes enumerated in the just cause ordinance. Courts have held that a city can eliminate causes for eviction.³ Therefore, if there is no stated cause for eviction because the unit is illegal, then the landlord has no right to evict on that basis. The tenant could then not be evicted unless some other cause exists; or the tenant could remain until s/he voluntarily vacates. This result would be problematic for code and zoning enforcement efforts.

KEY ISSUES AND IMPACTS

The issue is whether to place the JCO amendment on the ballot. If the measure passes, it would settle how landlords can cause tenants to vacate illegal units, the authority of the Rent

¹ The issue of the Rent Board's authority to adopt regulations has already been addressed in *Rental Housing Association of Northern California v. City of Oakland* (2009) 171 Cal.App.4th 741 ("RHA"). Nonetheless, AOA still pursued the issue in challenging Reg. 360A.10.b. Should they prevail on this basis the effect would be to invalidate nearly all of the Rent Board's regulations. This would potentially result in a chaotic situation with landlords and tenants not knowing many of the rules for evictions in Oakland. And the Rent Board would have no ability to clarify eviction requirements when uncertainties arise. The result would inevitably be more litigation.

² If the conditions in the unit represent an immediate danger to the health and safety of the tenants, then the code enforcement officers can declare the property an imminent hazard and order the property vacated within 72 hours. This is not an eviction because the City is taking the action to vacate the unit, not the landlord. But code enforcement staff rarely issue imminent hazardous notices unless the situation is extreme.

³ *RHA*. The reason tenants cannot be evicted in Oakland following a foreclosure is that there is no ground for such an eviction stated in the JCO. *Gross v. Superior Court* (1985) 217 Cal.Rptr. 284.

Board to adopt regulations, and give the City Council additional authority to amend the JCO when necessary.

To address the issues surrounding eviction of tenants from nonconforming units, the City Attorney's Office recommends that the City Council place an amendment to the JCO on the November ballot.

The proposed amendments are summarized as follows:

1. Sets out the original intent of the JCO as to how a tenant can be vacated from a nonconforming unit and adds some additional requirements not in the existing law or in the Rent Board's regulation. The requirements for vacating a tenant from a nonconforming unit include:
 - a. For all the units on a property, a landlord must use the Ellis Act Ordinance.
 - b. For single units, a landlord must use a 30/60 day notice pursuant to Civil Code 1946.1. Additional requirements for single units include:
 - i. Determining whether the unit can feasibly be legalized prior to noticing an eviction. In this regard the landlord would be required to work with code enforcement or more zoning officials;
 - ii. Paying the tenant any relocation due prior to the tenant vacating;
 - iii. If the landlord legalizes the unit within a limited period of time in the future the landlord must offer to rerent the unit to the former tenant.
2. Restates when relocation payments are due under a temporary eviction for code violations to conform to the requirements for a permanent vacation of the unit.
3. Sets out the original intent of the JOC that the Rent Board have the authority to adopt general regulations.
4. Permits the City Council to make corrective amendments to the JCO in the event the court declares any of its provisions invalid or there is a change in state law.

SUSTAINABLE OPPORTUNITIES

Economic

If nonconforming units are retained, there would be modest economic development activity thereby created from the rehabilitation of those units.

Environmental

The proposed JCO amendment would encourage landlords who create nonconforming units to legalize them rather than merely evict the tenant, thus retaining more housing opportunities.

Social Equity

Many of the tenants residing in nonconforming units are lower-income, minorities, seniors, disabled, and others who have limited housing opportunities. When they are evicted by a three-day notice, they are victimized by losing their homes, having to leave within three days, and potentially having an unlawful detainer on their credit making it more difficult to rent another unit. This might contribute to homelessness in Oakland.

DISABILITY AND SENIOR CITIZEN ACCESS

Some seniors and disabled persons reside in nonconforming units and would be protected from three-day notice evictions and might be better able to retain their homes if their units are legalized. In addition, by precluding a landlord from using a three-day notice and requiring relocation before the tenant is evicted, the tenant would have a greater opportunity to find new housing and would stand a better chance of avoiding an unlawful detainer.

