

**DRAFT**

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  
IMPROVED RESIDENTIAL PROPERTY WHICH IS NOT OCCUPIED BY THE NEW  
OWNER AND THE ABATEMENT OF HEALTH AND SAFETY VIOLATIONS**

**WHEREAS**, newly acquired residential buildings throughout the City of Oakland which are not occupied by new owners have been and continue to be significant and unnecessary attractors and creators of severe health hazards in neighborhoods, which contribute to explosions of vector populations, accumulations and dispersals of pollutants and target-organ toxins, and degradation of air quality, and adversely impact the quality of life in neighborhoods and deny occupants and residents their enjoyment of life; and

**WHEREAS**, newly acquired residential buildings throughout the City of Oakland which are not occupied by new owners also have been and continue to be significant and unnecessary attractors for trespassers and transient occupants that foster and enable criminal activities, including theft, vandalism, prostitution, and the sale and use of narcotics and other controlled substances; and

**WHEREAS**, newly acquired residential buildings throughout the City of Oakland which are not occupied by new owners also have been and continue to be a significant and unnecessary discouragers to economic development and contributors to the decline of property values in neighborhoods; and

**WHEREAS**, the City has expended and continues to expend vast and unnecessary amounts of limited resources and scarce funds investigating newly acquired residential buildings which are not occupied by new owners, mitigating the detrimental effects of neglected maintenance, curtailing associated criminal activity, and monitoring the recurrence of nuisance activities; 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 which are not occupied by new owners by implementing a program for registering and inspecting these properties and abating health and safety violations; and

**WHEREAS**, the costs to the City for implementing and sustaining such a program for newly acquired residential buildings which are not occupied by new owners should be borne by the 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 equitable fees and interest; and

**WHEREAS**, historically, the resource requirements for inspecting newly acquired residential buildings which 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**, historically, Code Enforcement has tracked its costs, through its computerized accounting system, for processing complaints of newly acquired residential buildings which are not occupied by new owners, 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 ordinance in the City of Oakland's Master Fee Schedule reflects the amounts for the Code Enforcement costs pertaining to newly acquired residential buildings which are not occupied by new owners; and

**WHEREAS**, historically, there are additional citywide costs of said resource requirements in areas of real estate divestiture and acquisition, fire prevention and suppression, neighborhood revitalization, nuisance and criminal activities, hazardous material identification and disposal, litigation, liens and collections, degradation of the general tax levy, and public notification and hearings; and

**WHEREAS**, newly acquired residential buildings which are not occupied by new owners impose additional financial burdens on occupants and neighbors, in 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 1. Recitals**

- A. The Council of the City of Oakland finds and determines that the foregoing recitals 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. Regulations**

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:

**SECTION 2. Amendments**

**Chapter 8.58 - Non-Owner Occupied Residential Building Registration**

**Article 1 - Intent**

**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.

**Section 8.54.030 - Scope**

The provisions of this Chapter shall apply solely to improved residential properties

- which have been acquired for valuable consideration or through quit claim or gift or through lender or tax foreclosure sale, and
- which have existing buildings that are not occupied by the new owner and have an occupancy classified as a Group R - Division 2, 3, or 7, as set forth in the Oakland Building Construction Code.

**Section 8.58.040 - 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.

**Section 8.58.050 - Exclusions**

The provisions of this Chapter shall not apply to properties and buildings 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 which are
- regulated by Oakland Municipal Code Chapter 8.54 – Vacant Buildings, or which are
- regulated by the California Department of Real Estate as a residential common interest subdivision (condominiums, planned developments, stock cooperatives, community apartments), or which are
- regulated by the Internal Revenue Service as a 501c3 nonprofit corporation formed for charitable or religious purposes.

**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 classification 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 - MIXED-USE** means a building which contains both residential and non-residential occupancies, as set forth in the Oakland Building Construction Code, except for attached storage and automobile parking facilities.

**BUILDING - NON-RESIDENTIAL** means a building which does not contain a Group R occupancy - Division 2, 3, or 7, 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 occupancy - Division 2, 3, or 7, as set forth in the Oakland Building Construction Code, except for attached storage and automobile parking facilities.

**CITY** means the City of Oakland.

**CONSTRUCTIVE KNOWLEDGE** means knowledge of a violation listed on a seller's property disclosure, a violation appearing on a notification provided by the City of Oakland or a violation that has been filed with the Alameda County Clerk-Recorder.

**DATE OF ACQUISITION** means the date that fee title to improved real property is transferred, including, but not limited to, 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.

**KNOWN TO HAVE** means knowledge of a violation based on actual or constructive knowledge.

**LOCAL INDIVIDUAL OR FIRM** means a property management company and/or Certified Property Manager that is either based or maintains an office within 20 miles of city limits and has a current business tax certificate issued by the City.

**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** has the same meaning as set forth in Chapter 3 of the Oakland Building Construction Code.

**OCCUPANT** means one or more individuals having legal tenancy in a building or portion thereof

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

**OWNER** means any person, co-partnership, association, corporation, limited liability company or fiduciary having a legal or equitable title or any interest in the acquired real property or portion thereof

**OWNERSHIP** means owner.

**PURCHASER** means owner.

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

**SUBSTANTIAL VIOLATION** means a violation of Article X of the Oakland Building Maintenance Code, but not a violation deemed by a court of competent jurisdiction to be de minimis.

#### Section 8.54.H0 - 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 - Registration, Inspection, and Abatement

#### Section 8.58.200 - Registration

- A. Within ninety (90) days following the date of acquisition, the owner shall separately register each residential building with the City which is not occupied by the owner and pay all fees as established in the Master Fee Schedule.
- B. Registration shall be accomplished by
  1. completing an electronic form at a website established by the City for the purpose of registering properties under this Chapter.
- C. Registration shall include providing a written Property Report in an approved format to the City by an approved local individual or firm of an interior and exterior inspection of the premises 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. The report shall also clearly identify all substantial violations or shall affirmatively confirm the absence of substantial violations.
- 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.

#### Section 8.58.200 - Inspection

- A. Whenever the Property Report identifies substantial violations, the owner shall schedule an inspection within thirty (30) days following registration with the Building Department or the Fire Department or both, as applicable, and pay all fees as established in the Master Fee Schedule to confirm the existence of substantial violations.
- B. Within sixty (60) days following registration, the owner shall provide a supplemental Property Report attesting to abatement of violations not otherwise identified as substantial violations.
- C. Within six (6) months following confirmation by the City of substantial violations, the owner shall fully abate all substantial violations to the satisfaction of the Building Official and the Fire Marshal either by repair, replacement, or removal with required permits.

**D. Failure to abate violations within the required time durations shall be a violation of this Chapter.**

**Section 8.58.220 - 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 when scheduling inspections by the City, unless a subsequent ordinance of the City Council to amend the Master Fee Schedule otherwise specifies.

**Article IV - Enforcement**

**Section 8.58.300 - 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.

**Section 8.58.310 - Violations**

**A. General**

The failure of an owner to comply fully with the provisions of this Chapter shall be a separate violation for each building 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.

**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 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 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 building or premises 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 8.58.320 - 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. The aggregate amount of penalties and citations assessed for a violation of this Chapter shall not exceed \$10,000, excluding interest and administrative fees and charges, for each building.

#### **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 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 8.58.330 - 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 8.58.400 - 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 8.58.410 - 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. Applicability**

**A. Revenue Account**

Two-thirds (67%) of the amounts received from the assessment of penalties and citations shall be deposited in the General Purpose Fund (1010), \_\_\_\_\_ organization (\_\_\_\_), \_\_\_\_\_ account (\_\_\_\_), project (to be determined), and one-third (33%) shall be deposited in a Foreclosure Mitigation Fund (\_\_\_\_), \_\_\_\_\_ organization (\_\_\_\_), \_\_\_\_\_ account (\_\_\_\_), project (to be determined), used by the City for low-income housing in a manner determined by the City.

**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.

**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: \_\_\_\_\_

DRAFT

**NOTICE AND DIGEST**

**An Ordinance Amending The Oakland Municipal Code To Establish A New Chapter 8.58  
Requiring The Registration and Inspection Of Improved Residential Property Which Is  
Not Occupied By The New Owner And The Abatement Of Health And Safety Violations  
Within One Year Of Acquisition**

This ordinance will establish a new program requiring the registration and inspection of residential buildings which are not occupied by the new owner and the abatement of health and safety violations which are identified by the new owner's inspection. New fees will be charged for registration and inspections by the City to confirm substantial violations.

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