

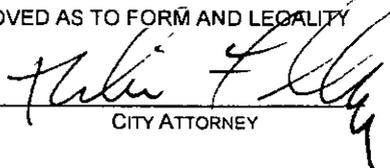
FILED
OFFICE OF THE CITY CLERK
OAKLAND

INTRODUCED BY COUNCILMEMBER

12 SEP 27 AM 9:43

APPROVED AS TO FORM AND LEGALITY

Ms. Brooks


CITY ATTORNEY

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ESTABLISH A NEW CHAPTER 8.58 REQUIRING THE REGISTRATION AND INSPECTION OF TRANSFERRED, IMPROVED RESIDENTIAL REAL PROPERTY OF ONE TO FOUR UNITS THAT IS NOT OCCUPIED BY THE NEW OWNER AND THE ABATEMENT OF HEALTH AND SAFETY VIOLATIONS AND AMENDING THE MASTER FEE SCHEDULE TO PROVIDE NEW FEES FOR THIS ORDINANCE

RECITALS

WHEREAS, the City of Oakland has been devastated by the national foreclosure crisis, with the severest impacts to Oakland's lower-income neighborhoods; and

WHEREAS, Owner-occupancy by committed residents promotes neighborhood stability, improves the quality of life, and increases the likelihood of increased property maintenance;

WHEREAS, recent information shows that many foreclosed properties are being purchased by non-owner occupants and that this has impacted the ability of Oakland residents to purchase a home in Oakland; and

WHEREAS, the foreclosure crisis has exacerbated existing problems by creating more substandard housing conditions and the impacts associated with previous patterns of property acquisitions by non-owner occupants in specific neighborhoods along with a decline in housing conditions associated with the failure of some of the new non-occupant owners to engage in adequate rehabilitation prior to property rental or resale; and

WHEREAS, Properties that have gone through some part of foreclosure process starting with a lender issuing a notice of default have high rates of distressed property conditions given the dynamics of the foreclosure process, including deferred maintenance by property owners in financial difficulty, as well as extended periods of vacancy that have resulted in blighted and deteriorated interior conditions.

WHEREAS, recent information shows that non-owner occupants are purchasing many foreclosed and other residential properties with significant rehabilitation needs that are not being adequately remediated by the purchasers and are rented out, resold, or held vacant without adequate remediation which exacerbates the City of Oakland's existing problems with

substantial substandard housing conditions, that negatively impact the quality of life, cause a decline of property values, and contribute to barriers to economic development; and

WHEREAS, according to recent reports, such as Urban Strategies Council, *Who Owns Your Neighborhood? The Role of Investors in Post-Foreclosure Oakland* (June 2012); Policy Link, *When Investors Buy Up The Neighborhood: Preventing Investor Ownership from Causing Neighborhood Decline* (April 2010), owner-occupants are more likely than some investor property owners to maintain residential property in a non-substandard condition, free from blight and nuisance; and

WHEREAS, the City has expended and continues to expend amounts of limited public resources and scarce funds investigating vacant newly acquired residential buildings that are not occupied by new owners and responding to complaints of substandard housing conditions, mitigating the detrimental effects of neglected maintenance, addressing associated criminal activity, and monitoring the recurrence of nuisance activities that would not be necessary if these properties were not retained in a substandard condition and if these properties were required to be registered with the City and inspected; and

WHEREAS, a critical and immediate need therefore exists to safeguard life and limb, health, property, and public welfare and to reduce the substantial and unnecessary economic toll on the citizens of Oakland resulting from the effects of newly acquired residential buildings that are substandard, vacant and not occupied by new owners by implementing a program for registering and inspecting these properties and abating health and safety violations; and

WHEREAS, the City has a public interest in monitoring the purchase of properties that were in the foreclosure process that are not occupied by new owners given negative impacts from many of these properties by implementing a program for registering and inspecting these properties and abating any health and safety violations; and

WHEREAS, historically, under other property registration programs, the resource requirements for inspecting vacant newly acquired residential buildings that are not occupied by new Owners increases with the time by involving an escalating commitment from Code Enforcement administrative, fiscal, and supervisory staff, and involving a proliferating interaction with other City departments and agencies, including Real Estate, Finance, City Attorney, Fire, and Police and by City officers and officials; and

WHEREAS, the costs to the City for implementing and sustaining a program for registering and inspecting newly acquired residential properties that are not occupied by their new owners should be borne by such property owners, rather than the citizens of Oakland; and

WHEREAS, said costs may be recovered from new owners of residential buildings by imposing and collecting necessary and authorized fees; and

WHEREAS, historically, Code Enforcement has tracked its costs, through its computerized accounting system, for processing registration and complaints of newly acquired residential buildings that under other registration programs, for field monitoring of such buildings, and for

interacting with property owners and the public concerning health and safety violation in such buildings; and

WHEREAS, the administrative and inspection fees set by the amendments in this ordinance to the City of Oakland's Master Fee Schedule reflect the amounts for the code enforcement costs pertaining to newly acquired residential buildings for the program set forth in this ordinance and such costs have been determined by analysis to reflect to costs of registering and inspecting covered properties ; and

WHEREAS, newly acquired residential buildings that are not occupied by new owners that are vacant and/or substandard impose additional financial burdens on occupants and neighbors, and the City of Oakland; and

WHEREAS, pursuant to California Government Code section 50076, establishing defined inspection fees and administrative fees and applying a rate-of-increase over time to cover the costs of implementing and sustaining an inspection program is a reasonable, fair, and equitable methodology, the results of which would be proportionately representative and would not exceed the estimated direct costs incurred for services provided by Code Enforcement nor the estimated indirect costs incurred by other City departments, agencies, officers, and officials; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with CEQA Guidelines Section 15301 (existing facilities) and Section 15061(b)(3), this project is categorically exempted; now, therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION L. Adoption of Recitals

- A. The Council of the City of Oakland finds and determines that the foregoing recitals ("Whereas" clauses) are true and correct and hereby incorporates them as part of this ordinance.
- B. The Council of the City of Oakland further finds and determines that the adoption of an ordinance requiring the registration of improved residential property that is not occupied by the new Owners and the abatement of health and safety violations complies with the California Environmental Quality Act.

SECTION 2. Title and Municipal Code Additions

Chapter 8.58, entitled "Non-Owner Occupied Residential Building Registration" is hereby added to Title 8 – Health and Safety of the Municipal Code of the City of Oakland as follows:

New Municipal Code Additions

Chapter 8.58 - Non-Owner Occupied Residential Building Registration

Article I - Title and Purpose

Section 8.54.010 - Title

This Chapter and the provisions herein shall be known as the “Non-Owner Occupied Residential Building Registration” program and may be cited as such, and will be referred to herein as “this Chapter”.