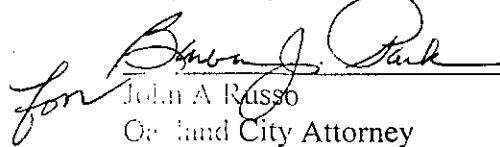
RECOMMENDATIONS AND RATIONALE

The City Attorney's Office recommends the Council place the measure amending the JCO on the November 2, 2010 ballot. These amendments would provide more protection for tenants residing in nonconforming units while still permitting a reasonable means for landlords to vacate the units when necessary.

ACTION REQUESTED OF THE AGENCY/CITY COUNCIL

The City Attorney's Office recommends that the Council pass a resolution placing the measure amending the JCO on the November 2, 2010 ballot.

Respectfully submitted,


John A. Russo
Oakland City Attorney

Attorney Assigned:
Richard F. Illgen

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DRAFT

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____
2010 JUL -8 PM 3:59

CITY ATTORNEY

OAKLAND CITY COUNCIL
RESOLUTION NO. _____ C.M.S.

Resolution Submitting Amendments to the Just Cause for Eviction Ordinance, On The City Council's Own Motion, To The Electors At The November 2, 2010 Statewide General Election, To Clarify the Original Intent of that Ordinance Regarding Vacating Tenants From Nonconforming (Illegal) Rental Units and Adding Additional Requirements Thereto, To Set Out the Rent Board's Existing Implied Regulatory Authority into the Ordinance, and To Expand the City Council's Authority to Revise the Ordinance in the Event Any Provision is Prospectively Found Invalid by a Court or Is Affected by State Law; Consolidating The Election With The Statewide General Election; And Directing The City Clerk To Fix The Date For Submission Of Arguments And Provide For Notice And Publication In Accordance With The November 2, 2010, Statewide General Election

WHEREAS, the Mayor and the City Council of the City of Oakland seek to better ensure Oakland's rent and eviction laws are clear for all landlords and tenants; and

WHEREAS, the Oakland's Just Cause for Eviction Ordinance (Measure EE) adopted by the voters in 2002 has been the subject of litigation and, as a result, has created more uncertainty among landlords and tenants regarding how and when tenants can be required to vacate their rental units; and

WHEREAS, in particular, tenants who rent units that landlords have placed illegally on the rental market should be protected against arbitrary eviction and landlords should be required to evict such tenants only as a last resort if the unit cannot be made legal and the way in which these evictions are addressed under the Ordinance should be clarified; and

WHEREAS, the Rent Board has adopted many regulations that clarify and assist both landlords and tenants in understanding and following the Ordinance, and that although the Rent Board's authority was affirmed in *Rental Housing Association of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, the Rent Board's regulatory authority continues to be litigated; and

WHEREAS, the Ordinance provides that the City Council can amend the Ordinance to add another just cause for eviction if one is added by state law, but the City Council should also have the authority to amend the ordinance in the event a provision of the Ordinance is challenged and invalidated by a court and the invalidation can be corrected by an amendment or new state legislation requires an amendment to the Ordinance; and

WHEREAS, litigation and submitting amendments to the voters are costly to the City of Oakland, particularly in times of limited City revenues;

WHEREAS, this action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15061 (b)(3) (General Rule); 15183 (Projects consistent with general plan and zoning); 15301 (Existing Facilities); 15304 (Minor Alterations to Land); and/or 15035 (Minor Alterations in Land Use Limitations), each of which provides a separate and independent basis for CEQA compliance and when viewed collectively, provides an overall basis for CEQA compliance.

NOW, THEREFORE BE IT RESOLVED:

That the City Council of the City of Oakland does hereby submit to the voters at the November 2, 2010 general election, an Ordinance, that reads as follows:

PART 1. GENERAL

Section A. TITLE AND PURPOSE.

