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March 16, 2004

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

Subject: Nuisance Eviction Ordinance

President De La Fuente and Councilmembers:

I. PURPOSE OF THE REPORT

This supplemental report is an informational report to address amendments to the proposed Nuisance Eviction Ordinance ("NEO") contained in the Third Revised Nuisance Eviction Ordinance. The City Attorney's Office is not making recommendations on the item, but is providing the City Council with additional background information.

II. INTRODUCTION

At its February 17, 2004 meeting, the City Council passed NEO as presented on a first reading. However, NEO's primary sponsor, Councilmember Reid asked that the City Attorney's Office look into some possible modifications to NEO that might address some concerns raised by tenants at the Council meeting and some Councilmembers. The CAO prepared revisions that are contained in a Third Revised NEO that address some of the tenant concerns. Below we provide some background and comment on these proposed revisions.

III. SUMMARY OF NEO REVISIONS IN THE THIRD REVISED VERSION:

- The City's notice to the tenant is enhanced to provide more information to the tenant about NEO, procedures under NEO, a summary of the evidence, and the availability of the evidence. 8.23.100 F.4.
- The evidence against the tenant will be made available to the tenant on the same basis as it is available to the landlord. 8.23.100 F.5.
- The tenant can request the City reconsider its decision based on additional conflicting or exculpatory evidence. 8.23.100 F.6.

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- The time for a landlord to begin an eviction is extended to 25 days to permit the tenant time to request the City reconsider its decision to issue the notice to the landlord to evict the tenant. 8.23.100 F.2.
- If the landlord knew or should have known of conflicting or exculpatory additional evidence and failed to notify the City, the landlord's conduct in pursuing the eviction could be determined to be wrongful in a subsequent suit by a tenant who prevails in the unlawful detainer. 8.23.100 L.
- The issue of what costs can be passed on to tenants is sent to the Rent Adjustment Board for its consideration of regulations: to limit passing through fees and penalties as Housing Service Costs for rent increase justification; and to consider how to address the costs of evictions as Housing Service Costs. Section 2.
- The City Manager reports back to the Public Safety Committee in August of each year. Section 3.
- Some minor wording changes were made and are reflected in a comparison version of NEO in the Council packet.

IV. DISCUSSION OF ISSUES RAISED AT FEBRUARY 17, 200 COUNCIL MEETING

A. Tenant Issues.

Tenants expressed some concerns about the rights of tenants subject to eviction under NEO. As compared with an eviction for illegal activities under the Just Cause for Eviction Ordinance (Measure EE), tenants have more advantages under NEO. Under NEO, tenants have all the rights and procedures available to them under Measure EE and state law, plus additional rights and procedures available under NEO.

| Measure EE | NEO |
|--|---|
| <ul style="list-style-type: none"> • Under Measure EE and state law, a landlord is only required to give a tenant a 3-day notice to quit the premises. | <ul style="list-style-type: none"> • Under NEO, the Tenant gets a notice from the City up to 25 days in advance of getting a 3-day notice. |
| <ul style="list-style-type: none"> • Under Measure EE, the 3-day notice is only required to state the basis for the eviction and that advice is available from the Rent Adjustment Program. | <ul style="list-style-type: none"> • Under NEO, the tenant gets more information on procedures under NEO., a summary of the evidence, the availability of the evidence, and the availability of a partial eviction in addition to the requirements of a notice under Measure EE. |
| <ul style="list-style-type: none"> • Under Measure EE and state law, tenants get access to the landlord's case through discovery after an unlawful detainer is filed. | <ul style="list-style-type: none"> • Under NEO, a Tenant can request the City's evidence in advance of an unlawful detainer being filed. |

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|---|--|
| <ul style="list-style-type: none"> • Under Measure EE and state law, the City does not evaluate evidence prior to an eviction. | <ul style="list-style-type: none"> • Under NEO, the City evaluates the evidence against the tenant in advance of the eviction and the tenant can seek reconsideration of the notice based on new information. |
| <ul style="list-style-type: none"> • Under Measure EE and state law, a tenant does not have a right to a partial eviction or be permitted to remain in tenancy when a minor commits the offense. | <ul style="list-style-type: none"> • Under NEO, a tenant can seek a settlement where the offending tenant is evicted and the remaining tenants stay in place or where a minor tenant is the offending tenant and the entire tenant household can remain in place. |