Section 8.58.020 - Purpose

The purpose of this Chapter is to promote the health, safety, and general welfare of the residents, workers, visitors, Owners, and proprietors of the City of Oakland and the economic stability and viability of neighborhoods in the City by requiring the registration and inspection of newly acquired residential buildings which are not occupied by the new Owners and the abatement of health and safety violations. This program will protect and preserve the livability, appearance, and social fabric of the City and will also protect the public from health and safety hazards and the impairment of property values resulting from the neglect and deterioration of real property and improvements. More specifically, this Chapter is intended to address problems of residential one to four unit properties that are acquired by persons who do not occupy the property, but leave the property in a substandard, bhgthed condition. This is accomplished by requiring registration and inspection of such properties. This Chapter should also have the indirect effect of promoting the sale of properties to homeowners who are more likely to rehabilitate and maintain the property in a lawful condition.

Section 8.58.030 - Authority

The Building Official and his or her designees are authorized to enforce the provisions of this Chapter, and for such purposes, shall have the powers of a law enforcement officer. The Building Official is authorized to establish standards, policies, and procedures for the implementation of the provisions of this Chapter to further the purpose set forth herein.

Article II - Definitions

Section 8.58.100 - Construed Meanings

For the purposes of this Chapter, certain words and phrases are defined and certain provisions shall be construed as set forth herein, unless it shall be apparent from the context that they have different meanings. Words in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

BUILDING means a roofed structure that exceeds one-hundred twenty (120) square feet in gross floor area (orthogonal planer projection) for which the Building Official is authorized to determine and assign an occupancy category as set forth in the Oakland Building Construction Code.

BUILDING DEPARTMENT has the same meaning as set forth in the Oakland Building Construction Code.

BUILDING OFFICIAL has the same meaning as set forth in the Oakland Building Construction Code.

BUILDING - RESIDENTIAL means a building which only contains a Group R - Division 2, 3, or 7 occupancy category, as set forth in the Oakland Building Construction Code, except for attached storage and automobile parking facilities.

CITY means the City of Oakland.

DATE OF ACQUISITION means the date that fee title to Property is transferred to an Owner, including, but not limited to, recording of the deed transferring ownership, the closing date of escrow or, in cases where the property is sold pursuant to a Claim and Tax Lien Law, the first day following the right of redemption period authorized under the Claim and Tax Lien Law.

FIRE DEPARTMENT has the same meaning as set forth in the Oakland Fire Code.

FORECLOSURE means the property has been sold at a judicial or non-judicial (trustees) foreclosure sale pursuant to the power of sale under a mortgage or deed of trust, or the mortgagee or beneficiary of the deed of trust has acquired the property through a deed in lieu of foreclosure.

FORECLOSURE PROCESS means the property received a Notice of Defaulh (NOD) from a lender and the default was not cured by the property owner or completed a foreclosure (Real Estate Owned or REO), as well as properties that were sold through trustee sale (strict foreclosure), short sale, judicial foreclosure, or transferred to the lender or other party through a deed in lieu of foreclosure, or other similar transfers, notwithstanding that the property may have been transferred to another party after the foreclosure process.

IMMEDIATE FAMILY means a child, spouse, sibling, grandchild, grand parent, parent of a title holder to the Property, including adoptive and step relationships.

OAKLAND BUILDING CONSTRUCTION CODE means Chapter 15.04 of the Oakland Municipal Code, as may be amended from time to time.

OAKLAND BUILDING MAINTENANCE CODE means Chapter 15.08 of the Oakland Municipal Code, as may be amended from time to time.

OAKLAND FIRE CODE means Chapter 15.12 of the Oakland Municipal Code, as may be amended from time to time.

OAKLAND PLANNING CODE means Title 17 of the Oakland Municipal Code, as may be amended from time to time.

OAKLAND PROPERTY MAINTENANCE CODE means Chapter 8.24 of the Oakland Municipal Code, as may be amended from time to time.

OCCUPANCY CATEGORY has the same meaning as set forth in Chapter 2 – Definitions of the Oakland Building Construction Code.

OCCUPANT means one or more individuals having legal right to occupy a specific building or portion thereof

OCCUPIED means the lawful physical presence of an Occupant on a continuing and non-transient basis.

OWNER means any individual, group of individuals, co-partnership, association, corporation, limited liability company, trustor fiduciary having legal or equitable title or any interest in the acquired Property or portion thereof

OWNER-OCCUPIED means that a Property was acquired with the intent to occupy within six months of the Date of Acquisition and for at least a year thereafter as the Primary Residence by any of the following:

- An individual who holds title to the Property;
- By a member of the Immediate Family of an individual who holds title to the Property;
- By an individual who is the trustor or beneficiary of a trust established for estate planning purposes that owns the Property.

PRIMARY RESIDENCE means that the Occupant would be eligible for a homeowner property tax exemption and does not have an equivalent exemption on any other real property.

PROPERTY means a single parcel with four (4) or fewer lawful dwelling units that are Building-Residential.

PURCHASER means the new Owner.

SHALL/ WILL means a definitive directive which includes the ordinary accepted meaning of the word “must”.

SUBSTANDARD VIOLATION means an unsafe condition as set forth in Article X – Substandard and Public Nuisance Definitions of the Oakland Building Maintenance Code.

Section 8.54.110 - Accepted Meanings

Where terms are not defined in this Chapter, they shall have their ordinary accepted meanings within the context with which they are used.

Article III Scope and Exclusions

Section 8.58 200. - Scope

The provisions of this Chapter shall apply solely to real properties that meet all of the following:

- A. Improved residential properties that have four (4) or fewer dwelling units on the same parcel;
- B. That have been acquired for valuable, not nominal, consideration, or transfers for estate planning purpose or through probate; and
- C. That are not Owner- Occupied.
- D. That have gone through a Foreclosure Process during or after the six (6) years prior to the effective date of this Chapter, irrespective of whether the Property was sold or transferred to by the lender or former owner during the six (6) years prior to the effective date.
- E. Owners or Purchasers of six (6) or more residential real properties, irrespective of number of units in each, that are not Owner-Occupied. For purposes of this threshold requirement, the purchase or ownership includes any form of partial ownership interest in real property purchased or owned through a partnership, corporate, or limited liability company, or any subsidiary or affiliate thereof Properties owned by the Purchaser on the effective date of this Chapter are included in determining the threshold requirement, but are not subject to the other requirements of this Chapter. The City Administrator may develop regulations to further clarify this requirement.

Section 8.58.210 - Exclusions

The provisions of this Chapter shall not apply to Properties:

- A. Which are owned by the United States of America, the State of California, the County of Alameda, the City of Oakland, or to any of their respective agencies or political subdivisions; nor shall it apply to the Oakland Housing Authority or to utilities regulated by the California Public Utilities Commission, or
- B. Which are regulated by Oakland Municipal Code Chapter 8.54 -- Vacant Buildings, or
- C. Which are regulated by the California Department of Real Estate as a residential common interest subdivision (condominiums, planned developments, stock cooperatives, community apartments), or are occupied by the owners under a tenancy-in-common arrangement, or

- D. Which are owned by an entity regulated by the Internal Revenue Service as a 501(c) nonprofit corporation formed for charitable or religious purposes, whereby the nonprofit serves as the sole owner or as the managing general partner in a partnership with entities that are not 501(c) nonprofit corporations, or
- E. Where the Owner has applied for a City building permit in order to rehabilitate the property within ninety (90) days from the date of acquisition of the property, and the permits issued cover the curing of all items, which require the issuance of a permit, under Inspection Standards issued by the Building Services Division, including blight and substandard housing standards. . Should the property be occupied by tenants and access to the property delayed due to issues with the tenants, the Owner can seek additional time through a request to the Building Official. If the permits expire without the permitted work being completed, this exclusion no longer applies and the Owner must register the property with thirty (30) days following the expiration of the permits.