(1) **Title.** This Ordinance may be referred to as the "Just Cause for Eviction Ordinance Amendments of 2010."

(2) **Purpose.** The purpose is to amend the Just Cause for Eviction Ordinance [O.M.C. 8.22.300, et seq.] to clarify existing Ordinance provisions as to how and when tenants can be removed from nonconforming or illegal rental units and to add additional requirements for such removal, to include in the Ordinance the Rent Board's existing authority to issue regulations for the Ordinance, and to permit the City Council to amend the Ordinance under limited circumstances (invalidation of provisions or changes in state law).

Section B. FINDINGS.

(1) In November 2002 the voters of the City of Oakland passed the Just Cause for Eviction Ordinance (Measure EE and codified O.M.C. 8.22.300, et seq., the "Ordinance") which requires that in order to remove a tenant from a unit covered by the Ordinance, a landlord must have specified good cause (such as non-payment of rent, violation of the rental agreement, owner move-in);

(2) The original intent of the Ordinance was that all residential rental units, including those that do not meet zoning requirements, lack a certificate of occupancy, or that otherwise may have been created not in conformity with state or local law requirements or became nonconforming, would be subject to the Ordinance, unless otherwise specifically exempted;

(3) The Ordinance intended that section 6A.10 (units that contain code violations) [O.M.C. 8.22.360.A.10] and section 6A.11 [O.M.C. 8.22.360.A.11] (removing units from the market)[the Ellis Act Section] were intended to address removal of

tenants from units with code violations including, if necessary, the permanent vacation or removal of such units from the market;

(4) Some landlords have been improperly evicting tenants from the nonconforming units that the landlord unlawfully created by using a three-day notice and alleging the tenant was using the premises for an unlawful purpose under Ordinance Section 6A(6) or California Code of Civil Procedure 1161(4) although it was the landlord who created the unlawful unit and put it on the rental market;

(5) The intent of this Measure before the voters is to clarify existing law and add requirements as to how a landlord may vacate a unit when the unit is required to be vacated by City code or zoning enforcement officials;

(6) The original intent of the Just Cause for Eviction Ordinance was to give the Oakland Rent Board the authority to adopt general regulations for the Ordinance without the need for City Council approval;

(7) At various times since the enactment of the Just Cause for Eviction Ordinance, the Rent Board, under its authority to adopt general regulations for the Ordinance, adopted regulations to implement, fill in details, or to clarify provisions of the Ordinance;

(8) The Rent Board's authority to adopt regulations has been important in clarifying for landlords and tenants as to how the Ordinance functions and how evictions may be carried out, and in addressing issues concerning the validity of provisions of the Ordinance;

(9) The authority of the Rent Board to adopt general regulations for the Ordinance without the requirement of City Council approval has been affirmed by the Court of Appeal in *Rental Housing Association of Northern California v. City of Oakland* (2009) 171 Cal.App.4th 741 ("RHA");

(10) Despite the *RHA* decision the City of Oakland has been sued over the validity of Rent Board regulations and the Board's regulatory authority;

(11) It is in the interests of the citizens of Oakland and landlords and tenants that future disputes over how tenants may be required to vacate illegal, non-conforming units be more specifically addressed and to include additional requirements and that the Rent Board's regulatory authority be more specifically set out in the Ordinance to avoid continuing litigation over these issues;

(12) Currently the City Council has the authority to amend the Ordinance, but only in the event state law requires the addition of new ground for eviction;

(13) It is in the interests of the City of Oakland and landlords and tenants to expand the City Council's authority to amend the ordinance to correct provisions that may be invalidated by a Court (when such correction can be made by amendment) and to address other amendments that may be required by changes in state law;

PART 2. SUBSTANTIVE ORDINANCE AMENDMENTS

The Just Cause for Eviction Ordinance is hereby amended as follows:

Section A.

