

INTRODUCED BY CITY ATTORNEY BARBARA J. PARKER,
COUNCIL PRESIDENT NIKKI FORTUNATO BAS, AND
COUNCILMEMBERS CARROLL FIFE, DAN KALB, AND TREVA REID



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

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

WHEREAS, elevators play a pivotal role in ensuring that buildings and other facilities are accessible to all persons, particularly persons with ambulatory and other mobility-related disabilities, and/or whose ability to walk and/or climb stairs is otherwise limited due to illness, health impairment, disease, disorder, or other such condition (hereinafter referred to as "persons with a mobility disability"); and

WHEREAS, access to safe and functional elevators is often a determining factor in where persons with a mobility disability are able to comfortably reside, and multi-level residential buildings that do not contain an elevator are often prohibitively inaccessible to persons who have limited ability to climb stairs; and

WHEREAS, regular maintenance ensures that elevators remain safe, useable, and less likely to fall into disrepair; and

WHEREAS, in residential buildings, the expeditious repair of elevators is necessary to ensure that persons with a mobility disability have continued access to their homes and have equal access to housing generally; and

WHEREAS, when an elevator is inoperable, people who rely on use of the elevator to gain access to or egress from their unit are often forced to remain inside their unit for a prolonged period of time, find temporary alternative housing, and/or secure assistance from a third party, often with little to no advanced notice; and

WHEREAS, advanced notice of inoperability of an elevator helps ensure that persons who rely on use of the elevator have an opportunity to secure temporary alternative housing, arrange assistance, and/or otherwise plan around the inoperability; and

WHEREAS, in some cases of disrepair, an owner or operator of a residential building may decline or otherwise fail to make repairs, leaving an elevator inoperable for prolonged periods of time; and

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) estimates that approximately 13.7% of adults in the United States have a mobility disability that seriously impairs their ability to walk and/or climb stairs; and

WHEREAS, according to an analysis of Census Bureau data, it is estimated that over 10,000 renter households in Oakland include at least one person with an ambulatory disability, and over 3,500 renter households in Oakland include at least one person who uses a wheelchair, scooter, or other such mobility aid; and

WHEREAS, although existing law requires housing providers to maintain elevators in a safe condition and to accommodate residents with disabilities, there are currently no clear guidelines setting forth specific requirements for maintenance, notice to residents, and/or the provision of alternative housing while repairs are pending; and

WHEREAS, the City of Oakland has a strong interest in ensuring that all residents have equal access to housing, and the City seeks to provide streamlined guidance to building operators regarding their obligations pertaining to elevators in residential buildings; and

WHEREAS, this action is exempt from the California Environmental Quality Act ("CEQA") pursuant to the following CEQA Guidelines, taken together and each as a separate and independent basis: Section 15301 (existing facilities), Section 15378 (regulatory actions), Section 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), and Section 15061(b)(3) (no significant environmental impact); and

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

SECTION 1. Recitals: The City Council of the City of Oakland hereby determines that the preceding recitals are true and correct and an integral part of the Council’s decision to enact this legislation, and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Addition of Chapter 8.72 (Elevator Maintenance In Residential Buildings) to the Oakland Municipal Code. Oakland Municipal Code 8.72 is hereby added as set forth below:

Chapter 8.72 ELEVATOR MAINTENANCE IN RESIDENTIAL BUILDINGS

8.72.010 - Title.

This Ordinance shall be known as the “Elevator Maintenance in Residential Buildings” Ordinance.

8.72.020 - Purpose.

The purpose of this Ordinance is to specify requirements for the maintenance and repair of elevators in residential buildings, and to establish a duty of building operators to provide notice to residents of elevator outages, to complete any necessary repairs to elevators expeditiously, and to provide temporary alternative housing to residents whose access to and/or egress from their dwelling unit is substantially restricted while elevators are inoperable due to the resident's physical disability, medical condition, illness, health impairment, or other similar circumstance. The purpose of this Ordinance is also to effectuate existing standards of state and federal fair housing laws, and to increase safety of residential buildings.

8.72.030 - Covered Buildings.

The provisions of this Chapter shall apply to all buildings containing three or more residential units and an elevator. The provisions of this Chapter shall not apply to any hospital, skilled nursing facility, health facility, hotel, motel, or other such short-term accommodation where no tenancy or other right to occupancy is established. The provisions of this Chapter shall not apply to elevators that are non-operational as of the date of final adoption of this Chapter that have never been offered or available for use by any current resident.

8.72.040 - Definitions.

For purposes of this Chapter, the following words and phrases are defined and shall be construed as set forth below.

“Building operator” means any owner or lessor of the entirety of a building subject to this Chapter, or any agent thereof with the responsibility of managing such building.

“Resident” means a tenant or other lawful occupant entitled to the use and occupancy of a residential unit located within a covered building.

8.72.050 - Duty of building operators generally.