Article III - Registration, Inspection, and Abatement

Section 8.58.300 - Registration

- A. Within ninety (90) days following the Date of Acquisition and annually thereafter on the anniversary date of submittal if all blighted or substandard conditions have not been cured, the Owner shall separately register each Property with the City which is not Occupied by the Owner and pay all fees as established in the Master Fee Schedule for registering such properties. Should the property be occupied by tenants and access to the property delayed due to issues with the tenants, the Owner can seek additional time through a request to the Building Official.
- B. Initial registration and annual re-registration shall be accomplished by completing an electronic form at a website established by the City for the purpose of registering properties under this Chapter.
- C. Initial registration shall include providing information attesting to the conditions of the property, including readily apparent violations of the Oakland Building Construction Code, Building Maintenance Code, Property Maintenance Code, Fire Code, and Planning Code. For the annual registration, the Owner need only report any new substandard conditions and an inspection by the City is not required unless there are reported or otherwise discovered substandard conditions.
- D. Registration shall also include providing such additional information as may be determined by the Building Official to be necessary to implement this Chapter.
- E. Failure to register a Property completely with the required time duration shall be a violation of this Chapter and subject to administrative citation or civil penalties pursuant

to Oakland Municipal Code Chapters 1.08 and 1.12, as appropriate for the number of violations or repeated violations by the Owner.

Section 8.58.310 - Inspection by City, Abatement, and Supplemental Reporting

- A. Within thirty (30) days of the initial registration and any annual re-registration of a Property, the Owner shall schedule an inspection with the Building Department or the Fire Department or both, as applicable, and pay all fees as established in the Master Fee Schedule to determine the existence or non-existence of substandard violations.
- B. Within sixty (60) days following registration and annual re-registration, the Owner shall abate all violations not otherwise identified as substandard violations and file a supplemental Property Report with the Building Department or Fire Department, as applicable, attesting to abatement of violations.
- C. Within six (6) months following confirmation by the City of substandard violations, the Owner shall fully abate all substandard violations to the satisfaction of the Building Official and the Fire Marshal either by repair, replacement, or removal in compliance with the law, unless a lesser or greater time is deemed reasonable and necessary by the appropriate City officer based on the severity of the violations, life safety issues, or other factors.
- D Failure to abate violations within the required time durations shall be a violation of this Chapter and subject to administrative citations or civil penalties pursuant to Oakland Municipal Code Chapters 1.08 and 1.12, depending on the Building Official's determination as to whether the unabated violations constitute a major violation of the applicable code. Any failure to abate or disclose a substandard condition is considered a major violation and subject to civil penalties. Should the property be occupied by tenants and access to the property delayed due to issues with the tenants, the Owner can seek additional time through a request to the Building Official.
- E. If the Property has no blight or substandard violations or Owner abated all violations to the satisfaction of the Building Department, the Property is no longer subject to registration and inspection requirements under this Ordinance. If there are changed conditions that make the Property blighted or substandard, the Owner must re-register, and schedule an inspection with the Building Department or Fire Department, or both as applicable. If the Owner fails to register and report any blighted or substandard conditions within the time requirements, the Owner shall be subject to administrative or civil penalties.
- F. If a Property subject to registration under this Chapter is transferred to an Owner-Occupant, the former Owner shall notify the Building Department within thirty (30) days of such transfer.

Section 8.58.320 - Fees

Fees for implementation and administration of this Chapter shall be as established in the Master Fee Schedule. Fees shall be fully paid at the time of registration and annually thereafter on the anniversary date of submittal and when scheduling inspections by the City.

Article IV - Enforcement

Section 8.58.400 - Compliance

The Owner shall comply fully and in all instances with the provisions of this Chapter and with all other applicable requirements of ordinances of the City of Oakland, regulations of the Oakland Municipal Code, statutes of the State of California and the United States Code of Regulations, and decisions, rulings, and orders of courts of competent jurisdiction, including, but not limited to, Oakland Municipal Code Chapters 8.22 – Residential Rent Adjustments And Evictions and 15.60 - Code Enforcement Relocation Program.

Section 8.58.410 - Violations

A. General

The failure of an Owner to comply fully with the provisions of this Chapter shall be a separate violation for each property and shall be immediately subject to abatement actions and fees, assessment of penalties and fines, and collection actions provided herein. Each and every day a violation of any provision of this Chapter exists shall constitute a separate and distinct offense. The Owner shall remain liable for any violation of this Chapter even though the Owner, by agreement, has imposed such duties on another individual, group, firm, or other entity and shall remain responsible for any violation that occurred during the period of Ownership, notwithstanding that Owner transfers the Property.

B. Remedies

Remedies provided in this Chapter for violations are in addition to and do not supersede or limit any other remedies, whether civil or criminal, including demolition or receivership of any Property by the City. The remedies provided for herein shall be cumulative and not exclusive.

C. Notification

The Owner shall be notified of a violation in accordance with the provisions for Notification for Abatement of Violations, as set forth in Article II of Chapter 15.08 of the Oakland Municipal Code.

D. Recordation

Notice of violations of the provisions of this Chapter may be filed with the Alameda County Clerk-Recorder for recordation on the property's title.

E. Right of Entry

When it is necessary to make an inspection to enforce the provisions of this Chapter, or when the Building Official has reasonable cause to believe that there exists on the building or upon a premises a condition that is contrary to or in violation of this Chapter that makes the property unsafe, dangerous or hazardous, the Building Official and the Fire Marshal may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this Chapter, provided that if such building or structure or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied and secured against entry, the Building Official and the Fire Marshal shall first make a reasonable effort to locate the record Owner of the property or other adult person having lawful charge or control of the building or structure or premises and request entry. If such entry is refused, the Building Official and the Fire Marshal shall have recourse to the remedies provide by law to secure entry.

No person authorized by this Chapter to enter buildings shall enter an occupied unit or space or other non-public area without the consent and presence of the Owner or the Owner's designated agent or the lawful and aduh occupant of the unit or space or other non-public area or without a proper written order executed and issued by a court having jurisdiction to issue the order

F. Inspection

Buildings, structures, or portions thereof, and real property within the scope of this Chapter and all construction or work for which a permit is required shall be subject to inspection by the Building Official and the Fire Marshal in accordance with and in the manner provided by this Chapter, the Oakland Building Maintenance Code, the Oakland Building Construction Code, the Oakland Property Maintenance Code, the Oakland Fire Code, and the Oakland Planning Code.

Section 8.58.420 - Fees and Assessments

A. Fees

The fees and costs incurred and the interest accrued in repairing, cleaning, remediating, removing, or demolishing a building, structure, or real property; including costs incurred in securing a building, structure, or real property from unauthorized access, and in ascertaining violations or affecting abatement thereof and in collecting such fees, costs, penalties, citations, and accruing interest shall be charged against the Property and Owner.

