



CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCIL PRESIDENT NIKKI FORTUNATO BAS

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING THE JUST CAUSE FOR EVICTION ORDINANCE AND THE RENT PROGRAM SERVICE FEE ORDINANCE TO (1) REQUIRE PROPERTY OWNERS TO STATE COMPLIANCE WITH RENT REGISTRY AND RENT PROGRAM SERVICE FEE OBLIGATIONS IN NOTICES TERMINATING TENANCY AND (2) ADD NONPAYMENT OF RENT PROGRAM SERVICE FEE AS A DEFENSE TO EVICTION

WHEREAS, Oakland Municipal Code (“OMC”) section 8.22.500.A establishes the Rent Program Service Fee (the “fee”) and provides that, “[t]he fee and any penalties or costs for late or nonpayment of the fee are dedicated solely to the payment or services and costs of the rent adjustment program and may be used only for the administration, outreach, legal needs, enforcement of Chapter 8.22 (including the rent adjustment program and the Just Cause for Eviction Ordinance), collection of this fee, and other costs of the rent adjustment program and cannot be used for any other purpose;” and

WHEREAS, section 8.22.500.H states that, “[a] rental property owner who has not paid the fee and any charges related to a delinquency in payment of the fee cannot: 1. Respond to a petition brought by a tenant; or 2. Petition for a rent increase;” and

WHEREAS, OMC section 8.22.300 codifies the Just Cause for Eviction Ordinance enacted by the electorate of the city of Oakland prohibiting a landlord from terminating a tenancy without good or just cause; and

WHEREAS, OMC section 8.22.360.F states that, “[t]he City Council is authorized to modify the Just Cause for Eviction Ordinance (Measure EE, O.M.C., Chapter 8, Article II (8.22.300 et seq.)) for the purpose of adding limitations on a landlord’s right to evict, but the City Council may not modify any exemption from the ordinance from which this section is derived contained in Section 8.22.350;” and

WHEREAS, RAP is the administrative agency charged with the implementation and enforcement of the City’s Municipal Code, Chapter 8.22 (Residential Rent Adjustments and Evictions). RAP provides essential services and is managed by DHCD. RAP provides counseling, hearing, and community engagement services to tenants and property owners. RAP services

include, but are not limited to: rent registration, tenant protections, processing and deciding rent adjustment petitions, holding hearing cases and mediations, processing appeals, and engaging in extensive public outreach; and

WHEREAS, the RAP fund revenue is generated by annual fees paid by rental property owners, who can pass half of the cost to tenants. The RAP fund balance was projected to become negative by FYE 6/30/25 at its current deficit operation. To address this deficit for FY 2024-25, the City is taking the following actions: reduce the number of non-DHCD positions allocated to the RAP Fund; reduce DHCD operation and maintenance costs; reduce DHCD staffing costs by temporarily freezing two positions; and, in collaboration with the Business Tax Office, increase revenue by collection actions of unpaid RAP fees and penalties, which past efforts have shown result in significantly increased revenue; and

WHEREAS, to incentivize compliance with the RAP Program Service Fee Ordinance, this legislation requires property owners to state compliance with rent registry and rent program service fee obligations in notices terminating tenancy and adds nonpayment of the rent program service fee as a defense to eviction.

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

SECTION 1. Amendments to Section 6 of the Just Cause for Eviction Ordinance (Measure EE) (O.M.C. Section 8.22.360). Added text is shown as double underlined type; deleted text is shown as ~~striketrough~~ type.