The building operator of any building subject to this Chapter shall ensure that all elevators remain accessible, usable, and in good working order at all times the building is occupied, as further provided in Section 8.72.060. This Chapter does not impose a duty on any elevator service company that contracts with a building operator to service elevators. Any contractual provision that purports to impose such liability either directly or by way of indemnification of the building operator for violation of this Chapter is hereby declared to be against public policy and void.

8.72.060 - Duty of building operators to maintain and repair elevators and to provide alternative housing pending elevator repair.

Every building operator subject to this Chapter shall have the following obligations:

- A. Duty to conduct regular maintenance. Building operators shall establish a program of regular elevator maintenance to ensure that elevators in their buildings remain usable and

accessible at all times the building is occupied, and that any maintenance or servicing of elevators is completed within the shortest practicable time period. Building operators shall require any elevator service company to give the building operator immediate notice of any repairs or servicing that will render the elevator inoperable for more than four hours.

- B. Duty to complete repairs expeditiously. When an elevator malfunctions or is otherwise in need of repair, the building operator shall ensure that such repairs are completed as soon as reasonably possible, not to exceed twenty-four (24) hours of notice to the building operator of the malfunction or need for repair.
- C. Duty to provide alternative housing pending elevator repair. If the building operator is unable to repair an elevator malfunction or otherwise render an elevator operable within twenty-four (24) hours of notice of its malfunction or other need for repair, the building operator shall locate and provide temporary alternative housing for any resident whose access to or egress from their unit is substantially restricted due to the elevator being out of service because the resident's physical disability, medical condition, illness, health impairment, or other similar circumstance, whether temporary or permanent, limits their ability to use stairs and no other elevator is available.
 - 1. Such alternative housing shall be decent, safe, sanitary, located within reasonable distance, accessible to people with disabilities as set forth in the California Building Code requirements for disability access in hotels and/or accessible to the individual resident, and shall not necessitate the person's use of stairs.
 - 2. Such alternative housing, as well as transportation to and from such alternative housing, shall be provided at the building operator's expense.
 - 3. The resident may elect, at the resident's choice, to secure their own temporary alternative housing and seek reimbursement in lieu of accepting alternative housing provided by the building operator. If the resident elects to secure their own alternative housing, the building operator shall reimburse the resident for the cost of such housing within forty-eight (48) hours of the resident submitting reasonable documentation of expenses incurred. However, the building operator shall not be required to pay more than \$250.00 per night, unless a higher amount is reasonable and necessary due to the limited availability of suitable accommodations, the individual needs of the resident (e.g., accessibility requirements, family size, etc.), or other similar circumstances.
 - 4. Effective January 1 of each year, beginning in 2025, the rate set forth in Section 8.72.060C(3) shall increase by an amount based on the Consumer Price Index-All Urban Consumers in the San Francisco-Oakland-San Jose Region averaged for the twelve-month period ending June 30 of each year, as determined and published by the United States Department of Labor.

5. Provision of alternative housing does not relieve the building operator of the duty to complete repairs as soon as reasonably possible. Failure to complete repairs expeditiously, even when alternative housing is provided, shall still constitute a violation of this Chapter.
6. Building operators of condominium buildings are only required to provide alternative housing or reimbursement pursuant to this Section if permitted or required by state or federal law.
7. The duty to provide alternative housing shall not arise if the building operator is prevented from repairing the elevator within twenty-four hours or any time thereafter due to a natural disaster, provided that the building operator shall be relieved of this duty only during the period that the inability to repair is caused by the natural disaster.

8.72.070 - Duty of building operators to provide notice of regular maintenance and unanticipated repair.

- A. Notice of regular maintenance. Whenever the elevator will be inoperable for any period of time as result of regular maintenance of such elevator, the building operator shall post written notice, adjacent to the elevator on each floor, at least forty-eight (48) hours prior to the scheduled maintenance, that the elevator will be inoperable and the expected duration of such inoperability. Additionally, when the elevator is expected to be inoperable for more than four hours, the building operator shall provide individual written notice to the residents of each residential unit in the building, at least forty-eight (48) hours in advance of the scheduled maintenance, that the elevator will be inoperable and the expected duration of such inoperability.
- B. Notice of unanticipated repair. In the event of an unanticipated malfunction or inoperability of the elevator requiring shut-down and repair, the building operator, immediately upon notice of such malfunction or inoperability, shall provide written notice to each resident of the building and shall post notice adjacent to the elevator on each floor, that the elevator is not functioning and the expected date, time, and duration of the repair.
- C. Notice of right to alternative housing. When it is anticipated that repairs to an elevator cannot be completed within twenty-four (24) hours, and no other functioning elevator is available for the same use, notice to residents shall additionally include information regarding the right to alternative housing for certain residents as set forth in Section 8.72.060 above, as well as instructions on how residents may request such accommodations. Notice of the right to alternative housing shall be provided as soon as reasonably possible.

8.72.080 - Notice to tenants at commencement of tenancy

Rental property owners subject to this Chapter shall provide tenants with notice of the Elevator Maintenance in Residential Buildings Ordinance at the commencement of tenancy. No specific form is required; it is sufficient to include a statement in the rental agreement that the City

of Oakland's Elevator Maintenance Ordinance requires regular maintenance of elevators in residential buildings and the provision of alternative housing to qualified tenants when elevators are out of service and repairs cannot be completed within 24 hours.

8.72.090 - Civil remedies.

- A. When a building operator's failure to comply with any provision of this Chapter results in any resident having substantially restricted access to or egress from their dwelling unit because of such person's impaired ability to use stairs as a result of such person's physical disability, medical condition, illness, health impairment, or other similar circumstance, the person whose access or egress has been substantially restricted may bring a civil action for:
 - 1. Actual damages including emotional distress;
 - 2. Injunctive relief to compel compliance with this Chapter and any other remedial measures the Court deems appropriate;
 - 3. Statutory damages of up to \$1,000.00 per day for each day that the elevator remains out of service in violation of Section 8.72.060 of this Chapter, unless the building operator demonstrates that the building operator acted with due diligence and that any delay in completing repairs was a result of unforeseeable circumstances that were beyond the building operator's control, as further provided in Section 8.72.090C;
 - 4. Statutory damages of up to \$2,500.00 per day for each day that the building operator failed to relocate a person who had substantially restricted access to or egress from their dwelling unit, as required by Section 8.72.060C; and
 - 5. Reasonable attorney's fees and costs of suit.
- B. Whenever this Chapter is violated, the City Attorney or any interested person acting on behalf of the resident whose access to or egress from their unit has been substantially restricted as set forth in Section 8.72.090A may bring an action for injunctive relief to compel compliance with this Chapter, restitution, and any other remedial measures the Court deems appropriate. If the City Attorney or interested person prevails, the Court shall award reasonable attorney's fees and costs. In any action filed by the City Attorney, the court may award civil penalties pursuant to OMC Chapter 1.10 for each violation of this Chapter, unless the failure to comply was beyond the building operator's control.
- C. The building operator's inability to timely repair shall be considered beyond the building operator's control only if the building operator: (1) had previously made reasonable arrangements, judged by relevant elevator industry and residential management standards, to provide for expeditious repair of the elevator in the event of a malfunction, (2) had regularly maintained the elevator, and (3) had taken all other reasonable steps, judged by relevant elevator industry and residential management standards, to repair the elevator at the earliest practicable time.

- D. The remedies provided by this Chapter are in addition to all other remedies available to any party with respect to ensuring accessibility and usability of elevators. The remedies herein are not exclusive and may be used cumulatively with any other available remedies.

8.72.090 - Retaliation and discrimination prohibited.

- A. No landlord may bring or threaten to bring an action to recover possession, cause a tenant to quit the unit involuntarily, serve any notice to quit or notice of termination of tenancy, decrease any services or increase the rent where the landlord's intention is retaliation against the tenant for the tenant's assertion or exercise of rights under this Chapter. Such retaliation shall be a defense to an action to recover possession, or it may serve as a basis for an affirmative suit by the tenant for actual and punitive damages and injunctive relief.
- B. It shall be unlawful for any landlord to refuse to rent to any persons on the grounds that they may assert their rights under this Chapter because they require an elevator for access to or egress from the building. In any action by any person arising out of a violation of this section, the prevailing plaintiff shall be entitled to all appropriate relief including but not limited to injunctive relief, actual damages including emotional distress, statutory damages not to exceed ten thousand dollars, and reasonable attorney's fees.

8.72.100 - Non-waiverability.

Any provision in any rental or other agreement, verbal or written, which waives or modifies any provision of this Chapter is contrary to public policy and void.

8.72.110 - Severability.

If any part or provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of the Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

SECTION 3. CEQA Compliance. The legislation contains no provisions modifying the physical design, development, or construction of residential or nonresidential structures. Accordingly, it can be seen with certainty that there is no possibility that it: (1) may have a significant effect on the environment and/or (2) would result in any physical changes to the environment. As a result, this action is exempt from the CEQA pursuant to the following CEQA Guidelines, taken together and each as a separate and independent basis: Section 15301 (existing facilities), Section 15378 (regulatory actions), Section 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), and Section 15061(b)(3) (no significant environmental impact).

SECTION 4. No Conflict with Federal or State 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. 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 6. Correction of Errors. The City Council hereby authorizes the City Administrator or designee to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors) to this Ordinance, as needed.

SECTION 7. 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.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the City of
Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

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

This ordinance creates an affirmative duty for owners and operators of residential properties that contain elevators to maintain elevators in an operable condition at all times, to complete elevator repairs expeditiously, and to provide temporary alternative housing to residents whose access to and egress from their dwelling unit is substantially restricted, due to physical impairment, when an elevator is inoperable for more than 24 hours.