Such fees, costs, and accruing interest shall be as established in the Master Fee Schedule and may be recovered by all appropriate legal means, including, but not limited to, nuisance abatement lien, priority hen and special assessment of the general tax levy, and civil and small claims court action brought by the City and combinations of such actions.

The City may recover from the Owner all costs incurred for processing and recording of such notices, liens, and special assessments authorized by this Chapter and for providing notice to the Owner as part of its abatement action or for other actions to enforce such liens and special assessments and to recover costs incurred, including attorneys' fees.

B. Penalties

The assessment of civil penalties as set forth in Chapter 1.08 and administrative citations as set forth in Chapter 1.12 of the Oakland Municipal Code shall apply to the enforcement of violations of the provisions of this Chapter.

C. Interest

Unpaid amounts shall be subject to the assessment of accruing interest as established in the Master Fee Schedule.

D. Collection

1. The City may serve a demand (invoice) to the Owner for payment of fees, costs, penalties, citations, and accruing interest by mailing with regular postage to the address identified on the Statement of Registration, or when such Statement has not been filed, to the address as it appears on the last equalized assessment roll of the Alameda County Assessor, or such address as otherwise may be known to the City. Whenever such amounts are not fully paid within fourteen (14) calendar days of service, the City may recover unpaid amounts by all available legal means including, but not limited to, civil and small claims court action, and may undertake collection by one or more of the following means:

a. Priority Lien

The City may file a Priority Lien with the Alameda County Clerk-Recorder for recordation on the property title which shall remain as a financial encumbrance until such unpaid amounts with accrued interest have been fully paid. The amount of such lien shall draw interest thereon at a rate as established in the Master Fee Schedule or such higher rate as may be established by the Alameda County Assessor for collection of municipal and county taxes from and after the date of service of such Demand. The statute of limitations shall not run against the right of the City of Oakland to enforce payment.

b. Special Assessment of the General Levy

The City may transmit such unpaid amounts with accrued interest to the Alameda County Assessor, who shall thereupon enter a Special Assessment of the General Levy Taxes on the County Assessment Book opposite the description of the particular lot or parcel of land, and such Special Assessment shall be collected together with all other taxes levied against the property. Such Special Assessment shall be subject to the

same penalties and interest and to the same procedure under foreclosure and sale, in the case of delinquency, as provided for all other municipal and county taxes against the property, and all laws applicable to the levy, collection, and enforcement of general property taxes are hereby made applicable to such special assessment.

c. Nuisance Abatement Lien

The City may file a Nuisance Abatement Lien with the Alameda County Clerk-Recorder for recordation on the property title which shall, from the date of recordation, have the force, effect, and priority of a Judgment Lien. Such Nuisance Abatement Lien may be foreclosed by an action brought by the City of Oakland for a money judgment.

2. The City may recover from the Owner the costs incurred for processing such Demands and liens and non-sufficient funds checks, recording such liens, transferring such special assessments, providing notice for court, collection or foreclosure actions, for other recovery actions, and for reasonable attorneys' fees.

Section 8.58.430 - Actual and Constructive Notice

Pursuant to state law, actual notice of the assessment of fees, costs, penalties, and citations shall be established on the date the City notifies the Owner of such assessment. Constructive notice of the pendency of a collection action for an assessment to all other interested parties shall be established on the date a lien is recorded by the Alameda County Clerk-Recorder. A subsequent Owner of a building without actual or constructive notice of the assessment under this Chapter shall not be liable for such assessment.

Article V - Appeal

Section 8.58.500 - Appeal

The Owner may appeal a notice of a violation or the assessment of fees for the abatement of a violation in accordance with the provisions for Appeals of Deteriorated Conditions, as set forth in Article II of Chapter 15.08 of the Oakland Municipal Code. Appeals of the assessment of penalties and citations shall be in accordance with the provisions set forth in Chapters 1.08 and 1.12 of the Oakland Municipal Code.

Section 8.58.510 - Review of Appeal

The limitation period provided pursuant to California Code of Civil Procedure Section 1094.6 shall apply to all petitioners seeking judicial review of administrative determinations.

SECTION 3. Miscellaneous

A. Use of Fines and Penalties

Fines and Penalties collected pursuant to this section shall be used first for costs of

administration of the provisions of this Chapter, to the extent that such costs cannot be covered by fee revenue. Any amounts remaining shall be deposited to the Affordable Housing Trust Fund provided for in Oakland Municipal Code Section 15.68.100 and shall be appropriated for Foreclosure prevention programs and such other purposes as permitted by Section 15.68.100, unless collected under state law or the Oakland Municipal Code, and required to be put towards a different purpose.

B. Construction and Severability

Should any article, section, subsection, sentence, clause, or phrase of this ordinance or exhibit be held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

C. Authority

This ordinance is enacted by the Council of the City of Oakland pursuant to the police powers accorded to the City by and through section 106 of the Charter of the City of Oakland and Article XI of the Constitution of the State of California.

D. Effective Date

Upon final adoption or approval of a reconsideration by sufficient votes of the Council of the City of Oakland, this ordinance shall be effective on and after the day established in section 216 of the Charter of the City of Oakland.

E. Regulations

The City Administrator or his/her appointee shall have the discretion to enact regulations and administrative procedures consistent with this Chapter to effectuate the intent and administration of this Chapter.

Section 5. Amendment to Master Fee Schedule

Ordinance No. 13078 C.M.S., as amended and referred to as the Master Fee Schedule of the City of Oakland, is hereby amended to establish new fees in the amounts set forth below for annually registering and inspecting residential properties of 1 to 4 units that are acquired by a person or entity that will not be owner-occupying the property. Said fees may be increased, decreased, otherwise modified, or deleted by subsequent ordinance amending the Master Fee Schedule. Such amendments by ordinance of the Master Fee Schedule shall not also require amendments to this ordinance.

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

CODE ENFORCEMENT

FEE DESCRIPTION

FEE UNIT

M. NON-OWNER OCCUPIED RESIDENTIAL BUILDING REGISTRATION
(OMC 8.58) (plus the Records Management and Technology Enhancement Fees)

1 Annual Registration Processing 339.00 Each Building

2. Annual Re-registration After Abatement or if No Violation \$71.00

2 Compliance Inspection \$99.00 Each Inspection

IN COUNCIL, OAKLAND, CALIFORNIA, _____ ,
2012

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,
SCHAAF, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

NOTICE AND DIGEST

AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ESTABLISH A NEW CHAPTER 8.58 REQUIRING THE REGISTRATION AND INSPECTION OF TRANSFERRED, IMPROVED RESIDENTIAL REAL PROPERTY OF ONE TO FOUR UNITS THAT IS NOT OCCUPIED BY THE NEW OWNER AND THE ABATEMENT OF HEALTH AND SAFETY VIOLATIONS AND AMENDING THE MASTER FEE SCHEDULE TO PROVIDE NEW FEES FOR THIS ORDINANCE

This ordinance will establish a new program requiring the registration and inspection of newly acquired residential buildings with up to four (4) dwelling units which are not occupied by the new Owner and the abatement of health and safety violations on such properties. New fees will be charged for registration and for inspections by the City to confirm abatement of violations.