Ordinance Section 2 [O.M.C. 8.22.340] (Definitions) is hereby amended as follows:

The following definitions are hereby added to Section 2 [O.M.C. 8.22.340] (Definitions):

"Noncomplying or illegal building or unit" means a building, room, or rental unit which has been found or determined by an authorized enforcement official of the city or other governmental entity to be substandard, blighted, unsafe, a public nuisance, or otherwise not in conformance with applicable state or local zoning, building or housing standards, including but not limited to standards contained in the Oakland Building Maintenance Code, the Oakland Planning Code, the Oakland Municipal Code, and the Uniform Fire Code as adopted by the city, and other technical codes adopted and enforced by the city for existing residential properties, including codes addressing dangerous or hazardous buildings;

"Noncomplying condition" or "noncompliance" means any physical condition or use with respect to the building, or unit, that contributes to a finding or determination that the unit or building is a Noncomplying or illegal building or unit.

"Rules and Regulations" means the rules or regulations adopted by the Rent Board under authority to clarify, implement, fill in details, or otherwise facilitate and enforce the intent and mandate of this Ordinance or any of its specific provisions, such rules and regulations may be adopted by the Rent Board without requiring City Council approval.

The following definition Section 2 [O.M.C. 8.22.340] (Definitions) is hereby revised to read as follows (added text underlined):

"Rental Unit" (aka Unit, aka Premises) means any unit in any real property, regardless of zoning status or whether the unit has a certificate of occupancy or does not conform to building or other codes intended to protect the health and safety of the unit's occupant(s) or others, 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.

Section B. Ordinance Section 6.A.10 [O.M.C. 8.22.360A.10] is hereby revised and restated to read as follows:

Section 6. Good Cause Required for Eviction.

A. No landlord shall endeavor to recover possession, issue a notice terminating tenancy, or recover possession of a rental unit in the city of Oakland unless the landlord is able to prove the existence of one of the following grounds [existing text]:

[The following subsection is revised and restated]

10. The owner of record seeks in good faith to temporarily or permanently vacate a Noncomplying unit or units in a Noncomplying building to cure the noncompliance.

a. Temporary Vacation of Unit.

i. An Owner of Record may give notice to vacate to a tenant after having obtained all necessary permits from the City of Oakland on or before the date upon which notice to vacate is given, to undertake substantial repairs that cannot be completed while the unit is occupied, and that are necessary either to bring the property into compliance with applicable codes and laws affecting health and safety of tenants of the building, or under an outstanding notice of code violations affecting the health and safety of tenants of the building.

ii. A notice terminating the tenancy to vacate temporarily under this Subsection 6(A)(10) [8.22.360 A.10] must include, in addition to any other information required by this Ordinance, the following:

(1). A statement informing tenants as to their right to relocation payment under the Oakland Code Enforcement Relocation Ordinance;

(2). A statement that "When the needed repairs are completed on your unit, the landlord must offer you the opportunity to return to your unit with a rental agreement containing the same terms as your original one and with the same rent (although landlord may be able to obtain a rent increase under the Oakland Residential Rent Arbitration Ordinance [O.M.C. Chapter 8.22, Article I])."

(3). The anticipated date when the work will be completed.

iii. The Tenant shall have a defense to the eviction if the landlord has paid any relocation required by state law, or City Ordinance requiring payment to the tenant for relocation from a Nonconforming Unit, as appropriate, in at least ten (10) days prior to the expiration of the notice to vacate, or in accordance with regulations adopted by the Rent Board. The Rent Board is directed to supplement this subsection with regulations to conform it to the requirements of the relocation ordinances or statutes and to address the circumstance in which the tenant will not be timely vacating.

iv. Upon recovery of possession of the rental unit, the owner of record shall proceed without unreasonable delay to effect the needed repairs. The tenant shall not be required to vacate pursuant to this section, for a period in excess of three months; provided, however, that such time period may be extended by the Rent Board upon application by the landlord.

v. Upon completion of the needed repairs, owner of record shall offer tenant the first right to return to the premises at the same rent and pursuant to a rental agreement of substantially the same terms, subject to the owner of record's right to obtain rent increase for capital improvements consistent with the terms of the Oakland Residential Rent Adjustment Ordinance or any successor ordinance.