8.22.360 Good cause required for eviction.

- A. No landlord shall endeavor to recover possession, issue a notice terminating tenancy, or recover possession of a rental unit in the city of Oakland unless the landlord is able to prove the existence of one of the following grounds:
1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under provisions of state or local law, and said failure has continued after service on the tenant of a written notice correctly stating the amount of rent then due and requiring its payment within a period, stated in the notice, of not less than three days. However, this subsection shall not constitute grounds for eviction where tenant has withheld rent pursuant to applicable law or where the amount of rent demanded is less than one month of fair market rent for a unit of equivalent size in the Oakland metro area as determined by the U.S. Department of Housing and Urban Development.
 2. The tenant has continued, after written notice to cease, to substantially violate a material term of the tenancy other than the obligation to surrender possession on proper notice as required by law. To establish a substantial violation of a material term of the tenancy, the landlord must demonstrate all of the following: (1) that the violation caused substantial actual injury to the landlord or to other residents; (2) that the tenant's conduct was unreasonable; and (3) that the term of tenancy is reasonable, legal, and

was accepted in writing by the tenant. To establish a substantial violation of a material term of the tenancy, the landlord must demonstrate that the term of tenancy is reasonable, legal, and was accepted in writing by the tenant.

- a. Notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit as a result of subletting of the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet following a written request by the tenant, so long as the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord.
- b. Notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit based on the addition of occupants to the rental unit if the landlord has unreasonably refused a written request by the tenant to add such occupant(s) to the unit, so long as the maximum number of occupants does not exceed the lesser of the amounts allowed by Subsection (i) or (ii) of this Section 8.22.360A.2.b. If the landlord fails to respond in writing with a description of the reasons for the denial of the request within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord. However, for units restricted as affordable housing as defined by O.M.C. Section 15.72.030, a written resident request to add an occupant shall be deemed incomplete and inadequate until such resident has provided all documentation required for qualification of such additional occupant and the household after the addition of such occupant under the rules restricting the housing. A landlord's reasonable refusal of the tenant's written request may not be based on either of the following: (1) the proposed additional occupant's lack of creditworthiness, if that person will not be legally obligated to pay some or all of the rent to the landlord, or (2) the number of occupants allowed by the rental agreement or lease. With the exception of the restrictions stated in the preceding sentence, a landlord's reasonable refusal of the tenant's written request may be based on, but is not limited to, the ground that the landlord resides in the same unit as the tenant or the ground that the total number of occupants in a unit exceeds (or with the proposed additional occupant(s) would exceed) The maximum number permitted in the unit under state law and/or other local codes such as the Building, Fire, Housing and Planning Codes.

This Subsection 8.22.360 A.2.b. is not intended by itself to establish a direct landlord-tenant relationship between the additional occupant and the landlord or to limit a landlord's rights under the Costa-Hawkins Rental Housing Act, California Civil Code Section 1954.50 et seq. (as it may be amended from time to time). Nothing in this subsection authorizes an occupancy that would result in either transient habitation commercial activity as defined by O.M.C. Section 17.10.440 or semi-transient commercial activity as defined by O.M.C. Section 17.10.120.

- c. Before endeavoring to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of

the violation that provides the tenant with a minimum of fourteen (14) days opportunity to cure the violation. The tenant may cure the violation by making a written request to add occupants referenced in subsection a. or b. of Section 8.22.360 A.2. or by using other reasonable means to cure the violation, including, without limitation, the removal of any additional or unapproved occupant. Nothing in this Section 8.22.360 A.2.c. is intended to limit any other rights or remedies that the law otherwise provides to landlords or to tenants.

- d. Actual injury must be a direct result of the tenant's lease. Injury is not limited to personal or physical injury. Substantial actual injury includes, but is not limited to, the harm caused by a tenant's failure to comply with income recertification requirements for deed-restricted affordable housing units.
 - e. A notice to cease must state allegations in sufficient detail so that a reasonable person would understand the alleged violation and resultant injury, including the term of the lease allegedly violated, the date of the violation, and the injury that occurred as a result of the violation.
3. Reserved.
 4. The tenant has willfully caused substantial damage to the premises beyond normal wear and tear and, after written notice, has refused to cease damaging the premises, or has refused to either make satisfactory correction or to pay the reasonable costs of repairing such damage over a reasonable period of time.
 5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants at the property.
 6. The tenant has used the rental unit or the common areas of the premises for an illegal purpose including the manufacture, sale, or use of illegal drugs. Residing in a rental unit that lacks a certificate of occupancy, has not been approved by the City for residential use, or that has been cited for housing, building, or planning code violations does not constitute use of the premises for an illegal purpose.
 7. The tenant has, after written notice to cease, continued to deny landlord access to the unit as required by state law.
 8. The owner of record seeks in good faith, without ulterior reasons and with honest intent, to recover possession of the rental unit for their own occupancy as a principal residence where the owner has previously occupied the rental unit as their principal residence and has the right to recover possession for their occupancy as a principal residence under a written rental agreement with the current tenants.
 9. The owner of record seeks in good faith, without ulterior reasons and with honest intent, to recover possession for their own use and occupancy as their principal residence, or for the use and occupancy as a principal residence by the owner of record's spouse, domestic partner, child, parent, or grandparent.
 - a. Where the owner of record recovers possession under this Subsection 9. [Paragraph 8.22.360 A.9.], and where continuous occupancy for the purpose of recovery is less than thirty-six (36) months, such recovery of the residential unit shall be a presumed violation of this Chapter.

- b. The owner of record may not recover possession pursuant to this subsection more than once in any thirty-six-month period.
- c. The owner must move into unit within three (3) months of the tenant's vacation of the premises. Such time period may be extended for good cause upon application to, and approval by, the Rent Adjustment Program.
- d. Reserved.
- e. A landlord may not recover possession of a unit from a tenant under Subsection 6.A.9. [8.22.360 A.9.], if the landlord has or receives notice, any time before recovery of possession, that any tenant in the rental unit:
 - i. Has been residing in the unit for five (5) years or more; and
 - (a) Is sixty (60) years of age or older; or
 - (b) Is a disabled tenant as defined in the California Fair Employment and Housing Act (California Government Code Section 12926); or
 - ii. Has been residing in the unit for five (5) years or more, and is a catastrophically ill tenant, defined as a person who is disabled as defined by Subsection e.i.b. [8.22.360 A.9.e.i.b.] and who suffers from a life threatening illness as certified by their primary care physician.
- f. The provisions of Subsection e. [8.22.360 A.9.e.] above shall not apply where the landlord's qualified relative who will move into the unit is sixty (60) years of age or older, disabled or catastrophically ill as defined by Subsection e. [8.22.360 A.9.e.], and where every rental unit owned by the landlord is occupied by a tenant otherwise protected from eviction by Subsection e. [8.22.360 A.9.e.].
- g. A tenant who claims to be a member of one (1) of the classes protected by Subsection 6.A.9.e. [8.22.360 A.9.e.] must submit a statement, with supporting evidence, to the landlord. A landlord may challenge a tenant's claim of protected status by requesting a hearing with the Rent Board. In the Rent Board hearing, the tenant shall have the burden of proof to show protected status. No civil or criminal liability shall be imposed upon a landlord for challenging a tenant's claim of protected status. The Rent Board shall adopt rules and regulations to implement the hearing procedure.
- h. Once a landlord has successfully recovered possession of a rental unit pursuant to Subsection 6.A.9. [8.22.360 A.9.], no other current landlords may recover possession of any other rental unit in the building under Subsection 6.A.9. [8.22.360 A.9.]. Only one (1) specific unit per building may undergo a Subsection 6.A.9. [8.22.360 A.9.] eviction. Any future evictions taking place in the same building under Subsection 6.A.9. [8.22.360 A.9.] must be of that same unit, provided that a landlord may file a petition with the Rent Board or, at the landlord's option, commence eviction proceedings, claiming that disability or other similar hardship prevents the landlord from occupying a unit which was previously the subject of a Subsection 6.A.9. [8.22.360 A.9.] eviction. The Rent Board shall adopt rules and regulations to implement the application procedure.

- i. A notice terminating tenancy under this Subsection must contain, in addition to the provisions required under Subsection 6.B.6. [8.22.360 B.6.]:
 - i. A listing of all property owned by the intended future occupant(s).
 - ii. The address of the real property, if any, on which the intended future occupant(s) claims a homeowner's property tax exemption.
 - j. If the owner or relative specified on the notice terminating tenancy fails to occupy the rental unit for at least a consecutive thirty-six-month period, or fails to occupy the rental unit within ninety (90) days after the tenant vacates, absent Subsection c., the owner shall do the following:
 - i. Offer the unit to the tenant who vacated it at the same rent in effect at the time the tenant vacated; and
 - ii. Pay to said tenant all reasonable expenses incurred in returning to the unit, including lease termination fees, if any. This subsection does not limit any other remedies a tenant may have under this Chapter or other applicable law.
10. The owner of record, after having obtained all necessary permits from the City of Oakland on or before the date upon which notice to vacate is given, seeks in good faith to undertake substantial repairs that cannot safely be completed while the unit is occupied, and that are necessary either to bring the property into compliance with applicable codes and laws affecting health and safety of tenants of the building, or under an outstanding notice of code violations affecting the health and safety of tenants of the building.
- a. As soon as the tenant vacates the rental unit, the owner of record shall proceed without unreasonable delay to complete the needed repairs. The tenant shall not be required to vacate pursuant to this Section, for a period in excess of three (3) months; provided, however, that such time period may be extended for good cause upon application to, and approval by, the Rent Adjustment Program. The Rent Board shall adopt rules and regulations to implement the application procedure.
 - b. Upon completion of the needed repairs, the owner of record shall offer the tenant the first right to return to the premises at the same rent and pursuant to the same terms of the rental agreement in effect as of the date of the notice to vacate, subject to the owner of record's right to petition the Rent Adjustment Program for a rent increase as provided by the Residential Rent Adjustment Ordinance.
 - c. A notice to vacate under this Subsection 6.A.10. [8.22.360 A.10.] must include the following information:
 - i. A statement informing tenants as to their right to payment under the Oakland Relocation Ordinance.
 - ii. A statement that "When the needed repairs are completed on your unit, the landlord must offer you the opportunity to return to your unit with a rental agreement containing the same terms as your original one and with the same rent (although landlord may be able to obtain a rent increase under the Oakland Residential Rent Arbitration Ordinance [O.M.C. Chapter 8.22, Article I)."

- iii. A list of the code violations necessitating substantial repairs, a detailed description of the work to be performed, the permit numbers of any and all permits obtained to affect the required repairs, and a copy of the City-issued notice of Code violations, if any.
 - iv. A good faith estimate of the time required to complete the repairs and the date upon which it is expected that the unit will be ready for habitation.
 11. The owner of record seeks to remove the property from the rental market in accordance with the terms of the Ellis Act (California Government Code Section 7060 et seq.).
- B. The following additional provisions shall apply to a landlord who seeks to recover a rental unit pursuant to Subsection 6(A) [8.22.360 A]:
 1. The burden of proof shall be on the landlord in any eviction action to which this order is applicable to prove compliance with Section 6 [8.22.360].
 2. A landlord shall not endeavor to recover possession of a rental unit unless at least one of the grounds enumerated in Subsection 6(A) [8.22.360 A] above is stated in the notice and that ground is the landlord's dominant motive for recovering possession and the landlord acts in good faith in seeking to recover possession.
 3. Where a landlord seeks to evict a tenant under a just cause ground specified in Subsections 6.A.7., 8., 9., 10., 11.) [8.22.360 A.7., 8., 9., 10., 11., the landlord must do so according to the process established in CCC § 1946 (or successor provisions providing for a thirty- or sixty-day notice period); where a landlord seeks to evict a tenant for the grounds specified in Subsections 6.A.1., 2., 3., 4., 5., 6. [8.22.360 A.1., 2., 3., 4., 5., 6.], the landlord must do so according to the process established in CCP § 1161 (or successor provisions providing for three-day notice period).
 4. Any written notice as described in Subsection 6(A)(2, 3, 4, 5, 7) [8.22.360 A.2, 3, 4, 7] shall be served by the landlord prior to a notice to terminate tenancy and shall include a provision informing tenant that a failure to cure may result in the initiation of eviction proceedings.
 5. Subsection 6(B)(3) [8.22.360 B.3] shall not be construed to obviate the need for a notice terminating tenancy to be stated in the alternative where so required under CCP § 1161.
 6. A notice terminating tenancy must additionally include the following:
 - a. A statement setting forth the basis for eviction, as described in Subsections 6(A)(1) [8.22.360 A.1] through 6(A)(11) [8.22.360 A.11];
 - b. A statement that advice regarding the notice terminating tenancy is available from Rent Adjustment Program (RAP), along with information about how the tenant may seek assistance, including the RAP phone number and email address.
 - c. Where an eviction is based on the ground specified in Subsection 6.A.9. [8.22.360 A.9.], the notice must additionally contain the provisions specified in Subsection 6.A.9.i. [8.22.360 A.9.i.] and a statement informing tenants of the limitations on evictions as set forth in Subsection 6.D.8. [8.22.360 D.8.].

- d. Where an eviction is based on the ground specified in Subsection 6.A.10. [8.22.360 A.10.], the notice must additionally contain the provisions specified in Subsection 6.A.10.c. [8.22.360 A.10.] and a statement informing tenants of the limitations on evictions as set forth in Subsection 6.D.8. [8.22.3600 D.8.].
 - e. Where an eviction is based on the grounds specified in Subsections 8.22.360.A.1-10, a statement alleging that the owner is in compliance with the annual registration obligation pursuant to OMC 8.22.510 and not delinquent on the Rent Program Service Fee. If the unit is exempt from the registration requirement and the Rent Program Service Fee, the notice must specify on what grounds the exemption is claimed.
 - ef. Failure to include any of the required statements in the notice shall be a defense to any unlawful detainer action.
7. Within ten (10) days of service of a notice terminating tenancy upon a tenant, a copy of the same notice and any accompanying materials must be filed with the Rent Board. Each notice shall be indexed by property address and by the name of the landlord. Such notices shall constitute public records of the City of Oakland, and shall be maintained by the Rent Board and made available for inspection during normal business hours. Failure to file the notice within ten (10) days of service shall be a defense to any unlawful detainer action.
- C. Reserved.
- D. Substantive limitations on landlord's right to evict. This Subsection 8.22.360 D. is intended as both a substantive and procedural limitation on a landlord's right to evict.
- 1. In any action to recover possession of a rental unit pursuant to Section 6 [8.22.360], a landlord must allege and prove the following:
 - a. the basis for eviction, as set forth in Subsection 6(A)(1) through 6(A)(11) [8.22.360 A.1 through 8.22.360 A.11] above, was set forth in the notice of termination of tenancy or notice to quit; and
 - b. that the landlord seeks to recover possession of the unit with good faith, honest intent and with no ulterior motive;
 - 2. If landlord claims the unit is exempt from this Chapter, landlord must allege and prove that the unit is covered by one (1) of the exceptions enumerated in Subsection 5. [8.22.350] of this Chapter. Such allegations must appear both in the notice of termination of tenancy or notice to quit, and in the complaint to recover possession, and must specify on what grounds exemption is claimed. Failure to make such allegations in the notice shall be a defense to any unlawful detainer action.
 - 3. A landlord's failure to comply with the obligations described in Subsections (D)(1) or (2) [*sic*] [8.22.360 D.1. or 8.22.360 D.2.] shall be a defense to any action for possession of a rental unit.
 - 4. In any action to recover possession of a rental unit filed under subsection 8.22.360 A.1. it shall be a defense if the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from

a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party as long as either the landlord or the tenant provide written notice that no new tenancy is intended.

5. A landlord's failure to fully comply with any applicable law requiring payment of relocation benefits to the tenant, such as those provided by Articles III, VII, and VIII of this Chapter and Chapter 15.60 of the Oakland Municipal Code, including, but not limited to, required notice, amount, timing, and any other requirement necessary to withdraw or repair a unit shall be a defense to any action for possession of a rental unit.
6. Notwithstanding any change in the terms of a tenancy pursuant to Civil Code Section 827, a tenant may not be evicted for a violation of a covenant or obligation that was not included in the tenant's written or oral rental agreement at the inception of the tenancy unless: (1) the change in the terms of the tenancy is authorized by the Rent Ordinance or California Civil Code Sections 1947.5 or 1947.12, or required by federal, state, or local law, or regulatory agreement with a government agency; or (2) the change in the terms of the tenancy was accepted in writing by the tenant after receipt of written notice from the landlord that the tenant need not accept such new term as part of the rental agreement and in exchange for valid consideration.
7. In any action to recover possession of a rental unit filed under Subsections 8.22.360 A.1.—10., it shall be a defense if the landlord was not in compliance with O.M.C. 8.22.510 at the time the notice terminating tenancy was served.
8. When a landlord seeks to evict a tenant under Subsection 6.A.9. or 10. [8.22,360 A.9., 10.], it shall be an affirmative defense if any child under the age of eighteen (18) enrolled in a school or any educator resides in the unit, the child or educator is a tenant in the unit or has a custodial or family relationship with a tenant in the unit, the tenant has resided in the unit for at least ninety (90) days, and the effective date of the notice of termination of tenancy falls during the regular school year of the Oakland Unified School District.
 - a. For purposes of this Section, the following terms shall have the following meanings:
 - i. "Custodial Relationship" means that the person is a legal guardian of the child, has a court-recognized caregiver authorization affidavit for the child, or has provided full-time custodial care of the child pursuant to an agreement with the child's legal guardian or court-recognized caregiver and has been providing that care for at least one (1) year or half of the child's lifetime, whichever is less.
 - ii. "Educator" means any person who works on-site at a school in Oakland as an employee of the school or of the Oakland Unified School District, including, without limitation, all teachers, classroom and student support providers, school administrators and administrative staff, counselors, social workers, school health services workers, speech pathologists, custodial or maintenance workers, nutrition and/or food services workers, library services workers, child welfare workers, and attendance liaisons.

- iii. "Family relationship" means that the person is the parent, grandparent, sibling, niece, nephew, aunt, or uncle of the child or educator, or the spouse or domestic partner of such relation.
 - iv. "School" for purposes of this Section means any State-licensed child care center, State-licensed family child care home, accredited community or junior college, and/or any public, private, or parochial institution that provides educational instruction for students in any or all of the grades from kindergarten through twelfth grade.
9. Nonpayment of rent during COVID-19 pandemic. In any unlawful detainer action based on nonpayment of rent or late fees that accrued between March 9, 2020, and July 14, 2023, it shall be a defense that the rent was late or unpaid because of a substantial reduction in household income or substantial increase in expenses resulting from the Coronavirus pandemic. Any notice demanding rent or late fees that accrued during this time period must:
- a. be served together with a form developed by the Rent Adjustment Program that, among other things, allows the tenant to indicate that the financial hardship defense applies: and
 - b. include the following statement in bold underlined 12-point font: "If you were unable to pay the rent or other fees demanded in this notice due to a substantial reduction in household income or substantial increase in expenses as a result of the COVID-19 pandemic, you may raise this as a defense to any eviction action based on this notice."
10. In any action to recover possession of a rental unit filed under Subsections 8.22.360 A.1-10., it shall be a defense if the landlord is delinquent on the Rent Program Service Fee (O.M.C. 8.22.500) at the time the notice terminating tenancy was served.
- E. In the event that new state or federal legislation confers a right upon landlords to evict tenants for a reason not stated herein, evictions proceeding under such legislation shall conform to the specifications set out in this Chapter [O.M.C. Chapter 8.22, Article II].
- F. The City Council is authorized to modify the Just Cause for Eviction Ordinance (Measure EE, O.M.C., Chapter 8, Article II (8.22.300 et seq.)) for the purpose of adding limitations on a landlord's right to evict, but the City Council may not modify any exemption from the ordinance from which this section is derived contained in Section 8.22.350.

SECTION 2. Amendments to O.M.C. Section 8.22.500. Added text is shown as double underlined type; deleted text is shown as ~~strikethrough~~ type.

8.22.500 Rent program service fee.

- A. Establishment of the Fee. The rent program service fee (the "fee") is hereby established. The fee and any penalties or costs for late or non payment of the fee are dedicated solely to the payment or services and costs of the rent adjustment program and may be used only for the administration, outreach, legal needs, enforcement of Chapter 8.22 (including the rent

adjustment program and the Just Cause for Eviction Ordinance), collection of this fee, and other costs of the rent adjustment program and cannot be used for any other purpose. The City Manager shall develop procedures for collection of the fee and ensuring that all funds generated by the fee will be used only for the rent adjustment program. The fee is to be charged against any residential rental unit that is subject to either the Rent Adjustment Ordinance, the Just Cause for Eviction Ordinance, or both.

B. Definitions.

1. "Rental property owner" includes an owner as defined in the Rent Adjustment Ordinance (O.M.C. 8.22.020) or a landlord as defined in the Just Cause for Eviction Ordinance (Measure EE, Section 4A).
2. "Tenant" has the same meaning as that term is defined in the Rent Adjustment Ordinance (O.M.C. 8.22.020).

C. Amount of Fee. The amount of the fee shall be set by the City Council in the master fee schedule. For the city's fiscal years of 2001—2002, and 2002—2003 the fee is set at twenty-four dollars (\$24.00) per covered unit. Each fiscal year the City Manager shall report to the City Council on the costs of the rent adjustment program for the preceding fiscal year and the anticipated costs of the rent adjustment program for the coming year.

D. Residential Rental Units Subject to the Fee. The fee is to be charged on a per unit basis against all residential rental units that are either covered units or are covered by the Just Cause for Eviction Ordinance, except such residential rental units that are owned or operated by a public entity, including, but not limited to, the City of Oakland, the Redevelopment Agency of the City of Oakland, and the Oakland Housing Authority. A rental property owner who does not timely pay the fee because the rental property owner claims the dwelling unit is not subject to the fee must pay all fees, delinquent charges, interest, and collection costs for any dwelling unit that is found by the city to be subject to the fee. Neither the fact that a rental property owner paid the fee nor that a rental property owner claimed dwelling units are not subject to the fee can be used as evidence in any determination of a petition with the rent adjustment program or in a court proceeding regarding whether the subject dwelling unit is covered by the Rent Adjustment Ordinance or the Just Cause for Eviction Ordinance.

E. Fee Based on Business Operation. The fee is a fee associated with the operation of a residential rental property business and not a fee based on ownership of real property.

F. Due Date for Fee. For the first fiscal year of 2001—2002, the fee will be due on March 1, 2002 and will be deemed delinquent if not paid by May 1, 2002. For all subsequent fiscal years, the fee will be due on January 1, and will be deemed delinquent if not paid by March 1.

G. Passthrough of One-Half (½) of Fee. For rental properties that are covered by the Rent Adjustment Program, a rental property owner may pass through one-half (½) of the fee to a tenant in the year in which it is due, unless the owner does not pay the fee before the date it is deemed delinquent. A rental property owner may not pass through any penalties, delinquent charges, or interest to a tenant. Rental properties that subject to the fee, but are not covered by the Rent Adjustment Program are not subject to the limitation in this Subsection 8.22.500 G.

- H. Delinquent Owner. A rental property owner who has not paid the fee and any charges related to a delinquency in payment of the fee cannot:
1. Respond to a petition brought by a tenant; or
 2. Petition for a rent increase;
 3. Evict a tenant based on the grounds specified in 8.22.360.A.1-10.
- I. Delinquent Charges, Interest, and Collection Costs.
1. An owner who does not pay the fee on or before the date it is considered late must pay a delinquency charge according to the following schedule:
 - a. Ten (10) percent of the fee due if paid in full within thirty (30) days of the date it is considered late;
 - b. Twenty-five (25) percent of the fee due if paid in full within sixty (60) days of the date it is considered late;
 - c. Fifty (50) percent if paid after sixty (60) days of the date it is considered late.
 2. In addition to the delinquent charges, a rental property owner who fails to remit the fee due by the date it is late shall pay simple interest at the rate of one percent per month or fraction thereof on the amount of the fee inclusive of delinquent charges from the date the fee is late.
 3. A rental property owner who has not paid the fee by the end of the fiscal year in which it is due may also be assessed the city's costs of collecting the fee, including the city's administrative costs of collection and any attorney's fees whether incurred by the City Attorney's Office or by outside counsel.
 4. The amount of any fee, delinquent charges, interest, and collection costs imposed by Chapter 8.22 shall be deemed a debt to the city and any rental property owner carrying on a residential rental business without paying the fee and/or any delinquent charges, interest or collection costs shall be liable in an action in the name of the city in any court of competent jurisdiction, for the amount of the fee and any tax and delinquent charges, interest or collection costs imposed. An action to collect the fee must be commenced within three years of the date the fee became due. An action to collect delinquent charges, interest or collection costs for nonpayment of the fee must be commenced within three years of the date such accrues.
- J. Severability. This O.M.C. Article 8.22.500 shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this Chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application; and to this end the provisions of this Chapter are declared to be severable and are intended to have independent validity.
- K. Nonwaiverability. Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this O.M.C. Chapter 8.22, Article IV (8.22.500) is waived or modified, is against public policy and void.

L. Effective Date.

1. The ordinance codified in this O.M.C. Chapter 8.22, Article IV (8.22.500) takes effect this section chapter take effect pursuant to Section 216 of the Oakland City Charter.
2. For rental units covered only by the Just Cause for Eviction Ordinance (O.M.C. Chapter 8.22 Article II (8.22.300)) and not by the Rent Adjustment Ordinance (O.M.C. Chapter 8.22 Article I (8.22.100)), the fee shall be charged to such rental units in the fiscal year beginning July 1, 2003.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 4. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

SECTION 5. CEQA Compliance. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to sections of the CEQA Guidelines, taken together and each as a separate and independent basis, including but not limited to: Section 15378 (regulatory actions), Section 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), Section 15061(b)(3) (no significant environmental impact), and Section 15183 (consistent with the general plan or zoning).

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES –
ABSENT –
ABSTENTION –

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

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING THE JUST CAUSE FOR EVICTION ORDINANCE AND THE RENT PROGRAM SERVICE FEE ORDINANCE TO (1) REQUIRE PROPERTY OWNERS TO STATE COMPLIANCE WITH RENT REGISTRY AND RENT PROGRAM SERVICE FEE OBLIGATIONS IN NOTICES TERMINATING TENANCY AND (2) ADD NONPAYMENT OF RENT PROGRAM SERVICE FEE AS A DEFENSE TO EVICTION

This ordinance amends the Just Cause for Eviction Ordinance and the Rent Program Service Fee Ordinance to (1) require property owners to state compliance with Rent Registry and Rent Program Service Fee obligations in notices terminating tenancy and (2) add nonpayment of Rent Program Service Fee as a defense to eviction