CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A. Russo
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TDD: (510) 839-6451

February 17, 2004

President Ignacio De La Fuente and
Members of the City Council
Oakland, California

Subject: Nuisance Eviction Ordinance

President De La Fuente and Councilmembers:

This supplemental report addresses the changes to the proposed Nuisance Eviction Ordinance ("NEO") made following the City Council Public Safety Committee meeting. The principal changes are those requested by the Committee by Councilmember Nadel, changes in response to Councilmember Brooks' questions, and changes in response to comments by the Rental Housing Association.

The significant changes to the proposed NEO are the following:

- A definition of Safety-Related Reasons is added. Safety-Related Reasons relates to when the City Attorney will accept an assignment of an unlawful detainer from a landlord. (8.23.100 A.11).

- The provision permitting a landlord to assign an eviction to the City Attorney is revised to provide a standard for the City Attorney to review the information in the landlord's request. Further, it provides that the City Attorney should consult with the Case Manager before accepting or rejecting an assignment. (8.23.100 G.3).

- Extended the time for a landlord to respond to the notice for eviction from 15 to 20 days. (8.23.100 F.2.a; F.2e).

- Expands the section on how a landlord must respond to a notice to remove a tenant. As revised, a landlord can respond by stating the tenant has vacated, requesting reconsideration of the notice on the basis that the evidence is not sufficient to evict, or requesting a settlement keep an offending minor's family in place or evicting only the offending tenant. These new responses are in addition to the existing permitted responses of reporting on the eviction status or requesting the City accept assignment of the unlawful detainer. (8.23.100 F.2.e).

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- Provides that the City will give landlords access to the evidence used to determine that the tenant should be evicted. (8.23.100 F.3).

- Revises the section on how the City evaluates the case against the tenant and makes it limited to information that the City is willing release to the landlord. Some information may not be released to the landlord in order to protect informants, on-going investigations, court orders, or is not releaseable under other laws or privacy constraints. Adds that the City has a goal of releasing the evidence in 5 days. (8.23.100 F.1)

- Provides that a landlord who, in bad faith, requests assignment to the City, reconsideration of the notice, or settlement with tenant can be cited administratively. (8.23.100 F.2.i)

- Adds to the City's notice to the tenant requiring the landlord to evict that the tenant can get information on evictions. (8.23.100 F.1.h).

- Enhances the section on the City's recovery of litigation costs from landlords by allowing the City to sue to recover the cost and to recover attorney's fees for collection in addition to being able to place a lien. (8.23.100 G.4.b).

- Adds a section to prohibit a landlord from revoking the assignment of an unlawful detainer without City approval. (8.23.100 G.9).

- Adds a section permitting either the landlord or tenant to request settlement to leave minor or non-offending tenants in place. (8.23.100 H.3).

- Permits City to recover attorney's fees in collection of fees. (8.23.100 K.3).

Additionally, some changes were made to clarify and to reorganize sections. All the changes are reflected in a comparison version of NEO in the Council packet.

Respectfully submitted,

JOHN A. RUSSO
City Attorney

Attorney assigned: Richard Illgen

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OAKLAND

SECOND REVISED

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APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____

CITY ATTORNEY

ORDINANCE NO. _____C.M.S.

AN ORDINANCE REQUIRING RENTAL PROPERTY OWNERS TO EVICT TENANTS ENGAGED IN CERTAIN ILLEGAL ACTIVITIES ON THE PREMISES AND INCLUDING OFF-PREMISES DRUG RELATED ACTIVITIES THAT USE THE PREMISES TO FURTHER THE OFF-PREMISES ILLEGAL DRUG ACTIVITY AND AUTHORIZING THE CITY ATTORNEY TO ACCEPT ASSIGNMENT OF EVICTION CAUSES OF ACTION FROM RENTAL PROPERTY OWNERS FOR EVICTIONS INVOLVING CERTAIN ILLEGAL ACTIVITIES BY ESTABLISHING SECTION 8.23.100 OF THE OAKLAND MUNICIPAL CODE, "NUISANCE EVICTION ORDINANCE"

WHEREAS, Oakland has experienced problems with drug, violence, and weapons related criminal activity occurring on rental properties—residential and commercial;

WHEREAS, these illegal activities jeopardize the health, safety, and welfare of other occupants of the rental property and the surrounding community;

WHEREAS, persons dealing illegal drugs make use of their residences to further their illegal drug activities by, among other things: making drug deals on the premises from contacts made off-premises, keeping illegal drugs on the premises for sale off-premises, making contacts on the premises with potential buyers and suppliers for sales concluded off-premises, keeping profits on the premises from off-premises from illegal drug sales, keeping on the premises weapons and other equipment used for off-premises drug activities;

WHEREAS, persons engaging in off-premises illegal drug activities within a close proximity to their residences are highly likely to use their residences to further their drug activity;

WHEREAS, persons engaging in off-premises illegal drug activity within a close proximity to their residences represent a danger to the health, safety, and welfare of other occupants at the rental property where they reside;

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WHEREAS, rental property owners have an obligation to keep their rental properties safe for all tenants and their visitors and to keep their rental properties free of nuisances;

WHEREAS, rental property owners have an obligation to remove tenants engaging in illegal activity that jeopardizes the health, safety, and welfare of other tenants and the surrounding community;

WHEREAS, some rental property owners may be reluctant to evict tenants engaged in illegal activity fearing retribution towards the owners, their families, employees, or other tenants;

WHEREAS, in order to stop nuisance activity at some rental properties, the City may be forced to declare the entire property a nuisance resulting in the removal of all tenants, including some who may not be engaged in illegal activity;

WHEREAS, the City of Los Angeles has a successful program of requiring rental property owners to evict tenants engaged in certain illegal activity or to assign the eviction cause of action to the Los Angeles City Attorney when the owners have safety concerns;

WHEREAS, the City Council believes that a requiring rental property owners to evict tenants engaged in illegal activity on the premises will assist in removing nuisances from rental properties and that owners who have safety concerns regarding the evictions are able to assign the evictions to the City Attorney, and owners who refuse to do either should be subject to citation, civil penalties, and other penalties or legal actions for failing to abate the nuisance of tenants engaging in illegal activities;

WHEREAS, the City Council desires a targeted approach to removing persons using rental units or the premises for illegal activities and therefore wishes to authorize "partial evictions" that remove from the premises only the person engaging in the illegal activities;

WHEREAS, the City Council wants the nuisance eviction program to be a self-sufficient as possible for several reasons: (1) the City has diminished resources to pay for such activities, (2) the property owners who permit the activities on their property should pay for the program rather than the taxpayers as a whole, and the additional costs might encourage property owners to be more diligent in their property management and avoid renting or continuing to rent to persons engaged in illegal activities.

WHEREAS, the fees, assessments of costs, and penalties provided for in this ordinance are based not on the ownership of rental property, but instead are based

on the operation of a business renting commercial or residential property and the management of that property;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN THAT SECTION 8.23 100 IS HEREBY ADDED TO THE OAKLAND MUNICIPAL CODE AS FOLLOWS:

8.23.100 EVICTION FOR NUISANCE AND ILLEGAL ACTIVITY ORDINANCE

A. PURPOSE. The City of Oakland has a significant problem wherein owners of rental property have tenants who commit illegal acts on the property or use it to further illegal activities. Often rental property owners fail to take action to evict such tenants for a variety of reasons including, but not limited to: neglect, lack of knowledge of the illegal activity, monetary gain from renting to the offending tenants, or fear of retribution from the offending tenants. This illegal activity represents a serious threat to the health, safety, and welfare of other residents in the rental property, the neighborhood in which the rental property is located, and the City as a whole.

The City has broad authority to address nuisances, including nuisances created by illegal activity. Often the City's recourse is to seek mandatory injunctions to force rental property owners to remove tenants who engage in illegal activity; this can be time consuming and costly to the City and the rental property owner. The City may also have to order the property vacated, which often can result in the displacement of tenants who are not engaged in illegal activity. The City Council desires a more expeditious, less costly, and more targeted approach to removal from the rental property tenants committing a nuisance by engaging in illegal activity.

The purposes of this ordinance include: to establish a procedure whereby rental property owners can be required to evict tenants committing illegal activity on the premises; to penalize such owners for maintaining a nuisance or authorize the City to take other action against the rental property owner for failing to take appropriate action against the offending tenants; to enable rental property owners to assign the eviction cause of action to the City and allow the City Attorney to handle the eviction of the offending tenant; and to authorize owners to remove from the rental unit only the person engaged in the illegal activity and not other tenants in the unit who may be innocent of the activity.

B. DEFINITIONS. For the purposes of this section O.M.C. 8.23.100, the following definitions apply:

1. **COMMERCIAL RENTAL UNIT.** Any Rental Unit that is rented or offered for rent for commercial, not residential use.

2. **CONTROLLED SUBSTANCE.** A drug, substance, or immediate precursor, as listed in the Uniform Controlled Substances Act, Health and Safety Code Section 11000, *et. seq.*

3. **DRUG-RELATED NUISANCE.** Any activity related to the possession, sale, use or manufacturing of a controlled substance that creates an unreasonable interference with the comfortable enjoyment of life, property or safety of other residents of the premises. These activities include, but are not limited to, any activity commonly associated with illegal drug dealing, such as noise, steady foot and vehicle traffic day and night to a particular unit, barricaded units, possession of weapons, or drug loitering as defined in California Health and Safety Code §11532, or other drug-related activities. Activity relating to the sale of a controlled substance that occurs off the premises is regarded as having occurred on the premises if, the activity occurs within such proximity to the premises that the Tenant's activity either unreasonably interferes with the comfortable enjoyment of life, property or safety of other residents of the premises or the Tenant likely uses the premises to further the drug sale activity.

4. **GANG-RELATED CRIME.** Any crime motivated by gang membership in which the perpetrator, victim, or intended victim is a known member of a gang,

5. **ILLEGAL DRUG ACTIVITY.** A violation of any of the provisions of Chapter 6 (commencing with Section 11350) or Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code.

6. **ILLEGAL POSSESSION SALE, OR USE OF WEAPON.** Illegal possession of a weapon by anyone occupying a Rental Unit who is not authorized to possess such a weapon, who sells such weapon and is not legally permitted to do so, or who uses or possesses the weapon in an illegal manner. Weapon includes, but is not limited to, a "Deadly Weapon" as defined in California Business and Professions Code § 7500.1 and "includes any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger, pistol, or revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club."

7. **OWNER.** An owner, landlord, lessor, or sublessor (including any person, firm, corporation, partnership, or other entity) of residential or commercial rental property who receives or is entitled to receive rent directly or through an agent for the use of any Rental Unit, or the agent, representative including a property manager, or successor of any of the foregoing.

8. **PREMISES.** The Rental Unit and the land on which it and other buildings of the rental complex are located and common areas, including but not

limited to, parking facilities, streets, alleyways, laundry, stairwells, yard, roofs, and elevators.

9. **RENTAL UNIT.** A Residential Rental Unit or Commercial Rental Unit irrespective of whether the unit, buildings, or Premises are properly permitted or zoned for the particular use.

10. **RESIDENTIAL RENTAL UNIT.** All dwelling units, efficiency dwellings units, guest rooms, and suites, including one-family dwellings, multi-family dwellings, rooming houses, dormitories, live-work units, units in a hotel occupied by Tenants (and not by transients), and condominiums rented or offered for rent for living or dwelling purposes in the City of Oakland. This term also includes mobile homes, whether rent is paid for the mobile home and the land upon which the mobile home is located, or the rent is paid for the land alone. Further, it includes recreational vehicles, as defined in California Civil Code Section 799.24, if located in a mobile home park or recreational vehicle park, whether rent is paid for the recreational vehicle and the land upon which it is located, or rent is paid for the land alone.

11. **SAFETY-RELATED REASONS.** Safety-Related Reasons include that the Owner has information that a credible threat has been made by the Tenant committing the illegal activities or someone on that Tenant's behalf against the person or property of the Owner, the Owner's family, the Owner's employees, the Owner's other Tenants, or a witness against the offending Tenant.

12. **TENANT.** A tenant, subtenant, lessee, sublessee, any person entitled to use, possession, or occupancy of a rental unit, or any other person residing in the Rental Unit.

13. **THREAT OF VIOLENT CRIME.** Any statement made by a Tenant, or at his or her request, by his or her agent to any person who is on or resides on the Premises or to the Owner of the Premises, or his or her agent, threatening commission of a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, when on its face and under the circumstances in which it is made, it is so unequivocal, immediate and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety. Such a threat includes any statement made verbally, in writing, or by means of an electronic communication device and regarding which a police report has been completed. A threat of violent crime under this Section does not include a crime that is committed against a person who is residing in the same rental unit as the person making the threat. "Immediate family" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity of affinity

within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household. "Electronic communication device" includes but is not limited to, telephones, cellular telephones, video recorders, fax machines, or pagers. "Electronic communications" has the same meaning as the term is defined in subsection 12 of Section 2510 of Title 18 of the United States Code.

14. **VIOLENT CRIME.** Any crime involving a gun, a Weapon, or serious bodily injury and for which a police report has been completed. A violent crime under this Section does not include a crime that is committed against a person residing in the same Rental Unit as the person committing the crime.

C. INCORPORATION OF EVICTION FOR ILLEGAL ACTIVITY INTO ALL RENTAL AGREEMENTS.

1. All agreements for the rental of real property in the City of Oakland, whether for residential or commercial purposes, are deemed to include a prohibition against using the Rental Unit and the Premises for illegal activity, or committing or permitting the Rental Unit or the Premises to be used for an illegal act thereon. Such illegal acts include, but are not limited to, the following illegal activity: Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime. A Tenant who violates this prohibition is subject to eviction pursuant to O.M.C. 8.22.360 A6 (Just Cause for Eviction Ordinance, Measure EE Subsection 6(A)(6)) for a residential Tenant whose Rental Unit is subject to O.M.C. 8.22.300, *et seq.* and, for any commercial Tenant or residential Tenant whose rental unit is not covered by O.M.C. 8.22.300, *et seq*, under any appropriate contract or state law provision pertaining to termination of tenancy for illegal activities.

D. DUTY OF OWNER TO NOT PERMIT OR MAINTAIN TENANT NUISANCE.

1. For purposes of this Chapter, an Owner who causes or permits either of the following is deemed to be creating, permitting, or maintaining a nuisance:

a. The Premises to be used or maintained for any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession or Use of Weapon, Violent Crime, or Threat of Violent Crime; or

b. A Tenant to use or occupy the Premises if the Tenant commits, permits, maintains, or is involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession or Use of Weapon, Violent Crime, or Threat of Violent Crime.

2. As part of a compliance plan after being cited for maintaining a nuisance, or by direct notice from the City to evict a Tenant, an Owner may be required to evict a Tenant who is creating nuisance by causing or permitting illegal activity on the Premises.

3. Information to Tenants. Owners who are covered by the Rent Adjustment Ordinance are required to give a notice to all Tenants at the commencement of their tenancies pursuant to O.M.C. 8.22.060. In addition to the information required by O.M.C. 8.22.060, this notice must include information to the effect that a Tenant who commits an illegal act on the Premises, as set out in this Section, is required by Oakland law to be evicted and that if the Owner does not evict, the City Attorney elect may do so upon request of the Owner. The City Manager shall modify the required notice to include the appropriate additional language set out in this subsection.

4. The illegal activities described in this Section are not exclusive of the activities or conduct that a Tenant may engage in and be subject to eviction pursuant to O.M.C. 8.22.360 A6 (Measure EE, Subsection 6(A)(6)) or under state law provisions providing for eviction for engaging in illegal activity on the Premises.

E. EVICTION OF OFFENDING TENANT.

1. A Tenant who commits, permits, maintains, or is involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides is deemed to be using the Rental Unit for an illegal purpose pursuant to O.M.C. 8.22.360 A6 (Measure EE (Just Cause for Eviction), Subsection 6(A)(6)). Under this Section, "permit" includes allowing a guest, visitor, or licensee to commit an illegal act on the Premises or use the Premises for the illegal purpose.