[The following subsection is added]

b. Vacation of Nonconforming Unit.

The Owner of Record seeks to permanently vacate a noncomplying unit as a result of an outstanding notice of non-complying conditions that, if not corrected would require the unit or building to be vacated, or an order that the unit or the building in which it is located violate zoning laws as set forth in this subsection. If all the units on the property are noncomplying units, then the landlord must use the Ellis Act Ordinance [O.M.C. 822.400, et seq.] to cause the property to be vacated. If less than all the units are noncomplying, then the landlord may use a notice pursuant to Civil Code Section 1946, 1946.1 or any successor statute allowing a landlord to terminate a tenancy without cause with a notice of 30 or 60 days (as appropriate under the statute) and follow the other requirements of this subsection. This section incorporates the original intent of the ordinance.

i. The landlord must be under an outstanding order to correct the noncomplying conditions that, if not corrected, would result in an order to require the landlord to cease residential occupancy of the unit or building.

ii. The landlord must make reasonable and good faith efforts to cooperate with code enforcement or zoning officials to see if the housing unit(s) can be preserved. Such efforts may include the following:

(a) Entering into a compliance plan with code enforcement officials;

(b) Seeking a formal zoning determination.

iii. After making good faith efforts, the landlord must have determined that:

(a) that the noncomplying conditions cannot be corrected due to physical limitations of the unit or property;

(b) that any zoning violations cannot be corrected, including by the granting of a variance or use-permit;

(c) after having investigated correcting the noncomplying conditions, the landlord in good faith determines that the corrections are financially infeasible or that the landlord is unwilling to commit the financial resources to make the corrections.

iv. Prior to issuing a notice terminating, the landlord must have obtained all necessary permits or approvals to convert the unit(s) to non-residential use, or to decommission or demolish the unit(s).

v. The Tenant shall have a defense to the eviction if the landlord has paid any relocation required by state law, or City Ordinance requiring payment to the tenant for relocation from a Nonconforming Unit, as appropriate, in at least ten (10) days prior to the expiration of the notice to vacate, or in accordance with regulations adopted by the Rent Board. The Rent Board is directed to supplement this subsection with regulations to conform it to the requirements of the relocation ordinances or statutes, and to address the circumstance in which the tenant will not be timely vacating.

vi. Tenant Right to Reoccupy. In the event that the Landlord corrects the violations and receives a certificate of occupancy for the unit(s), the Landlord must re-offer the unit any tenant who vacated a unit pursuant to this section. The Rent Board is directed to develop regulations that will give a Tenant displaced from a single unit the right to receive a re-offer to rent the unit the Tenant formerly occupied similar to that of a Tenant evicted pursuant to the Ellis Act Ordinance [O.M.C. 8.22.400, et seq.], subject to

any increases in rent authorized by the Rent Adjustment Ordinance. The regulations shall also provide that if the tenant wishes a right to return, the Tenant must provide the Landlord with a forwarding address. The Tenant's right to reoccupy applies to any of the landlord's heirs, assigns, or successors in interest to the unit or the property in which the unit is located. Prior to reoffering the unit to the Tenant, the landlord must petition the Rent Program to have the new rent determined.

vii. A notice terminating tenancy under this Subsection 6(A)(10)(b) [8.22.360 A.10.b] must include the following information:

(a) A statement that the tenancy is being terminated because the unit does not conform with either City building or codes or zoning laws.

(b) A statement informing tenants as to their right to relocation payment under the Oakland Relocation Ordinance.

(c) A statement that regarding the tenant's right to reoccupy the unit; that if the tenant wishes to preserve the right to reoccupy the unit, the tenant must provide the landlord forwarding addresses; and that the landlord may be entitled to rent increases if the tenant re-rents the unit.

...

[The following subsection is revised and restated.]