Ms. Brooks

CITY ATTORNEY

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ESTABLISH A NEW CHAPTER 8.58 REQUIRING THE REGISTRATION AND INSPECTION OF TRANSFERRED, IMPROVED RESIDENTIAL REAL PROPERTY OF ONE TO FOUR UNITS THAT IS NOT OCCUPIED BY THE NEW OWNER AND THE ABATEMENT OF HEALTH AND SAFETY VIOLATIONS AND AMENDING THE MASTER FEE SCHEDULE TO PROVIDE NEW FEES FOR THIS ORDINANCE

RECITALS

WHEREAS, the City of Oakland has been devastated by the national foreclosure crisis, with the severest impacts to Oakland's lower-income neighborhoods; and

WHEREAS, Owner-occupancy by committed residents promotes neighborhood stability, improves the quality of life, and increases the likelihood of increased property maintenance;

WHEREAS, recent information shows that many foreclosed properties are being purchased by non-owner occupants and that this has impacted the ability of Oakland residents to purchase a home in Oakland; and

WHEREAS, the foreclosure crisis has exacerbated existing problems by creating more substandard housing conditions and the impacts associated with previous patterns of property acquisitions by non-owner occupants in specific neighborhoods along with a decline in housing conditions associated with the failure of some of the new non-occupant owners to engage in adequate rehabilitation prior to property rental or resale; and

WHEREAS, Properties that have gone through some part of foreclosure process starting with a lender issuing a notice of default have high rates of distressed property conditions given the dynamics of the foreclosure process, including deferred maintenance by property owners in financial difficulty, as well as extended periods of vacancy that have resulted in blighted and deteriorated interior conditions.

WHEREAS, recent information shows that non-owner occupants are purchasing many foreclosed and other residential properties with significant rehabilitation needs that are not being adequately remediated by the purchasers and are rented out, resold, or held vacant without adequate remediation which exacerbates the City of Oakland's existing problems with

substantial substandard housing conditions, that negatively impact the quality of life, cause a decline of property values, and contribute to barriers to economic development; and

WHEREAS, according to recent reports, such as Urban Strategies Council. *Who Owns Your Neighborhood? The Role of Investors in Post-Foreclosure Oakland* (June 2012); Policy Link. *When Investors Buy Up The Neighborhood: Preventing Investor Ownership from Causing Neighborhood Decline* (April 2010) the experience of the City of Oakland's Building Services Division, owner-occupants are more likely than some investor property non-occupant owners to maintain residential property in a non-substandard condition, free from blight and nuisance; and

WHEREAS, the City has expended and continues to expend amounts of limited public resources and scarce funds investigating vacant newly acquired residential buildings that are not occupied by new owners and responding to complaints of substandard housing conditions, mitigating the detrimental effects of neglected maintenance, addressing associated criminal activity, and monitoring the recurrence of nuisance activities that would not be necessary if these properties were not retained in a substandard condition and if these properties were required to be registered with the City and inspected; and

WHEREAS, a critical and immediate need therefore exists to safeguard life and limb, health, property, and public welfare and to reduce the substantial and unnecessary economic toll on the citizens of Oakland resulting from the effects of newly acquired residential buildings that are substandard, vacant and not occupied by new owners by implementing a program for registering and inspecting these properties and abating health and safety violations; and

WHEREAS, the City has a public interest in monitoring the purchase of properties that were in the foreclosure process that are not occupied by new owners given negative impacts from many of these properties by implementing a program for registering and inspecting these properties and abating any health and safety violations; and

WHEREAS, historically, under other property registration programs, the resource requirements for inspecting vacant newly acquired residential buildings that are not occupied by new Owners increases with the time by involving an escalating commitment from Code Enforcement administrative, fiscal, and supervisory staff; and involving a proliferating interaction with other City departments and agencies, including Real Estate, Finance, City Attorney, Fire, and Police and by City officers and officials; and

WHEREAS, the costs to the City for implementing and sustaining a program for registering and inspecting newly acquired residential properties that are not occupied by their new owners should be borne by such property owners, rather than the citizens of Oakland; and

WHEREAS, said costs may be recovered from new owners of residential buildings by imposing and collecting necessary and authorized fees; and

WHEREAS, historically, Code Enforcement has tracked its costs, through its computerized accounting system, for processing registration and complaints of newly acquired residential buildings that under other registration programs, for field monitoring of such buildings, and for

interacting with property owners and the public concerning health and safety violation in such buildings; and

WHEREAS, the administrative and inspection fees set by the amendments in this ordinance to the City of Oakland's Master Fee Schedule reflect the amounts for the code enforcement costs pertaining to newly acquired residential buildings for the program set forth in this ordinance and such costs have been determined by analysis to reflect to costs of registering and inspecting covered properties ; and

WHEREAS, newly acquired residential buildings that are not occupied by new owners that are vacant and/or substandard impose additional financial burdens on occupants and neighbors, and the City of Oakland; and

WHEREAS, pursuant to California Government Code section 50076, establishing defined inspection fees and administrative fees and applying a rate-of-increase over time to cover the costs of implementing and sustaining an inspection program is a reasonable, fair, and equitable methodology, the results of which would be proportionately representative and would not exceed the estimated direct costs incurred for services provided by Code Enforcement nor the estimated indirect costs incurred by other City departments, agencies, officers, and officials; and

WHEREAS, the requirements of die California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with CEQA Guidelines Section 15301 (existing facilities) and Section 15061(b)(3), this project is categorically exempted; now, therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION L Adoption of Recitals

- A.** The Council of the City of Oakland finds and determines that the foregoing recitals ("Whereas" clauses) are true and correct and hereby incorporates them as part of this ordinance.
- B.** The Council of the City of Oakland further finds and determines that the adoption of an ordinance requiring the registration of improved residential property that is not occupied by the new Owners and the abatement of health and safety violations complies with the California Environmental Quality Act.

SECTION 2. Title and Municipal Code Additions

Chapter 8.58, entitled "Non-Owner Occupied Residential Building Registration" is hereby added to Title 8 – Health and Safety of the Municipal Code of the City of Oakland as follows:

New Municipal Code Additions

Chapter 8.58 - Non-Owner Occupied Residential Building Registration

Article I - Title and Purpose

Section 8.54.010 - Title

This Chapter and the provisions herein shall be known as the “Non-Owner Occupied Residential Building Registration” program and may be cited as such, and will be referred to herein as “this Chapter”.

Section 8.58.020 - Purpose

The purpose of this Chapter is to promote the health, safety, and general welfare of the residents, workers, visitors, Owners, and proprietors of the City of Oakland and the economic stability and viability of neighborhoods in the City by requiring the registration and inspection of newly acquired residential buildings which are not occupied by the new Owners and the abatement of health and safety violations. This program will protect and preserve the livability, appearance, and social fabric of the City and will also protect the public from health and safety hazards and the impairment of property values resulting from the neglect and deterioration of real property and improvements. More specifically, this Chapter is intended to address problems of residential one to four unit properties that are acquired by persons who do not occupy the property, but leave the property in a substandard, blighted condition. This is accomplished by requiring registration and inspection of such properties. This Chapter should also have the indirect effect of promoting the sale of properties to homeowners who are more likely to rehabilitate and maintain the property in a lawful condition.

Section 8.58.030 - Authority

The Building Official and his or her designees are authorized to enforce the provisions of this Chapter, and for such purposes, shall have the powers of a law enforcement officer. The Building Official is authorized to establish standards, policies, and procedures for the implementation of the provisions of this Chapter to further the purpose set forth herein.

Article II - Definitions

Section 8.58.100 - Construed Meanings

For the purposes of this Chapter, certain words and phrases are defined and certain provisions shall be construed as set forth herein, unless it shall be apparent from the context that they have different meanings. Words in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

BUILDING means a roofed structure that exceeds one-hundred twenty (120) square feet in gross floor area (orthogonal planer projection) for which the Building Official is authorized to determine and assign an occupancy category as set forth in the Oakland Building Constmction Code.

BUILDING DEPARTMENT has the same meaning as set forth in the Oakland Building Construction Code.

BUILDING OFFICIAL has the same meaning as set forth in the Oakland Building Construction Code.

BUILDING - RESIDENTIAL means a building which only contains a Group R - Division 2, 3, or 7 occupancy category, as set forth in the Oakland Building Construction Code, except for attached storage and automobile parking facilities.

CITY means the City of Oakland.

DATE OF ACQUISITION means the date that fee titie to Property is transferred to an Owner, including, but not limited to, recording of the deed transferring ownership, the closing date of escrow or, in cases where the property is sold pursuant to a Claim and Tax Lien Law, the first day following the right of redemption period authorized under the Claim and Tax Lien Law.

FIRE DEPARTMENT has die same meaning as set forth in the Oakland Fire Code.

FORECLOSURE means the property has been sold at a judicial or non-judicial (trustees) foreclosure sale pursuant to the power of sale under a mortgage or deed of trust, or the mortgagee or beneficiary of the deed of trust has acquired the property through a deed in lieu of foreclosure.

FORECLOSURE PROCESS means the property received a Notice of Default (NOD) from a lender and the default was not cured by the property owner or completed a foreclosure (Real Estate Owned or REO), as well as properties that were sold through trustee sale (strict foreclosure), short sale, judicial foreclosure, or transferred to the lender or other party through a deed in lieu of foreclosure, or other similar transfers, notwithstanding that the property may have been transferred to another party after the foreclosure process.

IMMEDIATE FAMILY means a child, spouse, sibling, grandchild, grand parent, parent of a titie holder to the Property, including adoptive and step relationships.

OAKLAND BUILDING CONSTRUCTION CODE means Chapter 15.04 of the Oakland Municipal Code, as may be amended from time to time.

OAKLAND BUILDING MAINTENANCE CODE means Chapter 15.08 of the Oakland Municipal Code, as may be amended from time to time.

OAKLAND FIRE CODE means Chapter 15.12 of the Oakland Municipal Code, as may be amended from time to time.

OAKLAND PLANNING CODE means Title 17 of the Oakland Municipal Code, as may be amended from time to time.

OAKLAND PROPERTY MAINTENANCE CODE means Chapter 8.24 of the Oakland Municipal Code, as may be amended from time to time.

OCCUPANCY CATEGORY has the same meaning as set forth in Chapter 2 – Definitions of the Oakland Building Construction Code.

OCCUPANT means one or more individuals having legal right to occupy a specific building or portion thereof.

OCCUPIED means the lawful physical presence of an Occupant on a continuing and non-transient basis.

OWNER means any individual, group of individuals, co-partnership, association, corporation, limited liability company, trustor fiduciary having legal or equitable title or any interest in the acquired Property or portion thereof

OWNER-OCCUPIED means that a Property was acquired with the intent to occupy within six months of the Date of Acquisition and for at least a year thereafter as the Primary Residence by any of the following:

- An individual who holds title to the Property;
- By a member of the Immediate Family of an individual who holds title to the Property;
- By an individual who is the trustor or beneficiary of a trust established for estate planning purposes that owns the Property.

PRIMARY RESIDENCE means that the Occupant would be eligible for a homeowner property tax exemption and does not have an equivalent exemption on any other real property.

PROPERTY means a single parcel with four (4) or fewer lawful dwelling units that are Building-Residential.

PURCHASER means the new Owner.

SHALL/ WILL means a definitive directive which includes the ordinary accepted meaning of the word “must”.

SUBSTANDARD VIOLATION means an unsafe condition as set forth in Article X – Substandard and Public Nuisance Definitions of the Oakland Building Maintenance Code.

Section 8.54.110 - Accepted Meanings

Where terms are not defined in this Chapter, they shall have their ordinary accepted meanings within the context with which they are used.

Article III Scope and Exclusions

Section 8.58 200. - Scope

The provisions of this Chapter shall apply solely to real properties that meet all of the following:

- A. Improved residential properties that have four (4) or fewer dwelling units on the same parcel;
- B. That have been acquired for valuable, not nominal, consideration, or transfers for estate planning purpose or through probate; and
- C. That are not Owner- Occupied.
- D. That have gone through a Foreclosure Process during or after the six (6) years prior to the effective date of this Chapter, irrespective of whether the Property was sold or transferred to by the lender or former owner during the six (6) years prior to the effective date.
- ~~C.~~
- D-E. Owners or Purchasers of six (6) or more residential real properties, irrespective of number of units in each, that are not Owner-Occupied. For purposes of this threshold requirement, the purchase or ownership includes any form of partial ownership interest in real property purchased or owned through a partnership, corporate, or limited liability company, or any subsidiary or affiliate thereof Properties owned by the Purchaser on the effective date of this Chapter are included in determining the threshold requirement, but are not subject to the other requirements of this Chapter. The City Administrator may develop regulations to further clarify this requirement.

Section 8.58.210 - Exclusions

The provisions of this Chapter shall not apply to Properties:

- A. Which are owned by the United States of America, the State of California, the County of Alameda, the City of Oakland, or to any of their respective agencies or political subdivisions; nor shall it apply to the Oakland Housing Authority or to utilities regulated by the California Public Utilities Commission, or
- B. Which are regulated by Oakland Municipal Code Chapter 8.54 – Vacant Buildings, or
- C. Which are regulated by the California Department of Real Estate as a residential common interest subdivision (condominiums, planned developments, stock

- cooperatives, community apartments); or are occupied by the owners under a tenancy-in-common arrangement, or
- D. Which are owned by an entity regulated by the Internal Revenue Service as a 501(c) nonprofit corporation formed for charitable or religious purposes, whereby the nonprofit serves as the sole owner or as the managing general partner in a partnership with entities that are not 501(c) nonprofit corporations, or
- E. Where the Owner has applied for a City building permit in order to rehabilitate the property within ninety (90) days from the date of acquisition of the property, and the permits issued cover the curing of all items, which require the issuance of a permit, that would otherwise be required to be cured under Inspection Standards issued by the Building Services Division, including blight and substandard housing standards, as may be issued by the Building Services Division from time to time. Should the property be occupied by tenants and access to the property delayed due to issues with the tenants, the Owner can seek additional time through a request to the Building Official. If the permits expire without the permitted work being completed, this exclusion no longer applies and the Owner must register the property with thirty (30) days following the expiration of the permits.

Article III - Registration, Inspection, and Abatement

Section 8.58.300 - Registration

- A. Within ninety (90) days following the Date of Acquisition and annually thereafter on the anniversary date of submittal if all blighted or substandard conditions have not been cured, the Owner shall separately register each Property with the City which is not Occupied by the Owner and pay all fees as established in the Master Fee Schedule for registering such properties. Should the property be occupied by tenants and access to the property delayed due to issues with the tenants, the Owner can seek additional time through a request to the Building Official.
- B. Initial registration and annual re-registration shall be accomplished by completing an electronic form at a website established by the City for the purpose of registering properties under this Chapter.
- C. Initial registration shall include providing information attesting to the conditions of the property, including readily apparent violations of the Oakland Building Construction Code, Building Maintenance Code, Property Maintenance Code, Fire Code, and Planning Code. For the annual registration, the Owner need only report any new substandard conditions and an inspection by the City is not required unless there are reported or otherwise discovered substandard conditions.
- D. Registration shall also include providing such additional information as may be determined by the Building Official to be necessary to implement this Chapter.

- E. Failure to register a Property completely with the required time duration shall be a violation of this Chapter and subject to administrative citation or civil penalties pursuant to Oakland Municipal Code Chapters 1.08 and 1.12, as appropriate for the number of violations or repeated violations by the Owner.

Section 8.58.310 - Inspection by City, Abatement, and Supplemental Reporting

- A. Within thirty (30) days of the initial registration and any annual re-registration of a Property, the Owner shall schedule an inspection with the Building Department or the Fire Department or both, as applicable, and pay all fees as established in the Master Fee Schedule to determine the existence or non-existence of substandard violations.
- B. Within sixty (60) days following registration and annual re-registration, the Owner shall abate all violations not otherwise identified as substandard violations and file a supplemental Property Report with the Building Department or Fire Department, as applicable, attesting to abatement of violations.
- C. Within six (6) months following confirmation by the City of substandard violations, the Owner shall fully abate ail substandard violations to the satisfaction of the Building Official and the Fire Marshal either by repair, replacement, or removal in compliance with the law, unless a lesser or greater time is deemed reasonable and necessary by the appropriate City officer based on the severity of the violations, life safety issues, or other factors.
- D Failure to abate violations within the required time durations shall be a violation of this Chapter and subject to administrative citations or civil penalties pursuant to Oakland Municipal Code Chapters 1.08 and 1.12, depending on the Building Official's determination as to whether the unabated violations constitute a major violation of the applicable code. Any failure to abate or disclose a substandard condition is considered a major violation and subject to civil penalties. Should the property be occupied by tenants and access to the property delayed due to issues with the tenants, the Owner can seek additional time through a request to the Building Official.
- E. If the Property has no blight or substandard violations or Owner abated all violations to the satisfaction of the Building Department, ~~subsequent annual re-registrations shall require the Owner-Property wouldis no longer be subject to registration and inspection requirements under this Ordinance. to inspect the Property and report any changed conditions at the property and the fee shall be at a reduced rate as set forth in the Master Fee Schedule. If there are changed conditions that make the pProperty blighted or substandard, along withwith the Owner must re-registerration, and the Owner shall~~ schedule an inspection with the Building Department or Fire Department, or both as applicable. If the Owner fails to register and report any blighted or substandard conditions within the time requirements, the Ovmer shall be subject to administrative or civil penalties.

- F. If a Property subject to registration under this Chapter is transferred to an Owner-Occupant, the former Owner shall notify the Building Department within thirty (30) days of such transfer.

Section 8.58.320 - Fees

Fees for implementation and administration of this Chapter shall be as established in the Master Fee Schedule. Fees shall be fully paid at the time of registration and annually thereafter on the anniversary date of submittal and when scheduling inspections by the City.

Article IV - Enforcement

Section 8.58.400 - Compliance

The Owner shall comply fully and in all instances with the provisions of this Chapter and with all other applicable requirements of ordinances of the City of Oakland, regulations of the Oakland Municipal Code, statutes of the State of California and the United States Code of Regulations, and decisions, rulings, and orders of courts of competent jurisdiction, including, but not limited to, Oakland Municipal Code Chapters 8.22 – Residential Rent Adjustments And Evictions and 15.60 - Code Enforcement Relocation Program.

Section 8.58.410 - Violations

A. General

The failure of an Owner to comply fully with the provisions of this Chapter shall be a separate violation for each property and shall be immediately subject to abatement actions and fees, assessment of penalties and fines, and collection actions provided herein. Each and every day a violation of any provision of this Chapter exists shall constitute a separate and distinct offense. The Owner shall remain liable for any violation of this Chapter even though the Owner, by agreement, has imposed such duties on another individual, group, firm, or other entity and shall remain responsible for any violation that occurred during the period of Ownership, notwithstanding that Owner transfers the Property.

B. Remedies

Remedies provided in this Chapter for violations are in addition to and do not supersede or limit any other remedies, whether civil or criminal, including demolition or receivership of any Property by the City. The remedies provided for herein shall be cumulative and not exclusive.

C. Notification

The Owner shall be notified of a violation in accordance with the provisions for Notification for Abatement of Violations, as set forth in Article II of Chapter 15.08 of the Oakland Municipal Code.

D. Recordation

Notice of violations of the provisions of this Chapter may be filed with the Alameda County Clerk-Recorder for recordation on the property's title.

E. Right of Entry

When it is necessary to make an inspection to enforce the provisions of this Chapter, or when the Building Official has reasonable cause to believe that there exists on the building or upon a premises a condition that is contrary to or in violation of this Chapter that makes the property unsafe, dangerous or hazardous, the Building Official and the Fire Marshal may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this Chapter, provided that if such building or structure or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied and secured against entry, the Building Official and the Fire Marshal shall first make a reasonable effort to locate the record Owner of the property or other adult person having lawful charge or control of the building or structure or premises and request entry. If such entry is refused, the Building Official and the Fire Marshal shall have recourse to the remedies provide by law to secure entry.

No person authorized by this Chapter to enter buildings shall enter an occupied unit or space or other non-public area without the consent and presence of the Owner or the Owner's designated agent or the lawful and adult occupant of the unit or space or other non-public area or without a proper written order executed and issued by a court having jurisdiction to issue the order

F. Inspection

Buildings, structures, or portions thereof, and real property within the scope of this Chapter and all construction or work for which a permit is required shall be subject to inspection by the Building Official and the Fire Marshal in accordance with and in the manner provided by this Chapter, the Oakland Building Maintenance Code, the Oakland Building Construction Code, the Oakland Property Maintenance Code, the Oakland Fire Code, and the Oakland Planning Code.

Section 8.58.420 - Fees and Assessments

A. Fees

The fees and costs incurred and the interest accrued in repairing, cleaning, remediating, removing, or demolishing a building, structure, or real property, including costs incurred in securing a building, structure, or real property from unauthorized access, and in ascertaining

violations or affecting abatement thereof and in collecting such fees, costs, penalties, citations, and accruing interest shall be charged against the Property and Owner.

Such fees, costs, and accruing interest shall be as established in the Master Fee Schedule and may be recovered by all appropriate legal means, including, but not limited to, nuisance abatement lien, priority lien and special assessment of the general tax levy, and civil and small claims court action brought by the City and combinations of such actions.

The City may recover from the Owner all costs incurred for processing and recording of such notices, liens, and special assessments authorized by this Chapter and for providing notice to the Owner as part of its abatement action or for other actions to enforce such liens and special assessments and to recover costs incurred, including attorneys' fees.

B. Penalties

The assessment of civil penalties as set forth in Chapter 1.08 and administrative citations as set forth in Chapter 1.12 of the Oakland Municipal Code shall apply to the enforcement of violations of the provisions of this Chapter.

C. Interest

Unpaid amounts shall be subject to the assessment of accruing interest as established in the Master Fee Schedule.

D. Collection

1. The City may serve a demand (invoice) to the Owner for payment of fees, costs, penalties, citations, and accruing interest by mailing with regular postage to the address identified on the Statement of Registration, or when such Statement has not been filed, to the address as it appears on the last equalized assessment roll of the Alameda County Assessor, or such address as otherwise may be known to the City. Whenever such amounts are not fully paid within fourteen (14) calendar days of service, the City may recover unpaid amounts by all available legal means including, but not limited to, civil and small claims court action, and may undertake collection by one or more of the following means:

a. Priority Lien

The City may file a Priority Lien with the Alameda County Clerk-Recorder for recordation on the property title which shall remain as a financial encumbrance until such unpaid amounts with accrued interest have been fully paid. The amount of such lien shall draw interest thereon at a rate as established in the Master Fee Schedule or such higher rate as may be established by the Alameda County Assessor for collection of municipal and county taxes from and after the date of service of such Demand. The statute of limitations shall not run against the right of the City of Oakland to enforce payment.

b. Special Assessment of the General Levy

The City may transmit such unpaid amounts with accrued interest to the Alameda County Assessor, who shall thereupon enter a Special Assessment of the General Levy Taxes on the County Assessment Book opposite the description of the particular lot or parcel of land, and such Special Assessment shall be collected together with all other taxes levied against the property. Such Special Assessment shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale, in the case of delinquency, as provided for all other municipal and county taxes against the property, and all laws applicable to the levy, collection, and enforcement of general property taxes are hereby made applicable to such special assessment.

c. Nuisance Abatement Lien

The City may file a Nuisance Abatement Lien with the Alameda County Clerk-Recorder for recordation on the property title which shall, from the date of recordation, have the force, effect, and priority of a Judgment Lien. Such Nuisance Abatement Lien may be foreclosed by an action brought by the City of Oakland for a money judgment.

2. The City may recover from the Owner the costs incurred for processing such Demands and liens and non-sufficient funds checks, recording such liens, transferring such special assessments, providing notice for court, collection or foreclosure actions; for other recovery actions, and for reasonable attorneys' fees.

Section 8.58.430 - Actual and Constructive Notice

Pursuant to state law, actual notice of the assessment of fees, costs, penalties, and citations shall be established on the date the City notifies the Owner of such assessment. Constructive notice of the pendency of a collection action for an assessment to all other interested parties shall be established on the date a lien is recorded by the Alameda County Clerk-Recorder. A subsequent Owner of a building without actual or constructive notice of the assessment under this Chapter shall not be liable for such assessment.

Article V - Appeal

Section 8.58.500 - Appeal

The Owner may appeal a notice of a violation or the assessment of fees for the abatement of a violation in accordance with the provisions for Appeals of Deteriorated Conditions, as set forth in Article II of Chapter 15.08 of the Oakland Municipal Code. Appeals of the assessment of penalties and citations shall be in accordance with the provisions set forth in Chapters 1.08 and 1.12 of the Oakland Municipal Code.

Section 8.58.510 - Review of Appeal

The limitation period provided pursuant to California Code of Civil Procedure Section 1094.6 shall apply to all petitioners seeking judicial review of administrative determinations.

SECTION 3. Miscellaneous

A. Use of Fines and Penalties

Fines and Penalties collected pursuant to this section shall be used first for costs of administration of the provisions of this Chapter, to the extent that such costs cannot be covered by fee revenue. Any amounts remaining shall be deposited to the Affordable Housing Trust Fund provided for in Oakland Municipal Code Section 15.68.100 and shall be appropriated for Foreclosure prevention programs and such other purposes as permitted by Section 15.68.100, unless collected under state law or the Oakland Municipal Code, and required to be put towards a different purpose.

B. Construction and Severability

Should any article, section, subsection, sentence, clause, or phrase of this ordinance or exhibit be held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

C. Authority

This ordinance is enacted by the Council of the City of Oakland pursuant to the police powers accorded to the City by and through section 106 of the Charter of the City of Oakland and Article XI of the Constitution of the State of California.

D. Effective Date

Upon final adoption or approval of a reconsideration by sufficient votes of the Council of the City of Oakland, this ordinance shall be effective on and after the day established in section 216 of the Charter of the City of Oakland.

E. Regulations

The City Administrator or his/her appointee shall have the discretion to enact regulations and administrative procedures consistent with this Chapter to effectuate the intent and administration of this Chapter.

Section 5. Amendment to Master Fee Schedule

Ordinance No. 13078 C.M.S., as amended and referred to as the Master Fee Schedule of the City of Oakland, is hereby amended to establish new fees in the amounts set forth below for annually registering and inspecting residential properties of 1 to 4 units that are acquired by a person or entity that will not be owner-occupying the property.' Said fees may be increased,

decreased, otherwise modified, or deleted by subsequent ordinance amending the Master Fee Schedule. Such amendments by ordinance of the Master Fee Schedule shall not also require amendments to this ordinance.

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

CODE ENFORCEMENT

FEE DESCRIPTION **FEE** **UNIT**

M. NON-OWNER OCCUPIED RESIDENTIAL BUILDING REGISTRATION
(OMC 8.58) (plus the Records Management and Technology Enhancement Fees)

1 Annual Registration Processing 339.00 Each Building

2. Annual Re-registration After Abatement or if No Violation \$71.00

2 Compliance Inspection \$99.00 Each Inspection

IN COUNCIL, OAKLAND, CALIFORNIA, _____,
2012

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,
SCHAAF, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

NOTICE AND DIGEST

AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ESTABLISH A NEW CHAPTER 8.58 REQUIRING THE REGISTRATION AND INSPECTION OF TRANSFERRED, IMPROVED RESIDENTIAL REAL PROPERTY OF ONE TO FOUR UNITS THAT IS NOT OCCUPIED BY THE NEW OWNER AND THE ABATEMENT OF HEALTH AND SAFETY VIOLATIONS AND AMENDING THE MASTER FEE SCHEDULE TO PROVIDE NEW FEES FOR THIS ORDINANCE

This ordinance will establish a new program requiring the registration and inspection of newly acquired residential buildings with up to four (4) dwelling units which are not occupied by the new Owner and the abatement of health and safety violations on such properties. New fees will be charged for registration and for inspections by the City to confirm abatement of violations.