2. An Owner may bring an action to recover possession of a Rental Unit on one of the following grounds, which action may be brought under O.M.C. 8.22.360 A6 (Measure EE Subsection 6(A)(6)) for a residential Tenant in a Rental Unit subject to O.M.C. 8.22.300, and, for any commercial Tenant or residential Tenant not covered by O.M.C. 8.22.300, under any appropriate contract or state law provision pertaining to termination of tenancy:

a. The Tenant commits, permits, maintains, or is involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises, or

b. The Tenant has been convicted of a crime and the underlying offense involves any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug

Activity, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime, and the crime occurred on the Premises where the Tenant resides or involves the use of the Premises.

F. NOTIFICATION BY THE CITY TO REMOVE TENANT.

1. Evaluation Of Facts And Evidence By City.

a. The City Manager, or the City Manager's designee, is authorized to gather facts and evidence to evaluate whether a Tenant committed, permitted, maintained, or was involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides. Facts or evidence may be derived from any source including, but not limited to, the Owner, other tenants, persons within the community, law enforcement agencies, or prosecution agencies. The City Manager's evaluation of whether a Tenant is engaged in illegal conduct is to be based on whether the Owner could prevail in a unlawful detainer proceeding against the Tenant based on a preponderance of evidence that the Tenant is engaged in the illegal activities and that eviction under such grounds is permissible under the Just Cause for Eviction Ordinance (O.M.C. 8.22.300) and applicable state law; a Tenant need not be arrested, cited, or convicted of the conduct to justify removing the Tenant from the Rental Unit. Based on such evaluation, the City Manager, or the City Manger's designee, may determine if the Owner of the Premises where the Tenant resides should be required seek the eviction of the Tenant.

b. The City's evaluation should not be based on any information regarding the Tenant's alleged illegal activities that the City is not willing or able to release to the Owner. Such information includes, but is not limited to, any information the City may have uncovered during its investigation that it would not release to a crime victim including, but not limited to, the identity of any confidential informants, witnesses who requested anonymity, or any other information that might jeopardize any criminal case or on-going investigation, or based on any federal, state, or city law that requires withholding or redacting certain information.

2. Notice by City to Owner and Tenant.

a. When the City Manager or designee determines that a Tenant committed, permitted, maintained, or was involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides, the City will give the Owner written notice, requiring the Owner to file an action for the removal of the Tenants in the unit within 20 days of the date of

mailing the notice (subject to any extensions permitted by O.M.C. 8.23.100 F.3). Included with the notice will be the amount of City's fee assessing the Owner the costs of investigating and evaluating the facts and evidence leading to the notice and the costs of sending the notice pursuant to Subsection 8.23.1004. If the Owner fails to file the unlawful detainer action within the 20 days, the City make take further action against the Owner for maintenance of a nuisance, including the assessment of Civil Penalties pursuant to O.M.C. 1.08.100.

c. This notice to the Owner to remove a Tenant shall include a summary of the factual basis for requiring the eviction of the Tenant and the availability of documentary evidence supporting the eviction.

d. The City shall serve the notice on the Owner and the Tenant by certified mail, return receipt requested and first class mail or other appropriate delivery method authorized by O.M.C 1.08.050. Failure of the Tenant to receive or accept the notice does not preclude the City requiring the Owner to remove the Tenant. As an accommodation, the City should attempt to notify all Owners who appear on the public record, however, notice to any Owner of record is deemed sufficient notice. Also as an accommodation, the City should also attempt to provide notice to agents of the Owner responsible for managing the subject Premises, if known to the City.

e. Within 20 days of the City's mailing the written notice to remove a Tenant to the Owner (subject to any extensions pursuant to O.M.C. 8.23100 F.3), the Owner must respond to the notice in one of the following ways:

i. Provide the City with all relevant information pertaining to the unlawful detainer case the Owner has filed or a statement that the Tenant has completely vacated and surrendered the Rental Unit.

ii. Request the City review whether there is sufficient evidence for the Owner to prevail in an unlawful detainer and whether the Owner should be required to evict the Tenant. In order to have the City review its decision to issue the notice to the Owner, the Owner must state with specificity why the Owner believes the evidence is insufficient to prevail in an unlawful detainer.

iii. Provide a written explanation setting forth any Safety-Related Reasons for noncompliance, and a request to assign the unlawful detainer to the City.

iv. Request the City review whether a settlement evicting only the offending Tenant or a leaving minor offending Tenant in place pursuant to Subsection O.M.C. 8.23.100 H. The Owner must state with specificity the reasons for the request for settlement

f. If the Owner requests the City to accept assignment of the unlawful detainer, reconsider the notice, or settlement in advance of the Owner filing the unlawful detainer, the City Attorney will notify the Owner of acceptance or rejection of the these Owner requests within 15 days or within such later time as is reasonably practicable after receipt of the Owner's response to the notice.

g. If the City Attorney rejects either assignment of the unlawful detainer, reconsideration of the notice, or settlement under Subsection O.M.C. 8.23.100 H, the Owner must file the unlawful detainer action within 15 days of the date of the City Attorney's mailing of the rejection of the request for unlawful detainer assignment. The Owner must also report all relevant information pertaining to the unlawful detainer case to the City within the 15 days following the City's rejection of any request.

h. If an Owner fails to take the action to commence an unlawful detainer within the time frames required by this Subsection or fails to submit a report or request to the City within the required time frames, the City may take further action against the Owner for maintenance of a nuisance, including, but not limited to, the assessment of Civil Penalties pursuant to O.M.C. 1.08.100.

i. An Owner who makes a request for the City to accept assignment, reconsider the notice, or settle a potential unlawful detainer without reasonable justification, in bad faith, or to delay commencing an unlawful detainer, may be cited for an administrative citation and assessed costs pursuant to O.M.C. Chapter 1.12.

3. Availability of Information to Owner. The City will make available to the Owner the evidence the City relied on in making its determination that the Tenant should be evicted. The Owner must make a written request for the information. The City has the goal of releasing the evidence to the Owner within 5 days of receipt of the Owner's written request. If the City is not able to release the evidence within the 5 days, the Owner's time for responding to the notice is extended by one day for each day beyond the 5 days. The City will not provide the Owner any information the City may have uncovered during its investigation that it would not release to a crime victim including, but not limited to, the identity of any confidential informants, witnesses who requested anonymity, or any other information that might jeopardize any criminal case or on-going investigation, or based on any federal, state, or city law that requires withholding or redacting certain information.

4. Contents of Notice to Tenant. The notice to the Tenant requiring the Tenant's eviction must include, among other things, a statement or where general information concerning evictions is available, (which can be a reference to the City's

Rent Program) and information on settlement of the eviction where the offending Tenant is removed or where a minor is the offending Tenant.

5. Within 10 days of the Tenant vacating and surrendering the Rental Unit or the final judgment in an unlawful detainer, the Owner must report the results to the City. At any time after the City issues a notice to remove a tenant to an Owner, the City may request a report on the status of the Tenant's removal.

G. ASSIGNMENT OF UNLAWFUL DETAINER TO THE CITY.

1. The Owner may assign an unlawful detainer cause of action to the City for the City Attorney to pursue, at the City Attorney's election, where the unlawful detainer is brought for illegal activities by the Tenant pursuant to this Section and the Owner provides a valid Safety-Related Reason for not bringing the unlawful detainer. The request for assignment must be on a form provided by the City.

2. The City may, at its sole election, also accept assignment of an unlawful detainer where the removal of the Tenant is initiated directly by the Owner and not by the City pursuant to O.M.C. 8.23.100 F. Where the Owner initiates the request for assignment of the unlawful detainer before notification by the City, the unlawful detainer must be based on illegal activity by the Tenant pursuant to this Section O.M.C. 8.23.100and the Owner must provide a valid Safety-Related Reason for not bringing the unlawful detainer directly. The Owner must also provide sufficient evidence to establish the tenant's violation of illegal purpose provisions of subdivision 4 of Section 1161 of the California Code of Civil Procedure and/or O.M.C. 8.22.360 A.6 (Measure EE (Just Cause for Eviction), Subsection 6(A)(6)) sufficient to warrants the tenant's eviction.

3. The City Attorney, at the City Attorney's sole discretion, may accept or reject assignment of the unlawful detainer and the City Attorney's decision is not appealable. In making a decision to accept or reject a request for assignment, the City Attorney should make a practical, common-sense decision whether, given all the circumstances set forth in the Owner's request before him or her, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that a credible Safety-Related Reason exists. Fair probability (probable cause) means more than mere suspicion, but less than prima facie proof, and less than a preponderance of the evidence. The City Attorney may also consider the availability of sufficient resources to handle the unlawful detainer. The City Attorney should consult with the City Manager prior to making a decision to accept or reject an assignment. If the City Attorney refuses to accept assignment of the unlawful detainer, the Owner remains responsible for bringing the unlawful detainer.

4. Litigation Costs.

a. If City Attorney accepts assignment of the right to bring the unlawful detainer action, the Owner must reimburse the City for all costs and attorney's fees associated with addressing the unlawful detainer, including, but not limited to, costs of investigation, case preparation, discovery, and trial, in rates as set by the City Council in the Master Fee Schedule.

b. Where the Owner fails to pay the costs of the City Attorney's office provided for by this Subsection, the City may place a lien for these costs against the Owner's Premises. The attorney and litigation costs will also become a debt to the City and the City may bring an action in any court of competent jurisdiction to collect the amount of any delinquent fees, and will be entitled to any attorney's fees and cost incurred to collect the debt. In the City Attorney's sole discretion, the City Attorney may require the Owner to place a reasonable amount on deposit with the City for anticipated attorney's fees and costs as a condition of the City accepting assignment of the unlawful detainer.

5. If the City Attorney accepts the assignment of the Owner's right to bring the unlawful detainer action, the Owner retains all other rights and duties, including handling the Tenant's personal property following issuance of the writ of possession and its delivery to and execution by the appropriate agency. The City Attorney's assignment ends when the judgment in the unlawful detainer is issued or a settlement is executed, unless the City Attorney agrees separately from the acceptance of the unlawful detainer assignment and the Owner agrees to pay the additional costs.

6. If any party appeals the unlawful detainer judgment, the City Attorney may continue to retain the unlawful detainer assignment or return the matter to the Owner to handle the appeal. The costs of appeal will be borne by the Owner.

7. If the Tenant prevails in an unlawful detainer assigned to the City, the Owner will be responsible for any attorney's fees assessed by the court to the Tenant as prevailing party, as if the unlawful detainer had not been assigned to the City.

8. In any assignment of an unlawful detainer accepted by the City, the Owner will be required to waive any claims against the City and hold the City harmless for any claims arising out of the City's prosecuting the unlawful detainer.

9. Once the City Attorney accepts an assignment, the Owner may not revoke the assignment without the agreement of the City Attorney. Such an agreement may include payment of all attorney costs and litigation costs incurred by the City and assurance the unlawful detainer will be satisfactorily prosecuted.

H. SETTLEMENT OF UNLAWFUL DETAINER BY REMOVING OFFENDING PERSON OR WHERE THE OFFENDER IS A MINOR.

1. The Owner or the City Manager may settle an unlawful detainer action brought under this Section by removing only the offending Tenant and avoiding the eviction of all persons occupying the unit where the person alleged to be committing the nuisance or illegal activity resides. Such settlement must be approved by the City Attorney under the following conditions, unless the City Manager finds good cause for different terms:

a. The person determined by the City who committed the nuisance or illegal activity is excluded from the Rental Unit by court order;

b. The remaining Tenants stipulate to a judgment in unlawful detainer against them should they permit the excluded person to return to the Rental Unit without first obtaining the permission of the Owner and the City Manager; and

c. The remaining Tenants agree to amend their rental agreement with Owner to include a provision prohibiting the return of the former Tenant who engaged in the illegal activity for a period of at least three years after execution of this settlement agreement, and that the return of such Tenant constitutes a substantial breach of a material term of the tenancy and good cause for eviction. The Tenants further agree that the settlement agreement and the notice given pursuant to O.M.C. 8.23.100 F of this Section separately constitute written notices to cease required by O.M.C. 8.22.360 A.2 prior to bringing an unlawful detainer.

2. When the offending Tenant is an unemancipated minor residing in a Rental Unit with the minor's parent or guardian, the Owner or the City Attorney may settle an unlawful detainer action brought under this Section by permitting the minor and all other occupants to remain in the Rental Unit. Such settlement must be approved by the City Manager under the following condition, unless the City Manager finds good cause for different terms:

a. The minor's parent(s) or guardian(s) residing in the Rental Unit stipulate to a judgment in unlawful detainer against them should the minor engage in any other illegal conduct covered under this Section; and

b. The minor's parent(s) or guardian(s) residing in the Rental Unit agree to amend their rental agreement with Owner to include a provision that includes the following:

i. Any additional illegal conduct, as set out in this Section that the minor Tenant engages in anytime within at least three years following the

execution of the settlement agreement constitutes a substantial breach of a material term of the tenancy pursuant to O.M.C 8.22.360 A.2 and also constitutes illegal use of the premises pursuant to O.M.C 8.22.360 A.6, and good cause for eviction under either of the aforementioned sections; and

ii. The Tenants further agree that the settlement agreement and the notice given pursuant to O.M.C. 8.23.100 F separately constitute written notices to cease required by O.M.C. 8.22.360 A.2 prior to bringing an unlawful detainer pursuant to that section.

3. Either the Owner or the Tenant may request the City consider settling the eviction either before or after the unlawful detainer is filed. The notice to the Tenant that the City is requiring the Tenant's removal will include information on settling the matter pursuant to this Subsection.

I. TENANT REMOVED FROM RENTAL UNIT CANNOT RETURN FOR THREE YEARS.

1. An Owner may not re-rent to or permit a Tenant who was removed from a Rental Unit pursuant to this Section O.M.C. 8.23.100 to reoccupy any Rental Unit in the City of Oakland owned by the Owner for a period of at least three years following the Tenant's vacating the Rental Unit, without first obtaining the approval of the City Manager, or the City Manager's designee.

2. For purposes of this Section, a Tenant is removed from a Rental Unit when the Tenant vacates the units either voluntarily after the City has sent a notice to the Owner to seek the Tenant's removal or after a court order evicting the Tenant.

3. An Owner who permits a removed Tenant to occupy a Rental Unit owned by the Owner within three years following the Tenant's removal is subject to remedies by the City as if the Owner had failed to prosecute an unlawful detainer against the Tenant.

4. A Tenant who re-rents from the same Owner within three years after being removed from a Rental Unit owned by the Owner is subject to being evicted under this Section and may be subject to any remedies for nuisance available to the City, including, but not limited to assessment of civil penalties pursuant to O.M.C. Chapter 1.08.

J. EVICTION UNDER THIS SECTION DEEMED IN GOOD FAITH.

Any eviction notice served to or unlawful detainer brought against a Tenant pursuant to this Section O.M.C. 8.23.100 is deemed brought in good faith by the Owner and not wrongful for purposes of any of the remedies available to a Tenant

pursuant to the Just Cause for Eviction Ordinance (O.M.C. 8.22.300, et seq.) irrespective of whether the Tenant, Owner, or City is the prevailing party.

K. ASSESSMENT OF CITY'S COST TO OWNER

1. To defray the costs to the City and taxpayers generally for investigating, evaluation, sending notices to Owners, monitoring, and following up on compliance with notices to evict an offending tenant, the City will assess to each Owner who receives a notice to evict an offending Tenant a fee for such costs. The costs will include the staff and attorney time and overhead costs charged and calculated in accordance with the Master Fee Schedule.

2. The amount of the initial fee will be sent to the Owner along with each notice of evict a Tenant. Additional fees may be assessed as the City incurs costs related to the notice and follow up or other activities. Payment of the fee will be due within fifteen (15) calendar days following the date of service of the notice. If the fee is not paid within the fifteen days, the fee will be considered delinquent and is subject to being placed as a lien against the Owner's property. A delinquent fee assessment may also be subject to such delinquent charges, penalties, and interest as may be set out in the Master Fee Schedule.

3. The amount of the fee is deemed a debt to the City of Oakland. The City may bring an action in any court of competent jurisdiction to collect the amount of any delinquent fees. Should the City prevail in any litigation to collect any delinquent fees, the City is entitled to collect its attorney's fees and costs for pursing the matter.

L. CITY REMEDIES FOR OWNER FAILURE TO PROSECUTE UNLAWFUL DETAINER OR FOR REPEATED ISSUANCES OF NOTICES TO REMOVE TENANTS.

1. In addition to citing the Owner for civil penalties pursuant to O.M.C. Chapter 1.08, the City may bring a nuisance action against an Owner who fails to bring, or fails to diligently or in good faith prosecute an unlawful detainer action against a Tenant who commits, permits, maintains, or is involved in any nuisance or illegal activity on the Premises under the conditions set out in this Section O.M.C. 8.23.100.

2. Upon the failure of the Owner to file an unlawful detainer action or to respond to the City Attorney after notice pursuant to O.M.C. 8.23.100 F.1.d. or, after having filed an action, if the Owner fails to prosecute the unlawful detainer diligently and in good faith, the City may take any or all of the following actions:

a. Assess the Owner civil penalties for the nuisance pursuant to O.M.C. Chapter 1.08;

b. Take any action authorized under O.M.C 1.16;

c. Bring an administrative action against the Owner for permitting or maintaining a nuisance or substandard property which includes as a remedy a possible administrative order vacating the property;

d. Bring a nuisance action in court against the Owner and/or Tenant for maintaining a nuisance. As part of the relief sought, the City Attorney may seek a mandatory injunction assigning to the City the Owner's unlawful detainer cause of action against the offending Tenant. When the City prevails in a nuisance action against the Owner under this Section, the City is entitled to recover its administrative costs in pursuing the matter, including any costs of investigation, and any attorney's fees and costs related to bringing the court action.

3. An Owner who receives more than two notices to remove tenants issued pursuant to this Section within a twenty-four (24) month period, may be cited for nuisance, assessed civil penalties pursuant to O.M.C. Chapter 1.08, and required to pay for all of the City's costs associated with the investigation and noticing for each subsequent notice to remove a tenant issued to the Owner. Each subsequent notice issued by the City to such Owner is also subject to civil penalties under O.M.C. Chapter 1.08.

4. All remedies of the City pursuant to this Section are cumulative and non-exclusive with any other remedies the City may have against an Owner or a Tenant who violates this Section or who creates, permits, or maintains a nuisance.

M. OWNER'S RECOVERY OF COSTS FROM TENANT.

Where an Owner or the City Attorney, on the Owner's behalf, prevail in an unlawful detainer action based on O.M.C. 8.23.100, the Court may award as costs in pursuing the unlawful detainer, all costs assessed by the City administratively for the citation against the Owner based on the Tenant's conduct.

N. TIME.

In this Section, "days" means calendar days, unless otherwise stated. A report to the City is considered timely if mailed to the City by its due date.

O. PROCEDURES AND FORMS.

The City Manager may develop procedures, and forms to implement this Section.

P. PARTIAL INVALIDITY.

If any provision of this ordinance or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this Section that can be given effect without the invalid provisions or applications, and to this end, the provisions and applications of this ordinance are severable.

Q. EFFECTIVE DATE.

This ordinance will become effective in accordance with Section 216 of the Oakland City Charter.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

Attest:

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

Item: 19
City Council
February 17, 2004

AN ORDINANCE REQUIRING RENTAL PROPERTY OWNERS TO EVICT TENANTS ENGAGED IN CERTAIN ILLEGAL ACTIVITIES ON THE PREMISES AND INCLUDING OFF-PREMISES DRUG RELATED ACTIVITIES THAT USE THE PREMISES TO FURTHER THE OFF-PREMISES ILLEGAL DRUG ACTIVITY AND AUTHORIZING THE CITY ATTORNEY TO ACCEPT ASSIGNMENT OF EVICTION CAUSES OF ACTION FROM RENTAL PROPERTY OWNERS FOR EVICTIONS INVOLVING CERTAIN ILLEGAL ACTIVITIES BY ESTABLISHING SECTION 8.23.100 OF THE OAKLAND MUNICIPAL CODE, "NUISANCE EVICTION ORDINANCE"

This is a new ordinance that will be referred to as the "Nuisance Eviction Ordinance ("NEO")." It will require landlords to evict tenants who are engaged in certain illegal activities on the premises where the tenant resides. The illegal activities include: violence (except for domestic violence); illegal use, possession, or sale of weapons; drug-related activities (which can be off-premises); and gang-related activities. NEO would apply to both residential and commercial tenancies. Landlords who fail to evict after notice from the City to evict a tenant can be cited for a nuisance violation. Where a landlord has safety related fears concerning the eviction, the landlord can request the Oakland City Attorney to carry out the eviction. The ordinance would also authorize partial evictions where only the tenant engaged in the illegal activity would be evicted and the other tenants in the unit could remain.

SECOND REVISED

OFFICE OF THE CITY CLERK OAKLAND

APPROVED AS TO FORM AND LEGALITY

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INTRODUCED BY COUNCILMEMBER _____

CITY ATTORNEY

ORDINANCE NO. _____C.M.S.

AN ORDINANCE REQUIRING RENTAL PROPERTY OWNERS TO EVICT TENANTS ENGAGED IN CERTAIN ILLEGAL ACTIVITIES ON THE PREMISES AND INCLUDING OFF-PREMISES DRUG RELATED ACTIVITIES THAT USE THE PREMISES TO FURTHER THE OFF-PREMISES ILLEGAL DRUG ACTIVITY AND AUTHORIZING THE CITY ATTORNEY TO ACCEPT ASSIGNMENT OF EVICTION CAUSES OF ACTION FROM RENTAL PROPERTY OWNERS FOR EVICTIONS INVOLVING CERTAIN ILLEGAL ACTIVITIES BY ESTABLISHING SECTION 8.23.100 OF THE OAKLAND MUNICIPAL CODE, "NUISANCE EVICTION ORDINANCE"

WHEREAS, Oakland has experienced problems with drug, violence, and weapons related criminal activity occurring on rental properties—residential and commercial;

WHEREAS, these illegal activities jeopardize the health, safety, and welfare of other occupants of the rental property and the surrounding community;

WHEREAS, persons dealing illegal drugs make use of their residences to further their illegal drug activities by, among other things: making drug deals on the premises from contacts made off-premises, keeping illegal drugs on the premises for sale off-premises, making contacts on the premises with potential buyers and suppliers for sales concluded off-premises, keeping profits on the premises from off-premises from illegal drug sales, keeping on the premises weapons and other equipment used for off-premises drug activities;

WHEREAS, persons engaging in off-premises illegal drug activities within a close proximity to their residences are highly likely to use their residences to further their drug activity;

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WHEREAS, persons engaging in off-premises illegal drug activity within a close proximity to their residences represent a danger to the health, safety, and welfare of other occupants at the rental property where they reside;

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WHEREAS, rental property owners have an obligation to keep their rental properties safe for all tenants and their visitors and to keep their rental properties free of nuisances;

WHEREAS, rental property owners have an obligation to remove tenants engaging in illegal activity that jeopardizes the health, safety, and welfare of other tenants and the surrounding community;

WHEREAS, some rental property owners may be reluctant to evict tenants engaged in illegal activity fearing retribution towards the owners, their families, employees, or other tenants;

WHEREAS, in order to stop nuisance activity at some rental properties, the City may be forced to declare the entire property a nuisance resulting in the removal of all tenants, including some who may not be engaged in illegal activity;

WHEREAS, the City of Los Angeles has a successful program of requiring rental property owners to evict tenants engaged in certain illegal activity or to assign the eviction cause of action to the Los Angeles City Attorney when the owners have safety concerns;

WHEREAS, the City Council believes that a requiring rental property owners to evict tenants engaged in illegal activity on the premises will assist in removing nuisances from rental properties and that owners who have safety concerns regarding the evictions are able to assign the evictions to the City Attorney, and owners who refuse to do either should be subject to citation, civil penalties, and other penalties or legal actions for failing to abate the nuisance of tenants engaging in illegal activities;

WHEREAS, the City Council desires a targeted approach to removing persons using rental units or the premises for illegal activities and therefore wishes to authorize "partial evictions" that remove from the premises only the person engaging in the illegal activities;

WHEREAS, the City Council wants the nuisance eviction program to be a self-sufficient as possible for several reasons: (1) the City has diminished resources to pay for such activities, (2) the property owners who permit the activities on their property should pay for the program rather than the taxpayers as a whole, and the additional costs might encourage property owners to be more diligent in their property management and avoid renting or continuing to rent to persons engaged in illegal activities.

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WHEREAS, the fees, assessments of costs, and penalties provided for in this ordinance are based not on the ownership of rental property, but instead are based

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on the operation of a business renting commercial or residential property and the management of that property;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN THAT SECTION 8.23 100 IS HEREBY ADDED TO THE OAKLAND MUNICIPAL CODE AS FOLLOWS:

8.23.100 EVICTION FOR NUISANCE AND ILLEGAL ACTIVITY ORDINANCE

A. PURPOSE. The City of Oakland has a significant problem wherein owners of rental property have tenants who commit illegal acts on the property or use it to further illegal activities. Often rental property owners fail to take action to evict such tenants for a variety of reasons including, but not limited to: neglect, lack of knowledge of the illegal activity, monetary gain from renting to the offending tenants, or fear of retribution from the offending tenants. This illegal activity represents a serious threat to the health, safety, and welfare of other residents in the rental property, the neighborhood in which the rental property is located, and the City as a whole.

The City has broad authority to address nuisances, including nuisances created by illegal activity. Often the City's recourse is to seek mandatory injunctions to force rental property owners to remove tenants who engage in illegal activity; this can be time consuming and costly to the City and the rental property owner. The City may also have to order the property vacated, which often can result in the displacement of tenants who are not engaged in illegal activity. The City Council desires a more expeditious, less costly, and more targeted approach to removal from the rental property tenants committing a nuisance by engaging in illegal activity.

The purposes of this ordinance include: to establish a procedure whereby rental property owners can be required to evict tenants committing illegal activity on the premises; to penalize such owners for maintaining a nuisance or authorize the City to take other action against the rental property owner for failing to take appropriate action against the offending tenants; to enable rental property owners to assign the eviction cause of action to the City and allow the City Attorney to handle the eviction of the offending tenant; and to authorize owners to remove from the rental unit only the person engaged in the illegal activity and not other tenants in the unit who may be innocent of the activity.

B. DEFINITIONS. For the purposes of this section O.M.C. 8.23.100, the following definitions apply:

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1. **COMMERCIAL RENTAL UNIT.** Any Rental Unit that is rented or offered for rent for commercial, not residential use.

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2. **CONTROLLED SUBSTANCE.** A drug, substance, or immediate precursor, as listed in the Uniform Controlled Substances Act, Health and Safety Code Section 11000, *et. seq.*

3. **DRUG-RELATED NUISANCE.** Any activity related to the possession, sale, use or manufacturing of a controlled substance that creates an unreasonable interference with the comfortable enjoyment of life, property or safety of other residents of the premises. These activities include, but are not limited to, any activity commonly associated with illegal drug dealing, such as noise, steady foot and vehicle traffic day and night to a particular unit, barricaded units, possession of weapons, or drug loitering as defined in California Health and Safety Code §11532, or other drug-related activities. Activity relating to the sale of a controlled substance that occurs off the premises is regarded as having occurred on the premises if, the activity occurs within such proximity to the premises that the Tenant's activity either unreasonably interferes with the comfortable enjoyment of life, property or safety of other residents of the premises or the Tenant likely uses the premises to further the drug sale activity.

4. **GANG-RELATED CRIME.** Any crime motivated by gang membership in which the perpetrator, victim, or intended victim is a known member of a gang,

5. **ILLEGAL DRUG ACTIVITY.** A violation of any of the provisions of Chapter 6 (commencing with Section 11350) or Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code.

6. **ILLEGAL POSSESSION SALE, OR USE OF WEAPON.** Illegal possession of a weapon by anyone occupying a Rental Unit who is not authorized to possess such a weapon, who sells such weapon and is not legally permitted to do so, or who uses or possesses the weapon in an illegal manner. Weapon includes, but is not limited to, a "Deadly Weapon" as defined in California Business and Professions Code § 7500.1 and "includes any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger, pistol, or revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club."

7. **OWNER.** An owner, landlord, lessor, or sublessor (including any person, firm, corporation, partnership, or other entity) of residential or commercial rental property who receives or is entitled to receive rent directly or through an agent for the use of any Rental Unit, or the agent, representative including a property manager, or successor of any of the foregoing.

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8. **PREMISES.** The Rental Unit and the land on which it and other buildings of the rental complex are located and common areas, including but not

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limited to, parking facilities, streets, alleyways, laundry, stairwells, yard, roofs, and elevators.

9. **RENTAL UNIT.** A Residential Rental Unit or Commercial Rental Unit irrespective of whether the unit, buildings, or Premises are properly permitted or zoned for the particular use.

10. **RESIDENTIAL RENTAL UNIT.** All dwelling units, efficiency dwellings units, guest rooms, and suites, including one-family dwellings, multi-family dwellings, rooming houses, dormitories, live-work units, units in a hotel occupied by Tenants (and not by transients), and condominiums rented or offered for rent for living or dwelling purposes in the City of Oakland. This term also includes mobile homes, whether rent is paid for the mobile home and the land upon which the mobile home is located, or the rent is paid for the land alone. Further, it includes recreational vehicles, as defined in California Civil Code Section 799.24, if located in a mobile home park or recreational vehicle park, whether rent is paid for the recreational vehicle and the land upon which it is located, or rent is paid for the land alone.

11. **SAFETY-RELATED REASONS.** Safety-Related Reasons include that the Owner has information that a credible threat has been made by the Tenant committing the illegal activities or someone on that Tenant's behalf against the person or property of the Owner, the Owner's family, the Owner's employees, the Owner's other Tenants, or a witness against the offending Tenant.

12. **TENANT.** A tenant, subtenant, lessee, sublessee, any person entitled to use, possession, or occupancy of a rental unit, or any other person residing in the Rental Unit.

13. **THREAT OF VIOLENT CRIME.** Any statement made by a Tenant, or at his or her request, by his or her agent to any person who is on or resides on the Premises or to the Owner of the Premises, or his or her agent, threatening commission of a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, when on its face and under the circumstances in which it is made, it is so unequivocal, immediate and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety. Such a threat includes any statement made verbally, in writing, or by means of an electronic communication device and regarding which a police report has been completed. A threat of violent crime under this Section does not include a crime that is committed against a person who is residing in the same rental unit as the person making the threat. "Immediate family" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity of affinity

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within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household. "Electronic communication device" includes but is not limited to, telephones, cellular telephones, video recorders, fax machines, or pagers. "Electronic communications" has the same meaning as the term is defined in subsection 12 of Section 2510 of Title 18 of the United States Code.

14. **VIOLENT CRIME.** Any crime involving a gun, a Weapon, or serious bodily injury and for which a police report has been completed. A violent crime under this Section does not include a crime that is committed against a person residing in the same Rental Unit as the person committing the crime.

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C. INCORPORATION OF EVICTION FOR ILLEGAL ACTIVITY INTO ALL RENTAL AGREEMENTS.

1. All agreements for the rental of real property in the City of Oakland, whether for residential or commercial purposes, are deemed to include a prohibition against using the Rental Unit and the Premises for illegal activity, or committing or permitting the Rental Unit or the Premises to be used for an illegal act thereon. Such illegal acts include, but are not limited to, the following illegal activity: Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime. A Tenant who violates this prohibition is subject to eviction pursuant to O.M.C. 8.22.360 A6 (Just Cause for Eviction Ordinance, Measure EE Subsection 6(A)(6)) for a residential Tenant whose Rental Unit is subject to O.M.C. 8.22.300, *et seq.* and, for any commercial Tenant or residential Tenant whose rental unit is not covered by O.M.C. 8.22.300, *et seq*, under any appropriate contract or state law provision pertaining to termination of tenancy for illegal activities.

D. DUTY OF OWNER TO NOT PERMIT OR MAINTAIN TENANT NUISANCE.

1. For purposes of this Chapter, an Owner who causes or permits either of the following is deemed to be creating, permitting, or maintaining a nuisance:

a. The Premises to be used or maintained for any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession or Use of Weapon, Violent Crime, or Threat of Violent Crime; or

b. A Tenant to use or occupy the Premises if the Tenant commits, permits, maintains, or is involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession or Use of Weapon, Violent Crime, or Threat of Violent Crime.

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2. As part of a compliance plan after being cited for maintaining a nuisance, or by direct notice from the City to evict a Tenant, an Owner may be required to evict a Tenant who is creating nuisance by causing or permitting illegal activity on the Premises.

3. Information to Tenants. Owners who are covered by the Rent Adjustment Ordinance are required to give a notice to all Tenants at the commencement of their tenancies pursuant to O.M.C. 8.22.060. In addition to the information required by O.M.C. 8.22.060, this notice must include information to the effect that a Tenant who commits an illegal act on the Premises, as set out in this Section, is required by Oakland law to be evicted and that if the Owner does not evict, the City Attorney elect may do so upon request of the Owner. The City Manager shall modify the required notice to include the appropriate additional language set out in this subsection.

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4. The illegal activities described in this Section are not exclusive of the activities or conduct that a Tenant may engage in and be subject to eviction pursuant to O.M.C. 8.22.360 A6 (Measure EE, Subsection 6(A)(6)) or under state law provisions providing for eviction for engaging in illegal activity on the Premises.

E. EVICTION OF OFFENDING TENANT.

1. A Tenant who commits, permits, maintains, or is involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides is deemed to be using the Rental Unit for an illegal purpose pursuant to O.M.C. 8.22.360 A6 (Measure EE (Just Cause for Eviction), Subsection 6(A)(6)). Under this Section, "permit" includes allowing a guest, visitor, or licensee to commit an illegal act on the Premises or use the Premises for the illegal purpose.

2. An Owner may bring an action to recover possession of a Rental Unit on one of the following grounds, which action may be brought under O.M.C. 8.22.360 A6 (Measure EE Subsection 6(A)(6)) for a residential Tenant in a Rental Unit subject to O.M.C. 8.22.300, and, for any commercial Tenant or residential Tenant not covered by O.M.C. 8.22.300, under any appropriate contract or state law provision pertaining to termination of tenancy:

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a. The Tenant commits, permits, maintains, or is involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises, or

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b. The Tenant has been convicted of a crime and the underlying offense involves any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug

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Activity, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime, and the crime occurred on the Premises where the Tenant resides or involves the use of the Premises.

F. NOTIFICATION BY THE CITY TO REMOVE TENANT.

1. Evaluation Of Facts And Evidence By City.

a. The City Manager, or the City Manager's designee, is authorized to gather facts and evidence to evaluate whether a Tenant committed, permitted, maintained, or was involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides. Facts or evidence may be derived from any source including, but not limited to, the Owner, other tenants, persons within the community, law enforcement agencies, or prosecution agencies. The City Manager's evaluation of whether a Tenant is engaged in illegal conduct is to be based on whether the Owner could prevail in a unlawful detainer proceeding against the Tenant based on a preponderance of evidence that the Tenant is engaged in the illegal activities and that eviction under such grounds is permissible under the Just Cause for Eviction Ordinance (O.M.C. 8.22.300) and applicable state law; a Tenant need not be arrested, cited, or convicted of the conduct to justify removing the Tenant from the Rental Unit. Based on such evaluation, the City Manager, or the City Manger's designee, may determine if the Owner of the Premises where the Tenant resides should be required seek the eviction of the Tenant.

b. The City's evaluation should not be based on any information regarding the Tenant's alleged illegal activities that the City is not willing or able to release to the Owner. Such information includes, but is not limited to, any information the City may have uncovered during its investigation that it would not release to a crime victim including, but not limited to, the identity of any confidential informants, witnesses who requested anonymity, or any other information that might jeopardize any criminal case or on-going investigation, or based on any federal, state, or city law that requires withholding or redacting certain information.

2. Notice by City to Owner and Tenant.

a. When the City Manager or designee determines that a Tenant committed, permitted, maintained, or was involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides, the City will give the Owner written notice, requiring the Owner to file an action for the removal of the Tenants in the unit within 20 days of the date of

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a. The City Manager, or the City Manager's designee, is authorized to gather facts and evidence to evaluate whether a Tenant committed, permitted, maintained, or was involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides. Facts or evidence may be derived from any source including, but not limited to, the Owner, other tenants, persons within the community, law enforcement agencies or prosecution agencies. The City Manager's evaluation of whether a Tenant is engaged in illegal conduct is based on whether the Owner could prevail in a unlawful detainer proceeding against the Tenant based on a preponderance of evidence that the Tenant is engaged in the illegal activities; a Tenant need not be arrested, cited, or convicted of the conduct to justify removing the Tenant from the Rental Unit. Based on such evaluation, the City Manager, or the City Manger's designee may determine if the Owner of the Premises where the Tenant resides should be required seek the eviction of the Tenant.

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mailing the notice (subject to any extensions permitted by O.M.C. 8.23.100 F.3). Included with the notice will be the amount of City's fee assessing the Owner the costs of investigating and evaluating the facts and evidence leading to the notice and the costs of sending the notice pursuant to Subsection 8.23.1004. If the Owner fails to file the unlawful detainer action within the 20 days, the City make take further action against the Owner for maintenance of a nuisance, including the assessment of Civil Penalties pursuant to O.M.C. 1.08.100.

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c. This notice to the Owner to remove a Tenant shall include a summary of the factual basis for requiring the eviction of the Tenant and the availability of documentary evidence supporting the eviction.

d. The City shall serve the notice on the Owner and the Tenant by certified mail, return receipt requested and first class mail or other appropriate delivery method authorized by O.M.C 1.08.050. Failure of the Tenant to receive or accept the notice does not preclude the City requiring the Owner to remove the Tenant. As an accommodation, the City should attempt to notify all Owners who appear on the public record, however, notice to any Owner of record is deemed sufficient notice. Also as an accommodation, the City should also attempt to provide notice to agents of the Owner responsible for managing the subject Premises, if known to the City.

e. Within 20 days of the City's mailing the written notice to remove a Tenant to the Owner (subject to any extensions pursuant to O.M.C. 8.23100 F.3), the Owner must respond to the notice in one of the following ways:

i. Provide the City with all relevant information pertaining to the unlawful detainer case the Owner has filed or a statement that the Tenant has completely vacated and surrendered the Rental Unit.

ii. Request the City review whether there is sufficient evidence for the Owner to prevail in an unlawful detainer and whether the Owner should be required to evict the Tenant. In order to have the City review its decision to issue the notice to the Owner, the Owner must state with specificity why the Owner believes the evidence is insufficient to prevail in an unlawful detainer.

iii. Provide a written explanation setting forth any Safety-Related Reasons for noncompliance, and a request to assign the unlawful detainer to the City.

iv. Request the City review whether a settlement evicting only the offending Tenant or a leaving minor offending Tenant in place pursuant to Subsection O.M.C. 8.23.100 H. The Owner must state with specificity the reasons for the request for settlement.

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f. If the Owner requests the City to accept assignment of the unlawful detainer, reconsider the notice, or settlement in advance of the Owner filing the unlawful detainer, the City Attorney will notify the Owner of acceptance or rejection of the these Owner requests within 15 days or within such later time as is reasonably practicable after receipt of the Owner's response to the notice.

g. If the City Attorney rejects either assignment of the unlawful detainer, reconsideration of the notice, or settlement under Subsection O.M.C. 8.23.100 H, the Owner must file the unlawful detainer action within 15 days of the date of the City Attorney's mailing of the rejection of the request for unlawful detainer assignment. The Owner must also report all relevant information pertaining to the unlawful detainer case to the City within the 15 days following the City's rejection of any request.

h. If an Owner fails to take the action to commence an unlawful detainer within the time frames required by this Subsection or fails to submit a report or request to the City within the required time frames, the City may take further action against the Owner for maintenance of a nuisance, including, but not limited to, the assessment of Civil Penalties pursuant to O.M.C. 1.08.100.

i. An Owner who makes a request for the City to accept assignment, reconsider the notice, or settle a potential unlawful detainer without reasonable justification, in bad faith, or to delay commencing an unlawful detainer, may be cited for an administrative citation and assessed costs pursuant to O.M.C. Chapter 1.12.

3. Availability of Information to Owner. The City will make available to the Owner the evidence the City relied on in making its determination that the Tenant should be evicted. The Owner must make a written request for the information. The City has the goal of releasing the evidence to the Owner within 5 days of receipt of the Owner's written request. If the City is not able to release the evidence within the 5 days, the Owner's time for responding to the notice is extended by one day for each day beyond the 5 days. The City will not provide the Owner any information the City may have uncovered during its investigation that it would not release to a crime victim including, but not limited to, the identity of any confidential informants, witnesses who requested anonymity, or any other information that might jeopardize any criminal case or on-going investigation, or based on any federal, state, or city law that requires withholding or redacting certain information.

4. Contents of Notice to Tenant. The notice to the Tenant requiring the Tenant's eviction must include, among other things, a statement or where general information concerning evictions is available, (which can be a reference to the City's

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Rent Program) and information on settlement of the eviction where the offending Tenant is removed or where a minor is the offending Tenant.

5. Within 10 days of the Tenant vacating and surrendering the Rental Unit or the final judgment in an unlawful detainer, the Owner must report the results to the City. At any time after the City issues a notice to remove a tenant to an Owner, the City may request a report on the status of the Tenant's removal.

G. ASSIGNMENT OF UNLAWFUL DETAINER TO THE CITY.

1. The Owner may assign an unlawful detainer cause of action to the City for the City Attorney to pursue, at the City Attorney's election, where the unlawful detainer is brought for illegal activities by the Tenant pursuant to this Section and the Owner provides a valid Safety-Related Reason for not bringing the unlawful detainer. The request for assignment must be on a form provided by the City.

2. The City may, at its sole election, also accept assignment of an unlawful detainer where the removal of the Tenant is initiated directly by the Owner and not by the City pursuant to O.M.C. 8.23.100 F. Where the Owner initiates the request for assignment of the unlawful detainer before notification by the City, the unlawful detainer must be based on illegal activity by the Tenant pursuant to this Section O.M.C. 8.23.100and the Owner must provide a valid Safety-Related Reason for not bringing the unlawful detainer directly. The Owner must also provide sufficient evidence to establish the tenant's violation of illegal purpose provisions of subdivision 4 of Section 1161 of the California Code of Civil Procedure and/or O.M.C. 8.22.360 A.6 (Measure EE (Just Cause for Eviction), Subsection 6(A)(6)) sufficient to warrants the tenant's eviction.

3. The City Attorney, at the City Attorney's sole discretion, may accept or reject assignment of the unlawful detainer and the City Attorney's decision is not appealable. In making a decision to accept or reject a request for assignment, the City Attorney should make a practical, common-sense decision whether, given all the circumstances set forth in the Owner's request before him or her, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that a credible Safety-Related Reason exists. Fair probability (probable cause) means more than mere suspicion, but less than prima facie proof, and less than a preponderance of the evidence. The City Attorney may also consider the availability of sufficient resources to handle the unlawful detainer. The City Attorney should consult with the City Manager prior to making a decision to accept or reject an assignment. If the City Attorney refuses to accept assignment of the unlawful detainer, the Owner remains responsible for bringing the unlawful detainer.

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4. Litigation Costs.

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a. If City Attorney accepts assignment of the right to bring the unlawful detainer action, the Owner must reimburse the City for all costs and attorney's fees associated with addressing the unlawful detainer, including, but not limited to, costs of investigation, case preparation, discovery, and trial, in rates as set by the City Council in the Master Fee Schedule.

b. Where the Owner fails to pay the costs of the City Attorney's office provided for by this Subsection, the City may place a lien for these costs against the Owner's Premises. The attorney and litigation costs will also become a debt to the City and the City may bring an action in any court of competent jurisdiction to collect the amount of any delinquent fees, and will be entitled to any attorney's fees and cost incurred to collect the debt. In the City Attorney's sole discretion, the City Attorney may require the Owner to place a reasonable amount on deposit with the City for anticipated attorney's fees and costs as a condition of the City accepting assignment of the unlawful detainer.

5. If the City Attorney accepts the assignment of the Owner's right to bring the unlawful detainer action, the Owner retains all other rights and duties, including handling the Tenant's personal property following issuance of the writ of possession and its delivery to and execution by the appropriate agency. The City Attorney's assignment ends when the judgment in the unlawful detainer is issued or a settlement is executed, unless the City Attorney agrees separately from the acceptance of the unlawful detainer assignment and the Owner agrees to pay the additional costs.

6. If any party appeals the unlawful detainer judgment, the City Attorney may continue to retain the unlawful detainer assignment or return the matter to the Owner to handle the appeal. The costs of appeal will be borne by the Owner.

7. If the Tenant prevails in an unlawful detainer assigned to the City, the Owner will be responsible for any attorney's fees assessed by the court to the Tenant as prevailing party, as if the unlawful detainer had not been assigned to the City.

8. In any assignment of an unlawful detainer accepted by the City, the Owner will be required to waive any claims against the City and hold the City harmless for any claims arising out of the City's prosecuting the unlawful detainer.

9. Once the City Attorney accepts an assignment, the Owner may not revoke the assignment without the agreement of the City Attorney. Such an agreement may include payment of all attorney costs and litigation costs incurred by the City and assurance the unlawful detainer will be satisfactorily prosecuted.

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H. SETTLEMENT OF UNLAWFUL DETAINER BY REMOVING OFFENDING PERSON OR WHERE THE OFFENDER IS A MINOR.

1. The Owner or the City Manager may settle an unlawful detainer action brought under this Section by removing only the offending Tenant and avoiding the eviction of all persons occupying the unit where the person alleged to be committing the nuisance or illegal activity resides. Such settlement must be approved by the City Attorney under the following conditions, unless the City Manager finds good cause for different terms:

a. The person determined by the City who committed the nuisance or illegal activity is excluded from the Rental Unit by court order;

b. The remaining Tenants stipulate to a judgment in unlawful detainer against them should they permit the excluded person to return to the Rental Unit without first obtaining the permission of the Owner and the City Manager; and

c. The remaining Tenants agree to amend their rental agreement with Owner to include a provision prohibiting the return of the former Tenant who engaged in the illegal activity for a period of at least three years after execution of this settlement agreement, and that the return of such Tenant constitutes a substantial breach of a material term of the tenancy and good cause for eviction. The Tenants further agree that the settlement agreement and the notice given pursuant to O.M.C. 8.23.100 F of this Section separately constitute written notices to cease required by O.M.C. 8.22.360 A.2 prior to bringing an unlawful detainer.

2. When the offending Tenant is an unemancipated minor residing in a Rental Unit with the minor's parent or guardian, the Owner or the City Attorney may settle an unlawful detainer action brought under this Section by permitting the minor and all other occupants to remain in the Rental Unit. Such settlement must be approved by the City Manager under the following condition, unless the City Manager finds good cause for different terms:

a. The minor's parent(s) or guardian(s) residing in the Rental Unit stipulate to a judgment in unlawful detainer against them should the minor engage in any other illegal conduct covered under this Section; and

b. The minor's parent(s) or guardian(s) residing in the Rental Unit agree to amend their rental agreement with Owner to include a provision that includes the following:

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i. Any additional illegal conduct, as set out in this Section that the minor Tenant engages in anytime within at least three years following the

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execution of the settlement agreement constitutes a substantial breach of a material term of the tenancy pursuant to O.M.C 8.22.360 A.2 and also constitutes illegal use of the premises pursuant to O.M.C 8.22.360 A.6, and good cause for eviction under either of the aforementioned sections; and

ii. The Tenants further agree that the settlement agreement and the notice given pursuant to O.M.C. 8.23.100 F separately constitute written notices to cease required by O.M.C. 8.22.360 A.2 prior to bringing an unlawful detainer pursuant to that section.

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3. Either the Owner or the Tenant may request the City consider settling the eviction either before or after the unlawful detainer is filed. The notice to the Tenant that the City is requiring the Tenant's removal will include information on settling the matter pursuant to this Subsection.

I. TENANT REMOVED FROM RENTAL UNIT CANNOT RETURN FOR THREE YEARS.

1. An Owner may not re-rent to or permit a Tenant who was removed from a Rental Unit pursuant to this Section O.M.C. 8.23.100 to reoccupy any Rental Unit in the City of Oakland owned by the Owner for a period of at least three years following the Tenant's vacating the Rental Unit, without first obtaining the approval of the City Manager, or the City Manager's designee.

2. For purposes of this Section, a Tenant is removed from a Rental Unit when the Tenant vacates the units either voluntarily after the City has sent a notice to the Owner to seek the Tenant's removal or after a court order evicting the Tenant.

3. An Owner who permits a removed Tenant to occupy a Rental Unit owned by the Owner within three years following the Tenant's removal is subject to remedies by the City as if the Owner had failed to prosecute an unlawful detainer against the Tenant.

4. A Tenant who re-rents from the same Owner within three years after being removed from a Rental Unit owned by the Owner is subject to being evicted under this Section and may be subject to any remedies for nuisance available to the City, including, but not limited to assessment of civil penalties pursuant to O.M.C. Chapter 1.08.

J. EVICTION UNDER THIS SECTION DEEMED IN GOOD FAITH.

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Any eviction notice served to or unlawful detainer brought against a Tenant pursuant to this Section O.M.C. 8.23.100 is deemed brought in good faith by the Owner and not wrongful for purposes of any of the remedies available to a Tenant

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pursuant to the Just Cause for Eviction Ordinance (O.M.C. 8.22.300, et seq.) irrespective of whether the Tenant, Owner, or City is the prevailing party.

K. ASSESSMENT OF CITY'S COST TO OWNER

1. To defray the costs to the City and taxpayers generally for investigating, evaluation, sending notices to Owners, monitoring, and following up on compliance with notices to evict an offending tenant, the City will assess to each Owner who receives a notice to evict an offending Tenant a fee for such costs. The costs will include the staff and attorney time and overhead costs charged and calculated in accordance with the Master Fee Schedule.

2. The amount of the initial fee will be sent to the Owner along with each notice of evict a Tenant. Additional fees may be assessed as the City incurs costs related to the notice and follow up or other activities. Payment of the fee will be due within fifteen (15) calendar days following the date of service of the notice. If the fee is not paid within the fifteen days, the fee will be considered delinquent and is subject to being placed as a lien against the Owner's property. A delinquent fee assessment may also be subject to such delinquent charges, penalties, and interest as may be set out in the Master Fee Schedule.

3. The amount of the fee is deemed a debt to the City of Oakland. The City may bring an action in any court of competent jurisdiction to collect the amount of any delinquent fees. Should the City prevail in any litigation to collect any delinquent fees, the City is entitled to collect its attorney's fees and costs for pursing the matter.

L. CITY REMEDIES FOR OWNER FAILURE TO PROSECUTE UNLAWFUL DETAINER OR FOR REPEATED ISSUANCES OF NOTICES TO REMOVE TENANTS.

1. In addition to citing the Owner for civil penalties pursuant to O.M.C. Chapter 1.08, the City may bring a nuisance action against an Owner who fails to bring, or fails to diligently or in good faith prosecute an unlawful detainer action against a Tenant who commits, permits, maintains, or is involved in any nuisance or illegal activity on the Premises under the conditions set out in this Section O.M.C. 8.23.100.

2. Upon the failure of the Owner to file an unlawful detainer action or to respond to the City Attorney after notice pursuant to O.M.C. 8.23.100 F.1.d. or, after having filed an action, if the Owner fails to prosecute the unlawful detainer diligently and in good faith, the City may take any or all of the following actions:

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a. Assess the Owner civil penalties for the nuisance pursuant to O.M.C. Chapter 1.08;

b. Take any action authorized under O.M.C 1.16;

c. Bring an administrative action against the Owner for permitting or maintaining a nuisance or substandard property which includes as a remedy a possible administrative order vacating the property;

d. Bring a nuisance action in court against the Owner and/or Tenant for maintaining a nuisance. As part of the relief sought, the City Attorney may seek a mandatory injunction assigning to the City the Owner's unlawful detainer cause of action against the offending Tenant. When the City prevails in a nuisance action against the Owner under this Section, the City is entitled to recover its administrative costs in pursuing the matter, including any costs of investigation, and any attorney's fees and costs related to bringing the court action.

3. An Owner who receives more than two notices to remove tenants issued pursuant to this Section within a twenty-four (24) month period, may be cited for nuisance, assessed civil penalties pursuant to O.M.C. Chapter 1.08, and required to pay for all of the City's costs associated with the investigation and noticing for each subsequent notice to remove a tenant issued to the Owner. Each subsequent notice issued by the City to such Owner is also subject to civil penalties under O.M.C. Chapter 1.08.

4. All remedies of the City pursuant to this Section are cumulative and non-exclusive with any other remedies the City may have against an Owner or a Tenant who violates this Section or who creates, permits, or maintains a nuisance.

M. OWNER'S RECOVERY OF COSTS FROM TENANT.

Where an Owner or the City Attorney, on the Owner's behalf, prevail in an unlawful detainer action based on O.M.C. 8.23.100, the Court may award as costs in pursuing the unlawful detainer, all costs assessed by the City administratively for the citation against the Owner based on the Tenant's conduct.

N. TIME.

In this Section, "days" means calendar days, unless otherwise stated. A report to the City is considered timely if mailed to the City by its due date.

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O. PROCEDURES AND FORMS.

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The City Manager may develop procedures, and forms to implement this Section.

P. PARTIAL INVALIDITY.

If any provision of this ordinance or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this Section that can be given effect without the invalid provisions or applications, and to this end, the provisions and applications of this ordinance are severable.

Q. EFFECTIVE DATE.

This ordinance will become effective in accordance with Section 216 of the Oakland City Charter.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

Attest:

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

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City Council
February 17, 2004

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CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A. Russo
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TDD: (510) 839-6451

January 27, 2004

Chairperson Larry Reid and
Members of the City Council Public Safety Committee
Oakland, California

Subject: Nuisance Eviction Ordinance

Chariperson Reid and Committee Members:

This supplemental report addresses the changes to the proposed Nuisance Eviction Ordinance ("NEO"). The principal substantive changes address cost recovery. The City Manager recommends that the City's nuisance enforcement effort be as self-sufficient as possible. In order to achieve this objective, and to encourage rental property owners to be more diligent in tenant selection and removing tenants engaged in illegal activity, the City Manger asked that the proposed NEO be amended as follows:

- To require cost recovery for notices sent to evict tenants involved in illegal activity (8.23.100 F.1.b and K);
- To permit the City to issue civil penalties against a property owner after two notices to evict in 24 months, rather than three over 12 (8.23.100 L.3)
- Clarifying that property owners can be cited for failing to timely take action to evict a tenant after notice by the City or to time report back to the City on what action the property owner took regarding the notice (8.23.100 F.1.h).

Additionally, a number of other changes were made to clarify and to reorganize sections.

All the changes are reflected in a comparison version of NEO.

Respectfully submitted,

JOHN A. RUSSO
City Attorney

Attorney assigned: Richard Illgen

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CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A. Russo
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TDD: (510) 839-6451

January 27, 2004

Chairperson Larry Reid and
Members of the City Council Public Safety Committee
Oakland, California

Subject: Nuisance Eviction Ordinance

Chairperson Reid and Committee Members:

The City Council is increasing the City's efforts to address nuisances caused by blight and illegal activity. The Council has already passed the Public Nuisance Ordinance ("PNO") and the Public Safety Committee is considering the Nuisance Eviction Ordinance ("NEO"). The Council needs to assure that City Administration and the City Attorney's Office have sufficient resources to implement these ordinances and the consequent increases in the nuisance enforcement effort.

The City Manager's budget for nuisance enforcement currently provides for only one-half of an attorney to address the enhanced nuisance enforcement, including NEO. This is insufficient. The increased nuisance enforcement will require at least one full time attorney. The allowance for one-half an attorney is at best enough to handle the increased general nuisance enforcement, but not enough to address in increased City Attorney responsibilities under NEO. Therefore, if only an additional one-half attorney is budgeted, the City Attorney's Office will lack resources to assist with additional workload resulting from the PNO--which involves the same types of nuisance enforcement that we currently perform. Given our current workload, if the Council directs that CAO provide services for NEO, the only resource available to provide the services is the outside counsel budget; and will make a specific line item for NEO related activities. I note that the City Manager's proposed budget for the enhanced nuisance enforcement includes *two new full time administrative staff* to address the increased nuisance enforcement.

The City Attorney's Office has already taken more than its fair share reductions. Not only have we lost six full time attorneys, but the reduced attorney staff has absorbed a considerable amount of work that previously went to outside counsel. We simply do not have the capacity to add more work and new programs to the existing attorney staff.

In evaluating the need for attorney services for the increased nuisance enforcement, please consider the following:

- The City Manager anticipates increasing the nuisance activity under the PNO by fifty percent over the existing nuisance efforts, excluding new NEO activity. That increase in activity alone equals more than one attorney.
- The City Manager's estimate of revenue from fees and penalties from nuisance enforcement is more than sufficient to cover the cost of a full time attorney.
- A considerable portion of the fees for nuisance enforcement generated are from reimbursement for attorney time. If sufficient attorney time is not available, the projected revenues will be substantially less.
- Increased nuisance enforcement can generate more litigation and liability to the City. Adequate advice from the City Attorney's Office can reduce this potential.
- The anticipated attorney time includes: evaluating and advising on potential nuisance actions; handling nuisance administrative hearings; nuisance litigation; responding to constituent inquiries; responding to Councilmembers; attending community and Council meetings.

We in the City Attorney's Office agree that nuisance enforcement is one of the most important functions of city government. The City should not shortchange its nuisance enforcement by failing to allocate sufficient attorney resources.

Respectfully submitted,

JOHN A. RUSSO
City Attorney

Attorney assigned: Richard Illgen

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CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

December 9, 2003

PUBLIC SAFETY COMMITTEE
OAKLAND CITY COUNCIL
Oakland, California

Re: REPORT REGARDING AN ORDINANCE REQUIRING RENTAL PROPERTY OWNERS TO EVICT TENANTS ENGAGED IN CERTAIN ILLEGAL ACTIVITIES ON THE PREMISES AND INCLUDING OFF-PREMISES DRUG RELATED ACTIVITIES THAT USE THE PREMISES TO FURTHER THE OFF-PREMISES ILLEGAL DRUG ACTIVITY AND AUTHORIZING THE CITY ATTORNEY TO ACCEPT ASSIGNMENT OF EVICTION CAUSES OF ACTION FROM RENTAL PROPERTY OWNERS FOR EVICTIONS INVOLVING CERTAIN ILLEGAL ACTIVITIES BY ESTABLISHING SECTION 8.23.100 OF THE OAKLAND MUNICIPAL CODE, "NUISANCE EVICTION ORDINANCE"

Dear Public Safety Committee Members:

SUMMARY

Tenants who commit illegal activities on or near the premises in which they reside, jeopardize the health, safety, and welfare of other tenants in their buildings and the surrounding community. These tenants are a nuisance. Landlords should be required to bring eviction actions against tenants who engage in illegal activities. A landlord who fails to bring an eviction action against a tenant engaged in an illegal act is permitting the tenant to remain a nuisance to other tenants and the community.

Pursuant to Councilmember Reid's request, the City Attorney's Office drafted a Nuisance Eviction Ordinance ("NEO") that would require (1) that rental property owners evict tenants who engage in (a) specified illegal activities on the premises and (b) certain illegal activities off-premises drug related activity; and (2) authorize the City Attorney to evict rental property owners' tenants in certain circumstances. The ordinance is attached.

The Nuisance Eviction Ordinance (NEO) proposes to give the City additional tools to address the situation of illegal activity by tenants on and around rental property. It does this in several ways:

- NEO requires a landlord to bring an eviction action against a tenant who commits certain illegal activities on the rental property or for illegal drug activity occurring off-premises;
- For landlords who may have concerns for their safety and/or the safety of others should the landlord attempt to evict a tenant engaged in illegal activity, the landlord may assign the eviction cause of action to the City Attorney to carry out the eviction, with the landlord bearing the eviction costs;
- The City may cite a landlord for maintaining a nuisance if the landlord fails to bring an eviction action against a tenant after being apprised by the City that the tenant has engaged in illegal activity.

NEO is modeled after a similar ordinance that has existed in Los Angeles for five years. (Los Angeles Municipal Code § 47.50). The Los Angeles ordinance is authorized in part by state law. California Health & Safety Code § 11571.1. The City of Buena Park, California enacted a similar ordinance in 1999, but does not provide for assignment of the eviction actions to the City Attorney. (Buena Park Municipal Code, Chapter 8.48.) The Buena Park ordinance was not specially authorized by state law.

NEO would be codified in a new Chapter 8.23 in the Oakland Municipal Code.

FISCAL IMPACT

The proposed Nuisance Eviction Ordinance will have a fiscal impact. This ordinance creates new duties for City administration and the City Attorney's Office. The nuisance Case Manager will have additional responsibilities. The City Attorney will have to work closely with the Case Manager in implementation and evaluation of nuisance eviction cases, and in handling evictions, if necessary. Without additional resources, the additional activities created by NEO cannot be fully implemented. The City Manager and City Attorney are presently assessing the fiscal needs and possible funding sources for the new activities provided for in NEO.

BACKGROUND

The proposed Nuisance Eviction Ordinance is an adjunct to other stepped up efforts by the City to control nuisance and other illegal activities, particularly violence and drug dealing. The City Council recently amended several sections of the Oakland Municipal Code to make the City's nuisance laws more effective. (See recent amendments to O.M.C. Chapters 1.08, 1.12, and 1.16 (Ordinance No. 12550 C.M.S.). Tenants who engage in illegal activity are a danger to the safety and welfare not only of other tenants, but also to the surrounding community. Additionally, their illegal activity often attracts others who assist or cooperate with them, which increases the dangers to others.

The first responsibility for dealing with a tenant engaged in illegal activity rests with the landlord. The landlord voluntarily enters into an agreement with the tenant to rent the unit; the landlord accepts rent from the tenant; and the landlord can evict the tenant for the illegal activity. Landlords should take responsibility to evict tenants who engage in illegal activity.

Currently, in order for the City to force a landlord to evict a tenant for illegal activity, the City either closes down the entire rental property, forcing out all tenants—guilty and innocent; or the City goes to court seeking an order requiring the landlord to evict the tenants. NEO targets only the offending tenants and does it more directly by permitting partial evictions.

However, there are instances where a landlord may genuinely be afraid to evict a tenant. This fear can be a concern for the landlord's self, family members, employees, or other tenants. In that circumstance, the landlord may assign the eviction to the City and the City Attorney will handle the eviction instead of the landlord.

NEO is not, however, a way for landlords to avoid their responsibility by having the City take on their evictions. The City will take on the evictions only when illegal activity is involved and the landlord can articulate a genuine fear related to the specific tenant. The landlord is required to pay for the City's costs in evicting the tenant. A landlord who, after receiving a notice to evict by the City, does not diligently carry out the eviction, or assign the eviction to the City can be cited for nuisance; additionally, the City can assert other nuisance remedies against the landlord. (In the Los Angeles program, state law authorizes the City Attorney to step into the landlord's shoes and directly evict the tenant if the landlord refuses to do so or assign the eviction to the City. California Health & Safety Code § 11571.1. Absent specific state legislation to include Oakland in the provisions of § 11571.1 or a voluntary assignment by the landlord, the City may not have standing to bring an eviction action against the tenant.)

Because this is a new ordinance, procedures may be needed for implementation. NEO gives the City Manager authority to institute such new procedures as may be necessary for full implementation.

The Los Angeles Program.

As stated above, Los Angeles has a program for nuisance evictions similar to NEO; this program has been in effect for approximately five years. The Los Angeles program is partially authorized by California Health & Safety Code § 11571.1. The Los Angeles nuisance eviction program has been a successful component of that city's drug and gang enforcement efforts. Statistics from Los Angeles show that in most cases, the tenant voluntarily vacates after notice from the City of the possible eviction. Many cases settled by requiring the offender to vacate, leaving the remainder of the tenants in place, or by the family agreeing to better control a minor in the household who is engaging in the illegal conduct. In a small number of the cases, an unlawful detainer was filed and a smaller number go to trial. Very few of the eviction cases in Los Angeles were assigned to the City Attorney—only one or two per year. Attached as exhibits are statistics for several representative years of Los Angeles program activity.

There are differences between the Los Angeles law and NEO. NEO includes the components similar to Los Angeles' that can be accomplished without authorization by § 11571.1. The key component contained in § 11571.1 that may not be possible for Oakland without state legislation is authorization for the City to directly evict a tenant where the landlord refuses to evict or assign the eviction to the City. Partial evictions (evicting only the offender) would also be easier if Oakland were covered under § 11571.1. The detriment to the City in coming under § 11571.1 is that attorney's fees to the City when it takes over an eviction are limited to $600—a contested eviction would cost significantly more. Los Angeles also authorizes eviction for illegal drug activity within a 1,000-foot radius of the tenant's residence; NEO allows eviction for off-premises drug activity when the premises are used in furtherance of that activity, but does not place a geographic limitation on the off-premises activity.

NEO contains several components not in the Los Angeles ordinance.

- NEO requires eviction for illegal weapons possession, use, or sale; Los Angeles does not.
- NEO permits a landlord, on his/her own, to request the City to take over an eviction without a prior notice to evict from the City; this happens where the landlord, and not the City, discovers the illegal activity.
- Los Angeles does not cover commercial properties, NEO does.
- NEO prohibits the landlord from re-renting to the tenant for three years, Los Angeles does not.

- Under NEO, a landlord noticed by the City to evict tenants more than three times in one 12 month period can be cited for civil penalties and required to pay for the investigation and processing costs for further evictions; Los Angeles does not.

KEY ISSUES AND IMPACTS

How does NEO work?

In the typical case, the police arrest a tenant for committing illegal activity on the premises where she/he lives, or for dealing drugs in the vicinity. The police notify the person designated by the City Manager to handle NEO (this could be the Case Manager envisioned in the recently enacted nuisance ordinance). The City Manager's nuisance designee would then evaluate the information (generally in consultation with the City Attorney's Office) and send a notice to the landlord informing the landlord that the landlord must bring an eviction action against the tenant. The notice would also tell the landlord that evidence against the tenant is available. A notice would also go to the tenant advising the tenant that the landlord must bring an eviction action against the tenant and that if the landlord does not, the City may do so. The landlord then must either bring the eviction action, or request the City to do so, citing safety reasons. If the landlord does not bring the eviction action, the City may cite the landlord for nuisance, including multiple citations if the landlord still refuses. Additionally, the City can bring an injunction requiring the landlord to evict.

What new tasks would the City perform under this Ordinance?

The basic new tasks for the City include:

- Reviewing cases for possible eviction.
- Assembling reports and other materials for evidence collection to assist landlords.
- Preparing and sending notices to landlords and tenants requiring eviction.
- Following up to determine compliance.
- Monitoring or approving settlements.
- Handling evictions.
- Issuing nuisance citations when there is no compliance.

Wouldn't evicting a tenant from one place simply move the problem to another location?

In some cases, yes; an eviction might just move the problem tenant to a new location. However, in many cases, the eviction disrupts drug sales by removing a base of operation and requiring the offending tenant to move to a new location

where repeating the activity may not be possible. In other cases, adults, under the threat of eviction for the conduct of a minor in the household, may assert more control and prevent the minor from engaging in further illegal activity. In many cases, the tenant might not engage in further illegal activity for fear of once again losing a place to live.

If a tenant can be evicted for just being arrested and not convicted of the illegal activity; isn't this a heavy-handed approach when the tenant has not been convicted?

No. The tenant has the same right to contest the eviction in court as without NEO. The landlord (or the City when the landlord assigns the eviction) still has the burden of proving the case against the tenant—that the tenant was engaged in the illegal activity. A tenant can now be evicted for illegal activity without being arrested. A tenant who is observed engaging in illegal activity can be evicted without the police being involved at all. Evictions and nuisance actions only require a preponderance of the evidence to prove the case, not the "beyond a reasonable doubt" standard required for a criminal conviction. Moreover, NEO permits partial evictions, so only the offending tenant in the unit may be evicted. Under current law, an eviction removes all tenants in the unit. The City's role in an eviction that the landlord handles would be to assist the landlord by making reports and evidence available to the landlord.

Can a landlord simply re-rent to a tenant?

No. NEO prohibits a landlord from re-renting to a tenant removed under NEO for three years.

Commercial facilities can also be used for illegal activities, does NEO cover commercial tenancies?

Yes. NEO also applies to commercial tenancies.

What about landlords who repeatedly rent to tenants who engage in illegal activities?

A landlord who gets noticed by the City to evict tenants more than three times in a twelve month period can be cited for a nuisance and required to pay the costs of investigation and processing the notice and eviction for all notice to evict after the third.

What if a guest of a tenant is the person committing the illegal activity?

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Public Safety Committee
~~December 9, 2003~~ JAN 27 2004

NEO provides that a tenant who permits the unit to be used for illegal activity can be evicted, even if the person committing the illegal act is a guest or visitor. The Case Manager would have discretion to not require an eviction if the tenant agreed not to allow the guest or visitor to return.

Does NEO require additional work for the Police Department?

The Police Department currently gets most of the information and evidence needed for the City to require a landlord to evict. The additional step would be advising the Case Manager when a tenant has been arrested for the illegal activity. From there, the Case Manager handles the bulk of the workload (with consultation from the City Attorney), unless the case is turned over to the City Attorney.

Can a landlord be required to evict a tenant for illegal drug activity that occurs off the premises?

Yes. Under NEO, the City can require a landlord to evict a tenant who commits the illegal drug activity off-premises, but uses the premises to further that illegal activity.

SUSTAINABLE OPPORTUNITIES

Economic: NEO is expected to positively impact the quality and value of Oakland neighborhoods by reducing and eliminating the number of tenants engaging in illegal activities that negatively impact and influence the neighborhoods.

Environmental: NEO is expected to reduce the negative impacts of illegal activity such as: additional vehicle traffic, criminal gangs, loitering, fear, gun possession.

Social Equity: All Oakland residents deserve to live in safe and beautiful neighborhoods; NEO will assist in achieving such conditions.

DISABILITY AND SENIOR CITIZEN ACCESS

Other than removing tenants involved with illegal activities to improve the quality of life for disabled and/or senior tenants residing in the same property or neighborhood, no disabled or senior citizen access issues are implicated by NEO.

RECOMMENDATION

Item 3
Public Safety Committee
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Passage of the Nuisance Eviction Ordinance is recommended as it would provide an additional means of addressing illegal activities on rental property that create a nuisance for other residents and the neighborhood. It is also recommended that the City Council urge the State Legislature to include Oakland along with Los Angeles in California Health & Safety Code § 11571.1 and amend this code section to permit recovery of reasonable attorney's fees by the City rather than the $600 limitation. Including Oakland in California Health & Safety Code § 11571.1 would better enable the City to fully implement a nuisance eviction program.

It is also recommended that the Public Safety Committee provide comment on this proposed ordinance and schedule a follow up report from the City Manager regarding implementation measures and fiscal impacts before forwarding to the City Council. This additional time will also afford the public more time to review and comment on the ordinance.

Respectfully submitted,

Larry Reid, Councilmember District 7
Oakland City Council

encl.

Item
Public Safety Committee
~~December 9, 2003~~ JAN 27 2004

Attachment to Nuisance Eviction Ordinance Report

Public Safety Committee December 9, 2003

Los Angeles Program Statistics

Statistics for Health and Safety Code Section 11571.1
1/1/99 to 12/31/99
Los Angeles City Attorney

General

(A) No. of Notices sent: 159
(B) No. of times the owner filed an action after being given notice: 30
(C) No. of times the owner did not file an action after being given notice: 129

(D) As to each case filed under this section:

Unlawful Detainer cases filed by the City Attorney: 1

(I) Final Disposition:
Case dismissed by City Attorney
(ii) Whether defendant had counsel:
No
(iii) Whether case was tried by judge or jury:
Not tried
(iv) Whether an appeal was taken, and if so, the result
No appeal taken:
(v) Whether the court ordered a partial eviction:
No

Additional information requested by Judicial Council as to above case

1. Date that notice was filed with landlord and tenant:
9/9/99
2. Date that landlord replied to notice:
9/10/99
3. Controlled substance that was cited in notice:
Cocaine
4. Was the landlord joined as a defendant?
No
5. Location of the apartment building where the action was filed:
Central and Jefferson
6. Number of apartments in the complex:
4
7. Number of tenants evicted:
All, unknown as to total residing there
8. Was a partial eviction sought?
No

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8a. If so, how many tenants remained?
N/A

9. Did the landlord initiate the complaint?
N/A

10. Did the landlord request the assignment of the unlawful detainer action to the City?
Yes (requested by court appointed receiver)

10a If so, Did the City recover fees?
No.

10b If so, How much?
N/A

Unlawful detainer cases filed by Landlords

It is the City Attorney's position that the statute accomplishes only one thing - it allows the City Attorney to bring an unlawful detainer action. As such, it is the City Attorney's position that the statistics required relate to notices sent and cases filed by the City Attorney. The City Attorney is not required to provide information relating to cases filed by landlords, and indeed, the City Attorney is not privy to the details of such proceedings. However, because there is so little data regarding City Attorney filed cases, the following statistics are provided for informational purposes only. They are culled from statements and other materials provided by landlords. Collecting this data required manual research and consumed an inordinate amount of time. Due to time constraints, the City Attorney may not be able to provide this information for the year 2000. Furthermore, the City Attorney has not verified this data and does not vouch for its accuracy.

Unlawful detainer cases filed by Landlords: 30

(i) Final Disposition

- 13 lock outs by Sheriff
- 1 defendant/tenant jailed on another felony
- 1 waiting for lockout
- 10 voluntarily vacated after UD filed
- 2 not yet concluded
- 2 stipulated judgments for plaintiff
- 1 judgment for defendant

(ii) Whether defendant had counsel

- Unknown

(iii) Whether case tried by judge or jury

- Unknown

(iv) Whether an appeal was taken, and if so, the result

- Unknown

(v) Whether the court ordered a partial eviction

- Unknown

Statistics for Health and Safety Code Section 11571.1
1/1/00 to 8/31/00
Los Angeles City Attorney

In evaluating the below statistics, it should be noted that many instances of drug activity are resolved without the necessity of filing an unlawful detainer case. After notification by the City Attorney, some tenants voluntarily vacate the premises or reach a negotiated agreement with the landlord. These agreements can provide for the departure of the offending tenant or consist of a warning to the arrestee, particularly if he or she is a minor. An important factor aiding in the non-judicial resolution of these cases is the fact that both landlords and tenants are made aware of the availability of the remedy provided by Health and Safety Code Section 11571.1. In conclusion, while the drug eviction provision of this section has been used very little, its very existence has been helpful in abating drug activity without judicial intervention.

General

(A) No. of Notices sent: 173
(B) No. of times the owner filed an action after being given notice: 39
(C) No. of times the owner did not file an action after being given notice: 134

(D) As to each case filed under this section:

Unlawful Detainer cases filed by the City Attorney: 0

(I) Final Disposition:
0
(ii) Whether defendant had counsel:
0
(iii) Whether case was tried by judge or jury:
0
(iv) Whether an appeal was taken, and if so, the result
0
(v) Whether the court ordered a partial eviction:
0

Additional information requested by Judicial Council as to above case

1. Date that notice was filed with landlord and tenant:
n/a
2. Date that landlord replied to notice:

n/a

3. Controlled substance that was cited in notice:
n/a

4. Was the landlord joined as a defendant?
n/a

5. Location of the apartment building where the action was filed:
n/a

6. Number of apartments in the complex:
n/a

7. Number of tenants evicted:
n/a

8. Was a partial eviction sought?
n/a

8a. If so, how many tenants remained?
n/a

9. Did the landlord initiate the complaint?
n/a

10. Did the landlord request the assignment of the unlawful detainer action to the City?
n/a

10a If so, Did the City recover fees?
n/a

10b If so, How much?
n/a

Unlawful detainer cases filed by Landlords

It is the City Attorney's position that the statute accomplishes only one thing - it allows the City Attorney to bring an unlawful detainer action. As such, it is the City Attorney's position that the statistics required relate to notices sent and cases filed by the City Attorney. The City Attorney is not required to provide information relating to cases filed by landlords, and indeed, the City Attorney is not privy to the details of such proceedings. However, because there is so little data regarding City Attorney filed cases, the following statistics are provided for informational purposes only. They are culled from statements and other materials provided by landlords. The City Attorney has not verified this data and does not vouch for its accuracy.

Unlawful detainer cases filed by Landlords: 39

(I) Final Disposition

- 13 lock outs by Sheriff
- 1 waiting for lockout
- 15 voluntarily vacated after UD filed
- 3 stipulated judgments for plaintiff
- 7 pending

(ii) Whether defendant had counsel

- Unknown

(iii) Whether case tried by judge or jury

- Unknown

(iv) Whether an appeal was taken, and if so, the result

- Unknown

(v) Whether the court ordered a partial eviction

- Unknown

Statistics for Health and Safety Code Section 11571.1

01/01/02 to 12/31/02

Los Angeles City Attorney

	# OF CASES	SUBTOTAL	GRAND TOTAL
A. 11571 NOTICE(S)			190
B. # UD BY OWNER, UPON 11571.1 NOTICE	27		
C. # ASSIGNMENTS TO CITY	2		
D. 3 OR 30-DAY NOTICE BY CITY	2		
E. UD FILED BY CITY	2		
F. # OWNER JOINED AS DEFENDANT	0		
G. ALL FILINGS:		29	
I. # OF JUDGMENTS:	23		
DEFAULT	6		
STIPULATION	7		
TRIAL	10		
ii. OTHER DISPOS[1]	6		
iii. DEFT REPRESENTED BY COUNSEL	2		
iv. TRIAL	10		
COURT	10		
JURY	0		
v. APPEAL	0		
vi. PARTIAL EVICTION REQ'D	0		
PARTIAL EVICTION ORDERED	0		
H. NOTICE (NO FILING)			
I. VOLUNTARILY VACATED		61	
ii. VACATED PRIOR TO NOTICE		50	
iii. OTHER		37	
(a) City Attorney hearings resulting in partial evictions	10		
(b) Unlawful detainer filed by landlord prior to notice	7		
(c) Tenant vacated after service of 3, 30, or 60-day notice	20		
iv. Pending Landlord Response of Notice		13	

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[1] In 6 instances, the offending Tenant vacated the unit after service with an Unlawful Detainer by the Owner, but before Trial.

REVISED

OFFICE OF THE CITY CLERK
OAKLAND
2004 JAN 15 PM 3:28

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____

_____
CITY ATTORNEY

ORDINANCE NO. _____C.M.S.

AN ORDINANCE REQUIRING RENTAL PROPERTY OWNERS TO EVICT TENANTS ENGAGED IN CERTAIN ILLEGAL ACTIVITIES ON THE PREMISES AND INCLUDING OFF-PREMISES DRUG RELATED ACTIVITIES THAT USE THE PREMISES TO FURTHER THE OFF-PREMISES ILLEGAL DRUG ACTIVITY AND AUTHORIZING THE CITY ATTORNEY TO ACCEPT ASSIGNMENT OF EVICTION CAUSES OF ACTION FROM RENTAL PROPERTY OWNERS FOR EVICTIONS INVOLVING CERTAIN ILLEGAL ACTIVITIES BY ESTABLISHING SECTION 8.23.100 OF THE OAKLAND MUNICIPAL CODE, "NUISANCE EVICTION ORDINANCE"

WHEREAS, Oakland has experienced problems with drug, violence, and weapons related criminal activity occurring on rental properties—residential and commercial;

WHEREAS, these illegal activities jeopardize the health, safety, and welfare of other occupants of the rental property and the surrounding community;

WHEREAS, persons dealing illegal drugs make use of their residences to further their illegal drug activities by, among other things: making drug deals on the premises from contacts made off-premises, keeping illegal drugs on the premises for sale off-premises, making contacts on the premises with potential buyers and suppliers for sales concluded off-premises, keeping profits on the premises from off-premises from illegal drug sales, keeping on the premises weapons and other equipment used for off-premises drug activities;

WHEREAS, persons engaging in off-premises illegal drug activities within a close proximity to their residences are highly likely to use their residences to further their drug activity;

WHEREAS, persons engaging in off-premises illegal drug activity within a close proximity to their residences represent a danger to the health, safety, and welfare of other occupants at the rental property where they reside;

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WHEREAS, rental property owners have an obligation to keep their rental properties safe for all tenants and their visitors and to keep their rental properties free of nuisances;

WHEREAS, rental property owners have an obligation to remove tenants engaging in illegal activity that jeopardizes the health, safety, and welfare of other tenants and the surrounding community;

WHEREAS, some rental property owners may be reluctant to evict tenants engaged in illegal activity fearing retribution towards the owners, their families, employees, or other tenants;

WHEREAS, in order to stop nuisance activity at some rental properties, the City may be forced to declare the entire property a nuisance resulting in the removal of all tenants, including some who may not be engaged in illegal activity;

WHEREAS, the City of Los Angeles has a successful program of requiring rental property owners to evict tenants engaged in certain illegal activity or to assign the eviction cause of action to the Los Angeles City Attorney when the owners have safety concerns;

WHEREAS, the City Council believes that a requiring rental property owners to evict tenants engaged in illegal activity on the premises will assist in removing nuisances from rental properties and that owners who have safety concerns regarding the evictions are able to assign the evictions to the City Attorney, and owners who refuse to do either should be subject to citation, civil penalties, and other penalties or legal actions for failing to abate the nuisance of tenants engaging in illegal activities;

WHEREAS, the City Council desires a targeted approach to removing persons using rental units or the premises for illegal activities and therefore wishes to authorize "partial evictions" that remove from the premises only the person engaging in the illegal activities;

WHEREAS, the City Council wants the nuisance eviction program to be a self-sufficient as possible for several reasons: (1) the City has diminished resources to pay for such activities, (2) the property owners who permit the activities on their property should pay for the program rather than the taxpayers as a whole, and the additional costs might encourage property owners to be more diligent in their property management and avoid renting or continuing to rent to persons engaged in illegal activities.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN THAT SECTION 8.23 100 IS HEREBY ADDED TO THE OAKLAND MUNICIPAL CODE AS FOLLOWS:

8.23.100 EVICTION FOR NUISANCE AND ILLEGAL ACTIVITY ORDINANCE

A. PURPOSE. The City of Oakland has a significant problem wherein owners of rental property have tenants who commit illegal acts on the property or use it to further illegal activities. Often rental property owners fail to take action to evict such tenants for a variety of reasons including, but not limited to: neglect, lack of knowledge of the illegal activity, monetary gain from renting to the offending tenants, or fear of retribution from the offending tenants. This illegal activity represents a serious threat to the health, safety, and welfare of other residents in the rental property, the neighborhood in which the rental property is located, and the City as a whole.

The City has broad authority to address nuisances, including nuisances created by illegal activity. Often the City's recourse is to seek mandatory injunctions to force rental property owners to remove tenants who engage in illegal activity; this can be time consuming and costly to the City and the rental property owner. The City may also have to order the property vacated, which often can result in the displacement of tenants who are not engaged in illegal activity. The City Council desires a more expeditious, less costly, and more targeted approach to removal from the rental property tenants committing a nuisance by engaging in illegal activity.

The purposes of this ordinance include: to establish a procedure whereby rental property owners can be required to evict tenants committing illegal activity on the premises; to penalize such owners for maintaining a nuisance or authorize the City to take other action against the rental property owner for failing to take appropriate action against the offending tenants; to enable rental property owners to assign the eviction cause of action to the City and allow the City Attorney to handle the eviction of the offending tenant; and to authorize owners to remove from the rental unit only the person engaged in the illegal activity and not other tenants in the unit who may be innocent of the activity.

B. DEFINITIONS. For the purposes of this section O.M.C. 8.23.100, the following definitions apply:

1. **COMMERCIAL RENTAL UNIT.** Any Rental Unit that is rented or offered for rent for commercial, not residential use.

2. **CONTROLLED SUBSTANCE.** A drug, substance, or immediate precursor, as listed in the Uniform Controlled Substances Act, Health and Safety Code Section 11000, *et. seq.*

3. **DRUG-RELATED NUISANCE.** Any activity related to the possession, sale, use or manufacturing of a controlled substance that creates an unreasonable interference with the comfortable enjoyment of life, property or safety of other residents of the premises. These activities include, but are not limited to, any activity commonly associated with illegal drug dealing, such as noise, steady foot and vehicle traffic day and night to a particular unit, barricaded units, possession of

weapons, or drug loitering as defined in California Health and Safety Code §11532, or other drug-related activities. Activity relating to the sale of a controlled substance that occurs off the premises is regarded as having occurred on the premises if, the activity occurs within such proximity to the premises that the Tenant's activity either unreasonably interferes with the comfortable enjoyment of life, property or safety of other residents of the premises or the Tenant likely uses the premises to further the drug sale activity.

4. **GANG-RELATED CRIME.** Any crime motivated by gang membership in which the perpetrator, victim, or intended victim is a known member of a gang,

5. **ILLEGAL DRUG ACTIVITY.** A violation of any of the provisions of Chapter 6 (commencing with Section 11350) or Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code.

Deleted: Cal.

6. **ILLEGAL POSSESSION SALE, OR USE OF WEAPON.** Illegal possession of a weapon by anyone occupying a Rental Unit who is not authorized to possess such a weapon, who sells such weapon and is not legally permitted to do so, or who uses or possesses the weapon in an illegal manner. Weapon includes, but is not limited to, a "Deadly Weapon" as defined in California Business and Professions Code § 7500.1 and "includes any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger, pistol, or revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club."

Deleted: Cal.

7. **OWNER.** An owner, landlord, lessor, or sublessor (including any person, firm, corporation, partnership, or other entity) of residential or commercial rental property who receives or is entitled to receive rent directly or through an agent for the use of any Rental Unit, or the agent, representative including a property manager, or successor of any of the foregoing.

8. **PREMISES.** The Rental Unit and the land on which it and other buildings of the rental complex are located and common areas, including but not limited to, parking facilities, streets, alleyways, laundry, stairwells, yard, roofs, and elevators.

9. **RENTAL UNIT.** A Residential Rental Unit or Commercial Rental Unit irrespective of whether the unit, buildings, or Premises are properly permitted or zoned for the particular use.

10. **RESIDENTIAL RENTAL UNIT.** All dwelling units, efficiency dwellings units, guest rooms, and suites, including one-family dwellings, multi-family dwellings, rooming houses, dormitories, live-work units, units in a hotel occupied by Tenants (and not by transients), and condominiums rented or offered for rent for living or dwelling purposes in the City of Oakland. This term also includes mobile homes,

whether rent is paid for the mobile home and the land upon which the mobile home is located, or the rent is paid for the land alone. Further, it includes recreational vehicles, as defined in California Civil Code Section 799.24, if located in a mobile home park or recreational vehicle park, whether rent is paid for the recreational vehicle and the land upon which it is located, or rent is paid for the land alone.

Deleted: Cal.

11. **TENANT.** A tenant, subtenant, lessee, sublessee, any person entitled to use, possession, or occupancy of a rental unit, or any other person residing in the Rental Unit.

12. **THREAT OF VIOLENT CRIME.** Any statement made by a Tenant, or at his or her request, by his or her agent to any person who is on or resides on the Premises or to the Owner of the Premises, or his or her agent, threatening commission of a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, when on its face and under the circumstances in which it is made, it is so unequivocal, immediate and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety. Such a threat includes any statement made verbally, in writing, or by means of an electronic communication device and regarding which a police report has been completed. A threat of violent crime under this Section does not include a crime that is committed against a person who is residing in the same rental unit as the person making the threat. "Immediate family" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity of affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household. "Electronic communication device" includes but is not limited to, telephones, cellular telephones, video recorders, fax machines, or pagers. "Electronic communications" has the same meaning as the term is defined in subsection 12 of Section 2510 of Title 18 of the United States Code.

13. **VIOLENT CRIME.** Any crime involving a gun, a Weapon, or serious bodily injury and for which a police report has been completed. A violent crime under this Section does not include a crime that is committed against a person residing in the same Rental Unit as the person committing the crime.

C. INCORPORATION OF EVICTION FOR ILLEGAL ACTIVITY INTO ALL RENTAL AGREEMENTS.

1. All agreements for the rental of real property in the City of Oakland, whether for residential or commercial purposes, are deemed to include a prohibition against using the Rental Unit and the Premises for illegal activity, or committing or permitting the Rental Unit or the Premises to be used for an illegal act thereon.

Such illegal acts include, but are not limited to, the following illegal activity: Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime. A Tenant who violates this prohibition is subject to eviction pursuant to O.M.C. 8.22.360 A6 (Just Cause for Eviction Ordinance, Measure EE Subsection 6(A)(6)) for a residential Tenant whose Rental Unit is subject to O.M.C. 8.22.300, *et seq.* and, for any commercial Tenant or residential Tenant whose rental unit is not covered by O.M.C. 8.22.300, *et seq*, under any appropriate contract or state law provision pertaining to termination of tenancy for illegal activities.

D. DUTY OF OWNER TO NOT PERMIT OR MAINTAIN TENANT NUISANCE.

1. For purposes of this Chapter, an Owner who causes or permits either of the following is deemed to be creating, permitting, or maintaining a nuisance:

a. The Premises to be used or maintained for any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession or Use of Weapon, Violent Crime, or Threat of Violent Crime; or

b. A Tenant to use or occupy the Premises if the Tenant commits, permits, maintains, or is involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession or Use of Weapon, Violent Crime, or Threat of Violent Crime.

2. As part of a compliance plan after being cited for maintaining a nuisance, or by direct notice from the City to evict a Tenant, an Owner may be required to evict a Tenant who is creating nuisance by causing or permitting illegal activity on the Premises.

3. Information to Tenants. Owners who are covered by the Rent Adjustment Ordinance are required to give a notice to all Tenants at the commencement of their tenancies pursuant to O.M.C. 8.22.060. In addition to the information required by O.M.C. 8.22.060, this notice must include information to the effect that a Tenant who commits illegal acts on the Premises, as set out in this Section, are required by Oakland law to be evicted and that if the Owner does not evict, the City Attorney elect may do so upon request of the Owner. The City Manager shall modify the required notice to include the appropriate additional language set out in this subsection.

4. The illegal activities described in this Section are not exclusive of the activities or conduct that a Tenant may engage in and be subject to eviction pursuant to O.M.C. 8.22.360 A6 (Measure EE, Subsection 6(A)(6)) or under state law provisions providing for eviction for engaging in illegal activity on the Premises.

E. EVICTION OF OFFENDING TENANT.

1. A Tenant who commits, permits, maintains, or is involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides is deemed to be using the Rental Unit for an illegal purpose pursuant to O.M.C. 8.22.360 A6 (Measure EE (Just Cause for Eviction), Subsection 6(A)(6)). Under this Section, "permit" includes allowing a guest, visitor, or licensee to commit or use the Premises for the illegal purpose.

2. An Owner may bring an action to recover possession of a Rental Unit upon one of the following grounds, which action may be brought under O.M.C. 8.22.360 A6 (Measure EE Subsection 6(A)(6)) for a residential Tenant in a Rental Unit subject to O.M.C. 8.22.300, and, for any commercial Tenant or residential Tenant not covered by O.M.C. 8.22.300, under any appropriate contract or state law provision pertaining to termination of tenancy:

a. The Tenant commits, permits, maintains, or is involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises, or

b. The Tenant has been convicted of a crime and the underlying offense involves any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime, and the crime occurred on the Premises where the Tenant resides or involves the use of the Premises.

F. NOTIFICATION BY THE CITY TO REMOVE TENANT.

1. Notice by City to Owner and Tenant.

a. The City Manager, or the City Manager's designee, is authorized to gather facts and evidence to evaluate whether a Tenant committed, permitted, maintained, or was involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides. Facts or evidence may be derived from any source including, but not limited to, the Owner, other tenants, persons within the community, law enforcement agencies or prosecution agencies. The City Manager's evaluation of whether a Tenant is engaged in illegal conduct is based on whether the Owner could prevail in a unlawful detainer proceeding against the Tenant based on a preponderance of evidence that the Tenant is engaged in the illegal activities; a Tenant need not be arrested, cited, or convicted of the conduct to justify removing the Tenant from the Rental Unit. Based on such evaluation, the City Manager, or the City Manger's designee may determine if the Owner of the Premises where the Tenant resides should be required seek the eviction of the Tenant.

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a. . The Owner may assign an unlawful detainer cause of action to the City for the City Attorney to pursue, at the City Attorney's election, where the unlawful detainer is brought for illegal activities by the Tenant pursuant to this Section and Owner provides a valid safety-related reason for not bringing the unlawful detainer. The request for assignment must be on a form provided by the City Attorney.¶
¶
b. . The City may, at its election, also accept assignment of an unlawful detainer where the removal of the Tenant is initiated directly by the Owner and not by the City pursuant to Section O.M.C. 8.23.100 F below. Where the Owner initiates the request for assignment of the unlawful detainer before notification by the City, the unlawful detainer must be based on illegal activity by the Tenant pursuant to this Section and the Owner must provide a valid safety-related reason for not bringing the unlawful detainer directly. The Owner must also provide sufficient evidence to establish the tenant's violation of illegal purpose provisions of subdivision 4 of Section 1161 of the Cal. Code of Civil Procedure and/or O.M.C. 8.22.360 A.6 (Measure EE (Just Cause for Eviction), Subsection 6(A)(6)) sufficient to warrants the tenant's eviction..¶
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c. . The City Attorney, at the City Attorney's sole discretion, may accept or reject assignment of the unlawful detainer. If the City Attorney refuses to accept assignment of the unlawful detainer, the Owner remains responsible for bringing the unlawful detainer. ¶
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d. In the event City Attorney accepts assignment of the right to bring the unlawful detainer action, the Owner must reimburse the City for all costs and attorney's fees associated with addressing the unlawful detainer, including, but not limited to. costs of investigation, case preparation, discovery, and trial, in rates as set by the City Council in the Master Fee Schedule. Where the Owner fails to pay the costs of the City Attorney's office provided for by this Subsection, the City may place a lien for these costs against the Owner's Premises. In the City Attorney's sole discretion, the City Attorney may require the Owner to place a reasonable amount on deposit with the City for anticipated attorney's fees and costs.

b. When the City Manager or designee determines that a Tenant committed, permitted, maintained, or was involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides, the City will give the Owner written notice, requiring the Owner to file an action for the removal of the Tenants in the unit within 15 calendar days of the date of mailing the notice. Included with the notice will be the amount of City's fee assessing the Owner the costs of investigating and evaluating the facts and evidence leading to the notice and the costs of sending the notice pursuant to Subsection 8.23.1004. If the Owner fails to file the unlawful detainer action within the fifteen (15) days, the City make take further action against the Owner for maintenance of a nuisance, including the assessment of Civil Penalties pursuant to O.M.C. 1.08.100.

c. This notice shall include a summary of the factual basis for requiring the eviction of the Tenant and the availability of documentary evidence supporting the eviction.

d. The City shall serve the notice on the Owner and the Tenant by certified mail, return receipt requested and first class mail or other appropriate delivery method authorized by O.M.C 1.08.050. Failure of the Tenant to receive or accept the notice does not preclude the City requiring the Owner to remove the Tenant. As an accommodation, the City should attempt to notify all Owners who appear on the public record, notice to any Owner of record deemed sufficient notice. Also as an accommodation, the City should also attempt to provide notice to agents of the Owner responsible for managing the subject Premises, if known to the City.

e. The Owner must, within 15 days of the mailing of the written notice, either provide the City with all relevant information pertaining to the unlawful detainer case, or provide a written explanation setting forth any safety-related reasons for noncompliance, and a request to assign the unlawful detainer to the City

f. If the Owner requests the City to accept assignment of the unlawful detainer, the City Attorney will notify the Owner of acceptance or rejection of the assignment within 15 days or within such later time as is reasonably practicable after receipt of the Owner's request for assignment.

g. If the City Attorney rejects the assignment, the Owner must file the unlawful detainer action within 15 days of the date of the City Attorney's mailing of the rejection of the request for unlawful detainer assignment. The Owner must also report all relevant information pertaining to the unlawful detainer case to the City within the 15 days following the City's rejection of the assignment.

h. If an Owner fails to take the action to commence an unlawful detainer within the time frames required by this Subsection or fails to submit a report

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to the City within the required time frames, the City may take further action against the Owner for maintenance of a nuisance, including, but not limited to, the assessment of Civil Penalties pursuant to O.M.C. 1.08.100.

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G. Assignment Of Unlawful Detainer To The City.

1. The Owner may assign an unlawful detainer cause of action to the City for the City Attorney to pursue, at the City Attorney's election, where the unlawful detainer is brought for illegal activities by the Tenant pursuant to this Section and the Owner provides a valid safety-related reason for not bringing the unlawful detainer. The request for assignment must be on a form provided by the City.

2. The City may, at its sole election, also accept assignment of an unlawful detainer where the removal of the Tenant is initiated directly by the Owner and not by the City pursuant to O.M.C. 8.23.100 F. Where the Owner initiates the request for assignment of the unlawful detainer before notification by the City, the unlawful detainer must be based on illegal activity by the Tenant pursuant to this Section O.M.C. 8.23.100and the Owner must provide a valid safety-related reason for not bringing the unlawful detainer directly. The Owner must also provide sufficient evidence to establish the tenant's violation of illegal purpose provisions of subdivision 4 of Section 1161 of the California Code of Civil Procedure and/or O.M.C. 8.22.360 A.6 (Measure EE (Just Cause for Eviction), Subsection 6(A)(6)) sufficient to warrants the tenant's eviction..

3. The City Attorney, at the City Attorney's sole discretion, may accept or reject assignment of the unlawful detainer. If the City Attorney refuses to accept assignment of the unlawful detainer, the Owner remains responsible for bringing the unlawful detainer.

4. If City Attorney accepts assignment of the right to bring the unlawful detainer action, the Owner must reimburse the City for all costs and attorney's fees associated with addressing the unlawful detainer, including, but not limited to, costs of investigation, case preparation, discovery, and trial, in rates as set by the City Council in the Master Fee Schedule. Where the Owner fails to pay the costs of the City Attorney's office provided for by this Subsection, the City may place a lien for these costs against the Owner's Premises. In the City Attorney's sole discretion, the City Attorney may require the Owner to place a reasonable amount on deposit with the City for anticipated attorney's fees and costs as a condition of the City accepting assignment of the unlawful detainer.

5. If the City Attorney accepts the assignment of the Owner's right to bring the unlawful detainer action, the Owner retains all other rights and duties, including handling the Tenant's personal property following issuance of the writ of possession and its delivery to and execution by the appropriate agency. The City Attorney's assignment ends when the judgment in the unlawful detainer is issued or

a settlement is executed, unless the City Attorney agrees separately from the acceptance of the unlawful detainer assignment and the Owner agrees to pay the additional costs.

6. If any party appeals the unlawful detainer judgment, the City Attorney may continue to retain the unlawful detainer assignment or return the matter to the Owner to handle the appeal. The costs of appeal will be borne by the Owner.

7. If the Tenant prevails in an unlawful detainer assigned to the City, the Owner will be responsible for any attorney's fees assessed by the court to the Tenant as prevailing party, as if the unlawful detainer had not been assigned to the City.

8. In any assignment of an unlawful detainer accepted by the City, the Owner will be required to waive any claims against the City and hold the City harmless for any claims arising out of the City's prosecuting the unlawful detainer.

H. SETTLEMENT OF UNLAWFUL DETAINER BY REMOVING OFFENDING PERSON OR WHERE THE OFFENDER IS A MINOR.

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1. The Owner or the City Manager may settle an unlawful detainer action brought under this Section by removing only the offending Tenant and avoiding the eviction of all persons occupying the unit where the person alleged to be committing the nuisance or illegal activity resides. Such settlement must be approved by the City Attorney under the following conditions, unless the City Manager finds good cause for different terms:

a. The person determined by the City who committed the nuisance or illegal activity is excluded from the Rental Unit by court order;

b. The remaining Tenants stipulate to a judgment in unlawful detainer against them should they permit the excluded person to return to the Rental Unit without first obtaining the permission of the Owner and the City Manager; and

c. The remaining Tenants agree to amend their rental agreement with Owner to include a provision prohibiting the return of the former Tenant who engaged in the illegal activity for a period of at least three years after execution of this settlement agreement, and that the return of such Tenant constitutes a substantial breach of a material term of the tenancy and good cause for eviction. The Tenants further agree that the settlement agreement and the notice given pursuant to O.M.C. 8.23.100 F of this Section separately constitute written notices to cease required by O.M.C. 8.22.360 A.2 prior to bringing an unlawful detainer.

2. When the offending Tenant is an unemancipated minor residing in a Rental Unit with the minor's parent or guardian, the Owner or the City Attorney may

settle an unlawful detainer action brought under this Section by permitting the minor and all other occupants to remain in the Rental Unit. Such settlement must be approved by the City Manager under the following condition, unless the City Manager finds good cause for different terms:

a. The minor's parent(s) or guardian(s) residing in the Rental Unit stipulate to a judgment in unlawful detainer against them should the minor engage in any other illegal conduct covered under this Section; and

b. The minor's parent(s) or guardian(s) residing in the Rental Unit agree to amend their rental agreement with Owner to include a provision that includes the following:

i. Any additional illegal conduct, as set out in this Section that the minor Tenant engages in anytime within at least three years following the execution of the settlement agreement constitutes a substantial breach of a material term of the tenancy pursuant to O.M.C 8.22.360 A.2 and also constitutes illegal use of the premises pursuant to O.M.C 8.22.360 A.6, and good cause for eviction under either of the aforementioned sections; and

ii. The Tenants further agree that the settlement agreement and the notice given pursuant to O.M.C. 8.23.100 F of this Section separately constitute written notices to cease required by O.M.C. 8.22.360 A.2 prior to bringing an unlawful detainer pursuant to that section.

J. TENANT REMOVED FROM RENTAL UNIT CANNOT RETURN FOR THREE YEARS.

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1. An Owner may not re-rent to or permit a Tenant who was removed from a Rental Unit pursuant to this Section O.M.C. 8.23.100 to reoccupy any Rental Unit in the City of Oakland owned by the Owner for a period of at least three years following the Tenant's vacating the Rental Unit, without first obtaining the approval of the City Manager, or the City Manager's designee.

2. For purposes of this Section, a Tenant is removed from a Rental Unit when the Tenant vacates the units either voluntarily after the City has sent a notice to the Owner to seek the Tenant's removal or after a court order evicting the Tenant.

3. An Owner who permits a removed Tenant to occupy a Rental Unit owned by the Owner within three years following the Tenant's removal is subject to remedies by the City as if the Owner had failed to prosecute an unlawful detainer against the Tenant.

4. A Tenant who re-rents from the same Owner within three years after being removed from a Rental Unit owned by the Owner is subject to being evicted under this Section and may be subject to any remedies for nuisance available to the

City, including, but not limited to assessment of civil penalties pursuant to O.M.C. Chapter 1.08.

J. EVICTION UNDER THIS SECTION DEEMED IN GOOD FAITH.

Any eviction notice served to or unlawful detainer brought against a Tenant pursuant to this Section O.M.C. 8.23.100 is deemed brought in good faith by the Owner and not wrongful for purposes of any of the remedies available to a Tenant pursuant to the Just Cause for Eviction Ordinance (O.M.C. 8.22.300, et seq.) irrespective of whether the Tenant, Owner, or City is the prevailing party.

K. ASSESSMENT OF CITY'S COST TO OWNER

1. To defray the costs to the City and taxpayers generally for investigating, evaluation, sending notices to Owners, monitoring, and following up on compliance with notices to evict an offending tenant, the City will assess to each Owner who receives a notice to evict an offending Tenant a fee for such costs. The costs will include the staff and attorney time and overhead costs charged and calculated in accordance with the Master Fee Schedule.

2. The amount of the initial fee will be sent to the Owner along with each notice of evict a Tenant. Additional fees may be assessed as the City incurs costs related to the notice and follow up or other activities. Payment of the fee will be due within fifteen (15) calendar days following the date of service of the notice. If the fee is not paid within the fifteen days, the fee will be considered delinquent and is subject to being placed as a lien against the Owner's property. A delinquent fee assessment may also be subject to such delinquent charges, penalties, and interest as may be set out in the Master Fee Schedule.

3. The amount of the fee is deemed a debt to the City of Oakland. The City may bring an action in any court of competent jurisdiction to collect the amount of any delinquent fees.

L. CITY REMEDIES FOR OWNER FAILURE TO PROSECUTE UNLAWFUL DETAINER OR FOR REPEATED ISSUANCES OF NOTICES TO REMOVE TENANTS.

1. In addition to citing the Owner for civil penalties pursuant to O.M.C. Chapter 1.08, the City may bring a nuisance action against an Owner who fails to bring, or fails to diligently or in good faith prosecute an unlawful detainer action against a Tenant who commits, permits, maintains, or is involved in any nuisance or illegal activity on the Premises under the conditions set out in this Section O.M.C. 8.23.100.

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1. . To defray the costs to the City and taxpayers generally for investigating, evaluation, sending notices to Owners, monitoring, and following up on compliance with notices to evict an offending tenant, the City will assess to each Owner who receives a notice to evict an offending Tenant a fee for such costs. The costs will include the staff and attorney time and overhead costs charged and calculated in accordance with the Master Fee Schedule.¶
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2. Upon the failure of the Owner to file an unlawful detainer action or to respond to the City Attorney after notice pursuant to O.M.C. 8.23.100 F.1.d. or, after having filed an action, if the Owner fails to prosecute the unlawful detainer diligently and in good faith, the City may take any or all of the following actions:

a. Assess the Owner civil penalties for the nuisance pursuant to O.M.C. Chapter 1.08;

b. Take any action authorized under O.M.C 1.16;

c. Bring an administrative action against the Owner for permitting or maintaining a nuisance or substandard property which includes as a remedy a possible administrative order vacating the property;

d. Bring a nuisance action in court against the Owner and/or Tenant for maintaining a nuisance. As part of the relief sought, the City Attorney may seek a mandatory injunction assigning to the City the Owner's unlawful detainer cause of action against the offending Tenant. When the City prevails in a nuisance action against the Owner under this Section, the City is entitled to recover its administrative costs in pursuing the matter, including any costs of investigation, and any attorney's fees and costs related to bringing the court action.

3. An Owner who receives more than two notices to remove tenants issued pursuant to this Section within a twenty-four (24) month period, may be cited for nuisance, assessed civil penalties pursuant to O.M.C. Chapter 1.08, and required to pay for all of the City's costs associated with the investigation and noticing for each subsequent notice to remove a tenant issued to the Owner. Each subsequent notice issued by the City to such Owner is also subject to civil penalties under O.M.C. Chapter 1.08.

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4. All remedies of the City pursuant to this Section are cumulative and non-exclusive with any other remedies the City may have against an Owner or a Tenant who violates this Section or who creates, permits, or maintains a nuisance.

M. OWNER'S RECOVERY OF COSTS FROM TENANT.

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Where an Owner or the City Attorney, on the Owner's behalf, prevail in an unlawful detainer action based on O.M.C. 8.23.100, the Court may award as costs in pursuing the unlawful detainer, all costs assessed by the City administratively for the citation against the Owner based on the Tenant's conduct.

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N. TIME.

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In this Section, "days" means calendar days, unless otherwise stated. A report to the City is considered timely if mailed to the City by its due date.

O. PROCEDURES AND FORMS.

The City Manager may develop procedures, and forms to implement this Section.

P. PARTIAL INVALIDITY.

If any provision of this ordinance or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this Section that can be given effect without the invalid provisions or applications, and to this end, the provisions and applications of this ordinance are severable.

Q. EFFECTIVE DATE.

This ordinance will become effective in accordance with Section 216 of the Oakland City Charter.

IN COUNCIL, OAKLAND, CALIFORNIA, , 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

Attest:

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

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Assignment of unlawful detainer to the City.

a. The Owner may assign an unlawful detainer cause of action to the City for the City Attorney to pursue, at the City Attorney's election, where the unlawful detainer is brought for illegal activities by the Tenant pursuant to this Section and Owner provides a valid safety-related reason for not bringing the unlawful detainer. The request for assignment must be on a form provided by the City Attorney.

b. The City may, at its election, also accept assignment of an unlawful detainer where the removal of the Tenant is initiated directly by the Owner and not by the City pursuant to Section O.M.C. 8.23.100 F below. Where the Owner initiates the request for assignment of the unlawful detainer before notification by the City, the unlawful detainer must be based on illegal activity by the Tenant pursuant to this Section and the Owner must provide a valid safety-related reason for not bringing the unlawful detainer directly. The Owner must also provide sufficient evidence to establish the tenant's violation of illegal purpose provisions of subdivision 4 of Section 1161 of the Cal. Code of Civil Procedure and/or O.M.C. 8.22.360 A.6 (Measure EE (Just Cause for Eviction), Subsection 6(A)(6)) sufficient to warrants the tenant's eviction..

c. The City Attorney, at the City Attorney's sole discretion, may accept or reject assignment of the unlawful detainer. If the City Attorney refuses to accept assignment of the unlawful detainer, the Owner remains responsible for bringing the unlawful detainer.

d. In the event City Attorney accepts assignment of the right to bring the unlawful detainer action, the Owner must reimburse the City for all costs and attorney's fees associated with addressing the unlawful detainer, including, but not limited to, costs of investigation, case preparation, discovery, and trial, in rates as set by the City Council in the Master Fee Schedule. Where the Owner fails to pay the costs of the City Attorney's office provided for by this Subsection, the City may place a lien for these costs against the Owner's Premises. In the City Attorney's sole discretion, the City Attorney may require the Owner to place a reasonable amount on deposit with the City for anticipated attorney's fees and costs as a condition of the City accepting assignment of the unlawful detainer.

e. If the City Attorney accepts the assignment of the Owner's right to bring the unlawful detainer action, the Owner retains all other rights and duties, including handling the Tenant's personal property following issuance of the writ of possession and its delivery to and execution by the appropriate agency. The City Attorney's assignment ends when the judgment in the unlawful detainer is issued or a settlement is executed, unless the City Attorney agrees separately from the acceptance of the unlawful detainer assignment and the Owner agrees to pay the additional costs.

f. If any party appeals the unlawful detainer judgment, the City Attorney may continue to retain the unlawful detainer assignment or return the matter to the Owner to handle the appeal. The costs of appeal will be borne by the Owner.

g. In the event the Tenant prevails in an unlawful detainer assigned to the City, the Owner will be responsible for any attorney's fees assessed by the court to the Tenant as prevailing party, as if the unlawful detainer had not been assigned to the City.

h. In any assignment of an unlawful detainer accepted by the City, the Owner will be required to waive any claims against the City and hold the City harmless for any claims arising out the City Attorney's prosecuting the unlawful detainer.

4. Eviction Deemed in Good Faith. Any unlawful detainer brought against a Tenant pursuant to this Section is deemed brought in good faith by the Owner and not wrongful for purposes of any of the remedies available to a Tenant pursuant to the Just Cause for Eviction Ordinance (O.M.C. 8.22.300, et seq.) irrespective of whether the Tenant, Owner, or City is the prevailing party.