B.3. Where a landlord seeks to evict a tenant under a just cause ground specified in Subsections 6(A)(7, 8, 9, or 10) [8.22.360 A.7, 8, 9, or 10], she or he must do so according to the process established in Civil Code § 1946, 1946.1 (or successor provisions providing for 30 or 60 day notice period for a termination of tenancy); where a landlord seeks to evict a tenant under Subsection 6(A)(11) the landlord must do so pursuant to the Ellis Act Ordinance [O.M.C. 8.22.400, et seq]. Where a landlord seeks to evict a tenant for the grounds specified in Subsections 6(A)(1, 2, 3, 4, 5, 6) [8.22.360 A.1, 2, 3, 4, 5, 6], she or he may do so under an appropriate section of state law (either Code of Civil Procedure 1161 or Civil Code 1946, 1946.1 (or their successor provisions) as determined by the landlord.

Section C. Partial Invalidity; Council Authority to Amend Ordinance; Rent Board Regulations.

Section 9 [O.M.C. 8.22.390] is hereby amended to read as follows:

Partial Invalidity or state law change; City Council Authority; Rent Board Regulatory Authority.

A Partial invalidity.

If any provision of this chapter or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this chapter are severable. [existing text]

B. Limited City Council Authority to Amend. The City Council may adopt an ordinance amending this Ordinance to correct any provision held invalid by the judgment of a Court after the date of enactment of this subsection, provided that such amendment meets the intent of this Ordinance and the provision invalidated. The City

Council may also adopt an ordinance amending this Ordinance in the event a change in state law affects the manner in which this Ordinance operates. [added text].

C. Rent Board Regulatory Authority. The Rent Board shall have the authority to adopt general rules and regulations to implement, interpret, fill in details, or to clarify provisions of the Ordinance, and including such regulatory authority is maybe customarily given to or implied in the powers of similar administrative agencies and is intended to be broad authority, only limited by a direct conflict with the Ordinance. Additionally, the Rent Board may develop forms and notices to assist landlords and tenants in complying with this Ordinance. Such rules and regulations adopted by the board do not require approval by the City Council, but at the rent Board's discretion, may refer such regulations to the City Council for review and comment. This section incorporates the original intent of the Ordinance. [added text].

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby request that the Board of Supervisors of Alameda County order the consolidation of the Oakland Municipal election with the statewide general election of November 2, 2010, consistent with provisions of State Law; and be it

FURTHER RESOLVED: That the City Council hereby authorizes and directs the City Clerk of the City of Oakland (the "City Clerk") at least 88 days prior to November 2, 2010, to file with the Alameda County Clerk certified copies of this resolution; and be it

FURTHER RESOLVED: That the City Council does hereby request that the Board of Supervisors of Alameda County include on the ballots and sample ballots recitals and measure language to be voted on by the voters of the qualified electors of the City of Oakland; and be it

FURTHER RESOLVED: That the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Oakland, the Government Code and the Elections Code of the State of California; and be it

FURTHER RESOLVED: That the City Council does hereby request that the Registrar of Voters of the County of Alameda perform necessary services in connection with said election; and be it

FURTHER RESOLVED: That the City Clerk is hereby directed to obtain printing, supplies and services as required; and be it

FURTHER RESOLVED: That the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Oakland; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 11 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Ordinance and rebuttals, and said date shall be posted in the Office of the City Clerk; 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 2010 general election and appropriate all monies necessary for the City Administrator and City Clerk to prepare and conduct the November 2, 2010, general election, consistent with law; and be it

FURTHER RESOLVED: The Environmental Review Officer shall cause to be filed a Notice of Exemption; and be it.

FURTHER RESOLVED: That appropriate sections of this Ordinance may be codified into the City of Oakland Municipal Code at the direction of the City Clerk if the measure is adopted by the voters.

IN COUNCIL, OAKLAND, CALIFORNIA _____, 2010

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT BRUNNER

NOES

ABSENT

ABSTENTION

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
Of the City of Oakland, California
Date:

