

1 MERIEM L. HUBBARD, No. 155057  
Email: mhubbard@pacificlegal.org  
2 J. DAVID BREEMER, No. 215039  
Email: jbreemer@pacificlegal.org  
3 Pacific Legal Foundation  
930 G Street  
4 Sacramento, California 95814  
Telephone: (916) 419-7111  
5 Facsimile: (916) 419-7747

6 Attorneys for Plaintiffs Lyndsey Ballinger  
and Sharon Ballinger  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10  
11 LYNDSEY BALLINGER and SHARON  
BALLINGER,

12 Plaintiffs,

13 v.

14 CITY OF OAKLAND,

15 Defendant.  
16  
17

No. \_\_\_\_\_

**COMPLAINT FOR VIOLATION  
OF FEDERAL CIVIL RIGHTS  
UNDER 42 U.S.C. § 1983 AND  
CALIFORNIA STATE LAW  
(Cal. Gov't Code §§ 7060-7060.7)**

**MONETARY, DECLARATORY,  
AND INJUNCTIVE RELIEF**

18  
19 **INTRODUCTION**

20 1. Lyndsey and Sharon Ballinger (Ballingers) bring this complaint against  
21 the City of Oakland (City) to challenge legislation (the Ordinance) that retroactively,  
22 illegally, and unconstitutionally requires rental property owners to pay thousands of  
23 dollars in “relocation” payments to tenants before the owners can repossess the  
24 property for their own use.

25 2. The Ballingers, both on Active Duty with the United States Air Force,  
26 rented their single-family home in Oakland when they were transferred from  
27 California to the Washington, D.C., area in 2015. Anticipating that they would return  
28 to the Bay area within three years, the Ballingers’ lease agreement was set to end on

1 September 30, 2017, at which time any remaining tenancy converted to a month-to-  
2 month agreement.

3 3. On January 16, 2018—after the Ballingers executed the lease  
4 agreement—the City enacted an ordinance which requires rental property owners to  
5 make payments to tenants before they can take their property off the rental market  
6 and use it for their own purposes.

7 4. When the Ballingers received orders from the Air Force to return to the  
8 Bay Area in January 2018 they gave their tenants proper notice that the existing  
9 month-to-month tenancy was about to end. At this time, the Ballingers discovered  
10 that they could not lawfully end the lease, under the terms of the new Ordinance,  
11 unless they paid the tenants more than \$6,000 dollars. Although the Ordinance  
12 implies these payments are for purposes of tenant “relocation,” the law actually allows  
13 benefitting tenants to take and use rental owner monies for any purpose they desire.  
14 With their return to California pending, the Ballingers had no choice but to pay the  
15 tenants \$6,582.40—a substantial sacrifice for a young Bay-area family on a military  
16 salary.

17 5. The Ballingers now challenge the Ordinance and the tenant payments it  
18 mandates. The Ordinance is unconstitutional and illegal under the Takings Clause of  
19 the Fifth Amendment to the United States Constitution, the Due Process Clause of  
20 the Fourteenth Amendment, the Fourth Amendment, the Contract Clause of Article  
21 I, Section 10, and state law. The Ballingers are accordingly entitled to damages and  
22 equitable relief under 42 U.S.C. § 1983, the Constitution, and state law.

23 **THE PARTIES**

24 6. Plaintiffs Lyndsey and Sharon Ballinger are individual citizens of the  
25 United States. They are married, and are domiciled and reside in, Oakland,  
26 California. The Ballingers own a single-family home located at 1685 MacArthur Blvd.  
27 As owners of a home that has been, and could be rented, they are subject to the  
28 Ordinance.

1           7. Defendant City of Oakland is a political subdivision of the State of  
2 California, and the local governing authority in Oakland. On January 16, 2018, the  
3 City enacted Article VIII, Relocation Payments for Owner or Relative Move-Ins, the  
4 Ordinance at issue in this lawsuit. The City is entitled to sue and be sued, and is  
5 constrained by the laws of the United States and the State of California, including the  
6 United States Constitution, 42 U.S.C. § 1983, and the Ellis Act.

7   **JURISDICTION AND VENUE**

8           8. The claims in this action arise under the Fourth and Fifth Amendments  
9 to the United States Constitution, as incorporated against the states by the  
10 Fourteenth Amendment, the Due Process Clause of the Fourteenth Amendment, and  
11 the Contract Clause of Article I, Section 10. The Court has jurisdiction under 42 U.S.C.  
12 § 1983 and 28 U.S.C. § 1331. The Court also has supplemental jurisdiction over the  
13 Ellis Act claim under 28 U.S.C. § 1367. A remedy is sought under the Declaratory  
14 Judgment Act, 28 U.S.C. § 2201.

15           9. Venue is proper in this Court because this action concerns property  
16 located in Oakland, California, and the actions of the City of Oakland, all of which are  
17 within the jurisdiction of the Northern District of California.

18   **FACTS**

19           **The Ellis Act and Ordinance at Issue**

20           10. Under California law, property owners have a right to remove their  
21 homes, buildings, and other property from the residential rental market when they  
22 wish. This right arises from the 1984 enactment of the Ellis Act. The Act provides, in  
23 part, that no public entity may “compel the owner of any residential real property to  
24 offer, or to continue to offer, accommodations in the property for rent or lease, except  
25 for [certain] guestrooms or efficiency units within a residential hotel . . . .” Cal. Gov’t  
26 Code § 7060(a).

27           ///

28           ///

1           11.       The Ellis Act also recognizes that local governments may seek to mitigate  
2 the impacts of the withdrawal of rental units from the market. It provides that  
3 “[n]otwithstanding Section 7060, nothing in this chapter . . . [d]iminishes or enhances  
4 any power in any public entity to mitigate any adverse impact on persons displaced  
5 by reason of the withdrawal from rent or lease of any accommodations.” *Id.* § 7060.1.

6           12.       On January 16, 2018, the City adopted an ordinance, codified as Oakland  
7 Municipal Code (OMC) Article VIII and entitled “Relocation Payments for Owner or  
8 Relative Move-Ins.” Relevant portions of the Ordinance are attached as **Exhibit A**  
9 and its provisions are incorporated herein.

10           13.       The Ordinance requires owners of rental property to make relocation  
11 payments to tenants before they can evict the tenants for the purpose of occupying the  
12 property themselves or to allow a relative to occupy the property. OMC § 8.22.850(A).

13           14.       Tenants are entitled to a relocation payment of \$6,500 per unit for  
14 studios and one-bedroom apartments, \$8,000 per unit for two-bedroom apartments,  
15 and \$9,875 per unit for units with three or more bedrooms. § 8.22.850(B), referencing  
16 § 8.22.820(A).

17           15.       The amounts adjust for inflation annually on July 1. Through June 30,  
18 2018, the required, inflation-adjusted payments amounts are: \$6,875.58 per  
19 studio/one-bedroom unit; \$8,462.26 per two-bedroom unit, and \$10,445.60 per three-  
20 or more-bedroom unit.

21           16.       Households in rental units that include lower income, elderly or disabled  
22 tenants, and/or minor children are entitled to a single additional relocation payment  
23 of \$2,500 per unit. § 8.22.820(B).

24           17.       Tenants are eligible for relocation payments of one-third of the total  
25 payment upon taking possession of the rental unit, two-thirds of the payment after  
26 one year of occupancy, and the full amount of the total payment after two years of  
27 occupancy. § 8.22.850(C).

28 ///

1           18.       The first half of the relocation payment must be paid when the  
2 termination notice is given, and the other half when the tenant vacates the property.  
3 § 8.22.850(D).

4           19.       The Ordinance allows the City to provide zero-interest loans to assist  
5 some rental property owners with their relocation payments. Eligible property owners  
6 must have fewer than five units in the City, must qualify as low or moderate income,  
7 and meet other financial conditions outlined in the Ordinance. § 8.22.850(F).

8           20.       Nothing in the Ordinance requires that the tenants use payments for  
9 relocation purposes. Rather, tenants are allowed to use the money for any personal  
10 purpose or desire.

11           21.       Property owners are subject to criminal, administrative, and civil  
12 remedies if they do not comply with the requirements of the tenant relocation  
13 ordinance. §§ 8.22.860 & 8.22.870.

14           ***The Ballingers and Their Property***

15           22.       Sharon Ballinger is currently stationed at Travis Air Force Base, where  
16 she is a Nurse Practitioner at the base hospital medical center's ICU. Lyndsey  
17 Ballinger is transitioning from the D.C. Air National Guard to part time in the  
18 California Air National Guard. Lyndsey and Sharon have two young children.

19           23.       The Ballingers own a three-bedroom, two-bathroom, single-family  
20 residence located at 1685 MacArthur Blvd. in Oakland.

21           24.       In 2015, at which time both of them were active duty personnel in the  
22 United States Air Force, they received orders to transfer to the Washington, D.C.,  
23 area.

24           25.       Intending to return to the Bay Area, and to make it their permanent  
25 home, Plaintiffs decided to temporarily rent their house while on duty in the  
26 Washington, D.C., area.

27           26.       On September 13, 2016, a young couple of software engineers signed a  
28 lease to rent the Ballingers' house. The Lease was for one year, after which it would

1 automatically switch to a month-to-month tenancy. The Lease is attached as  
2 **Exhibit B** and its provisions are incorporated herein.

3 27. In late 2017 the Ballingers received confirmation that they would be  
4 reassigned to the Bay Area in 2018.

5 28. On March 21, 2018, Plaintiffs' gave their tenants a notice to vacate the  
6 property by May 21, 2018, to allow the Ballingers to move back into their home soon  
7 thereafter. Pursuant to the Ordinance, the notice included a statement informing the  
8 tenants of their right to relocation payments and the amount of those payments. The  
9 Sixty Day Notice of Termination of Tenancy is attached as **Exhibit C** and its  
10 provisions are incorporated herein.

11 29. On the same day, the Ballingers paid the tenants half of the \$6,582.40  
12 "relocation" payment the Ordinance required them to make to the tenants.

13 30. The tenants vacated the home prior to the May 21, 2018, deadline, on  
14 April 20, 2018. At that point, the tenants had leased the home for approximately a  
15 year and a half.

16 31. When the tenants vacated their home, the Ballingers paid the remaining  
17 half of the payment due to the tenants under the Ordinance.

18 32. The Ordinance compelled the Ballingers to pay this amount before the  
19 tenants claimed or incurred any relocation costs and without any means to verify that  
20 they would use the money for legitimate "relocation" purposes.

21 **DECLARATORY RELIEF ALLEGATIONS**

22 33. Under the Fifth Amendment to the United States Constitution, the  
23 Ballingers have a federal right to be free from a taking of their private property for a  
24 private purpose, a right to be free from laws that take property for a public purpose,  
25 but without just compensation, and a right not to be subject to unconstitutional  
26 conditions on their ability to use, and rent, private property. Under the Due Process  
27 Clause of the Fourteenth Amendment, Plaintiffs also have a right to be free from an  
28 irrational and illegitimate deprivation of their property.

1           34.       The Fourth Amendment protects the right to be free of unreasonable  
2 seizures, here the tenant payment provisions of the Ordinance. Additionally, under  
3 the Contract Clause (Article I, Section 10), governments are forbidden from  
4 interfering with the existing obligation of contracts.

5           35.       Under state common law and the Ellis Act, Plaintiffs have a right to  
6 withdraw their property from the rental market, and to be free of any law that  
7 unreasonably and impermissibly burdens that state law property right so as to  
8 effectively force them to remain landlords.

9           36.       Defendant has enacted, and is charged with enforcing, an Ordinance that  
10 retroactively and immediately takes private property for a private purpose and  
11 without a rational or a reasonable basis. To the extent the Ordinance serves a public  
12 purpose, it takes private property without compensation and imposes an  
13 unconstitutional condition and exaction on the lawful use of property.

14           37.       There is a justiciable controversy in this case as to whether the  
15 Ordinance violates the Fourth, Fifth, and Fourteenth Amendments, the Contract  
16 Clause, and the Ellis Act, on its face and as applied to Plaintiffs.

17           38.       A declaratory judgment as to whether the Ordinance unconstitutionally  
18 takes property, deprives individuals, including Plaintiffs, of their property, creates an  
19 illegal seizure, interferes with the obligation of contract, and/or violates the Ellis Act  
20 will clarify the legal relations between Plaintiffs and Defendant, with respect to  
21 enforcement of the Ordinance.

22           39.       A declaratory judgment as to the constitutionality and legality of the  
23 Ordinance will give the parties relief from the uncertainty and insecurity giving rise  
24 to this controversy.

25   **INJUNCTIVE RELIEF ALLEGATIONS**

26           40.       Plaintiffs have no adequate remedy at law to address the unlawful and  
27 unconstitutional taking and deprivation of the property effected by the Ordinance  
28 under color of state law.

1 41. There is a substantial likelihood that Plaintiffs will succeed on the merits  
 2 of their claims that the Ordinance unconstitutionally deprives Plaintiffs of their  
 3 property, violates due process, creates an illegal seizure, interferes with an obligation  
 4 of contract, and violates the Ellis Act.

5 42. An injunction restraining Defendant from enforcing the confiscatory,  
 6 unconstitutional, and illegal Ordinance on its face and as applied to Plaintiffs, will not  
 7 impair, but rather enhance, the public interest.

## 8 LEGAL CLAIMS

### 9 FIRST CLAIM

#### 10 Taking of Private Property for a Private Purpose— 11 Facial Claim Under 42 U.S.C. § 1983

12 43. Plaintiffs hereby re-allege each and every allegation contained in  
 13 Paragraphs 1 through 42 as though fully set forth herein.

14 44. It is well established that, under the Public Use Clause of the Fifth  
 15 Amendment to the Constitution, local governments may not take private property for  
 16 a private purpose.

17 45. The Ordinance requires rental property owners such as Plaintiffs to  
 18 transfer money to other private persons, namely, their tenants, when the owners  
 19 exercise their right to withdraw units from the rent market under the Ellis Act.

20 46. The Ordinance provides that the City can provide a zero-interest loan to  
 21 qualified rental property owners to satisfy their relocation payments. The necessity of  
 22 such loans evidences the fact that relocation payments create a substantial burden on  
 23 rental property owners.

24 47. The Ordinance does not place any limits or conditions on how the tenants  
 25 may use the money that rental property owners, such as Plaintiffs, must transfer to  
 26 the tenants under the Ordinance.

27 ///

28 ///



1 48. Tenants may use the money transferred to them by rental property  
2 owners for any private purpose whatsoever. There is no requirement that the tenants  
3 use the money for relocation or to pay rents.

4 49. The Ordinance benefits private persons, not the general public. The  
5 private benefit accruing to tenants from the Ordinance's tenant payment provisions  
6 far outweighs any conceivable incidental public benefit.

7 50. The Ordinance was intended to benefit private parties.

8 51. The Ordinance serves a private purpose and use and therefore violates  
9 the Public Use Clause of the Takings Clause of the Fifth Amendment.

10 52. The Public Use Clause violation arising from the Ordinance occurs under  
11 color of state law and violates 42 U.S.C. § 1983.

## 12 SECOND CLAIM

### 13 Unconstitutional Exaction of Private Property— 14 Facial and As-Applied Under 42 U.S.C. § 1983

15 53. Plaintiffs hereby re-allege each and every allegation contained in  
16 Paragraphs 1 through 52 as though fully set forth herein.

17 54. The Ordinance conditions the exercise of a state law and common law  
18 property right—a property owner's right to take property off the rental market and to  
19 regain possession of it for personal, nonrental uses—on the payment of money to  
20 tenants.

21 55. Money is constitutionally protected property.

22 56. If Defendant had simply demanded that Plaintiffs hand over their money  
23 to displaced tenants, it would be liable for a per se unconstitutional physical taking of  
24 property.

25 57. Under *Nollan v. California Coastal Commission (Nollan)*, 483 U.S. 825  
26 (1987), *Dolan v. City of Tigard (Dolan)*, 512 U.S. 374 (1994), and *Koontz v. St. Johns*  
27 *River Water Management District (Koontz)*, 570 U.S. 595 (2013), the government may

28 ///

1 constitutionally exact money from property owners, such as Plaintiffs, as a condition  
2 of allowing the owners to exercise a property right only if:

- 3 a. The exaction directly mitigates a public impact directly arising from  
4 the property owners' exercise of their property right; and  
5 b. The exaction is roughly proportionate in both nature and degree to  
6 the public impact arising from the property owners' exercise of the  
7 property right.

8 58. The tenant payment exaction imposed by the Ordinance on rental  
9 property owners withdrawing their units from the rental market, is not related to,  
10 and does not address, any impact arising from the property owners' exercise of their  
11 right to withdraw units from the rental market.

12 59. The monetary exaction imposed by the Ordinance is not proportionate in  
13 either nature or degree to any impact arising from the property owners' exercise of  
14 the right to withdraw units from the rental market.

15 60. The City, aware that the relocation payments would create a substantial  
16 burden on property owners, offers zero-interest loans to property owners to provide  
17 relocation payments to their tenants.

18 61. By requiring property owners, such as the Ballingers, to pay unrestricted  
19 and exorbitant sums to tenants as a condition of exercising their state law property  
20 right to remove their units from the rental market, the Ordinance imposes an  
21 unconstitutional condition and unconstitutionally exacts and takes private property.

22 62. The monetary exaction imposed by the Ordinance violates the  
23 constitutional principles articulated in *Nollan*, *Dolan*, and *Koontz*.

24 63. The unconstitutional monetary exaction arising from the Ordinance is  
25 imposed under color of state law and violates 42 U.S.C. § 1983.

26 64. The City has failed to pay the just compensation the Ballingers are  
27 entitled to as a result of the unconstitutional taking.

28 ///

**THIRD CLAIM**

**Unconstitutional Regulatory Taking—  
As-Applied Under 42 U.S.C. § 1983**

65. Plaintiffs hereby re-allege each and every allegation contained in Paragraphs 1 through 64 as though fully set forth herein.

66. If the Ordinance does not amount to an unconstitutional exaction/condition as applied to the Ballingers, it causes a regulatory taking.

67. The Ordinance’s demand that the Ballingers pay \$6,582.40 has had a severe economic impact on their family.

68. The Ordinance interferes with the Ballingers’ distinct investment-backed expectations, including their reasonable expectation that they would not be subject to tenant payment obligations that were not in effect when they rented the home and the parties signed the rental agreement.

69. The Ordinance requires the Ballingers to submit to either the confiscation of their money or the physical occupation of their property, and has the character of a taking as applied to them.

70. If the Ordinance does not violate the principles articulated in *Nollan*, *Dolan*, and *Koontz*, it causes a taking of the Ballingers’ property under *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978).

71. The unconstitutional taking of the Ballingers’ property arising from the Ordinance occurs under color of state law and violates 42 U.S.C. § 1983.

72. The City has failed to pay the just compensation the Ballingers are entitled to as a result of the unconstitutional taking.

**FOURTH CLAIM**

**Violation of Due Process—  
As-Applied Claim Under 42 U.S.C. § 1983**

73. Plaintiffs hereby re-allege each and every allegation contained in Paragraphs 1 through 72 as though fully set forth herein.







1 103. The Ordinance is not in accord with California law as applied to the  
2 Ballingers.

3 **RELIEF SOUGHT**

4 WHEREFORE, Plaintiffs pray for judgment from this Court as follows:

5 1. A declaratory judgment that the Ordinance violates the Public Use  
6 Clause of the Fifth Amendment on its face and is therefore invalid and unenforceable;

7 2. A declaratory judgment that the Ordinance violates *Nollan, Dolan*, and  
8 *Koontz* and the Unconstitutional Conditions doctrine on its face and as-applied to the  
9 Ballingers, and is therefore invalid and unenforceable;

10 3. A declaratory judgment that the Ordinance as applied to the Ballingers  
11 created a regulatory taking;

12 4. A declaratory judgment that the Ballingers have suffered an  
13 unconstitutional taking without just compensation;

14 5. A declaratory judgment that the Ordinance, as applied to the Ballingers,  
15 violates the Due Process Clause of the Fourteenth Amendment;

16 6. A declaratory judgment that the Ordinance, as applied to the Ballingers,  
17 violates the Fourth Amendment;

18 7. A declaratory judgment that the Ordinance, as applied to the Ballingers,  
19 violates Article I, Section 10, of the United States Constitution by impairing the  
20 obligation of contract;

21 8. A declaratory judgment that the Ordinance violates the Ellis Act as  
22 applied to the Ballingers;

23 9. A permanent injunction preventing Defendant from enforcing or taking  
24 further action to enforce the Ordinance on its face;

25 10. An award of economic damages and compensatory damages (just  
26 compensation) equal to the relocation payments that the Ballingers were required to  
27 pay in addition to all other costs that the Ballingers incurred;

28 ///