Other parts of eviction procedures are the same under Measure EE/state law and NEO:

- The standard of proof is the same—preponderance of the evidence.
- The burden for proving the case is the same—it is the landlord's burden.
- The type of evidence required to evict is the same (the City's notice to the landlord to evict the tenant is not evidence).
- Neither the landlord nor the tenant is entitled to attorney's fees unless the rental agreement for the rental unit contains an attorney's fee provision (Measure EE does not provide for attorney's fees for the prevailing tenant or prevailing party).
- A tenant may recover damages against a landlord for a wrongful eviction, if the landlord's conduct in bringing the eviction is wrongful. (Even if a landlord loses an unlawful detainer action, the landlord's conduct in evicting a tenant likely would not be "wrongful" if the City compelled the landlord to evict under NEO).

In sum, a tenant who is being evicted through the NEO procedures has significant advantages over a tenant who is evicted for the same conduct under Measure EE and state law.

B. Attorney's Fees for Prevailing Tenants.

Measure EE does not provide for attorney's fees for a prevailing tenant or prevailing party in an unlawful detainer. Unless the rental agreement between the landlord and tenant provides for attorney's fees or some other statutory right to attorney's fees applies in the litigation, a prevailing tenant cannot recover attorney's fees in the unlawful detainer action. The only other theory under which a tenant might be able to recover attorney's fees is damages in a wrongful eviction suit under Measure EE or at common law. In this respect, an eviction under NEO is no different than any other eviction under Measure EE.

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The Third Revision to NEO contains a modification that permits a landlord's conduct to be considered wrongful if the landlord fails to notify the City when the landlord has contrary evidence. This modification may create more interest in attorneys to represent tenants in evictions because it may permit a wrongful eviction claim in this limited circumstances. The only other options would involve City funding of eviction defenses or paying prevailing tenant's attorney's fees directly.

C. Eviction costs under the Rent Adjustment Ordinance.

Under the Rent Adjustment Ordinance, eviction costs would be considered "Housing Service Costs." Housing Service Costs are operating expenses. Such costs are not passed through separately to tenants (as compared with Capital Improvements that are separately passed through). Housing Service Costs are not apportioned among the individual units based on which units are affected (again unlike Capital Improvements that are applied to the benefited units). Housing Service Costs are considered as part of rent increase calculations only in two instances:

- Housing Service Cost Rent Increase. When a landlord claims a rent increase on the basis that the landlord's total housing services costs increased more than the amount covered by the annual CPI Rent Adjustment. In this case, all the Housing Service Costs, including the costs pertaining to any evictions are considered together for the two year comparison. Costs are not separated out and passed through separately.
- Debt Service Rent Increase. When a landlord claims a rent increase based on a sale of the property and an increased debt service. In this case, all the landlord's Housing Service Costs are added to a percentage of the landlord's new debt service costs and compared to the existing rent structure to see if the landlord needs a rent in order to break even on a cash flow basis. Again no individual cost is segregated out for a pass through.

According to the Rent Adjustment Program, Housing Service Costs and Debt Service Costs are utilized as justifications for rent increases less frequently than any other grounds. The City should carefully consider removing specific landlord costs, such as eviction costs, from the Housing Service Costs calculations. Cities are required to permit landlords the opportunity to receive a fair return on their real property investment under rent control laws. Evictions are a routine expense for landlords; except for the fees and penalties that can be assessed under NEO, the landlord's costs for Illegal activity evictions are part of a landlord's business expenses. Removing specific landlord expenses from the Housing Service Costs calculation could impact landlords' ability to receive a fair return.

For this reason, the City Council and Rent Adjustment Program should carefully consider removing specific landlord costs from increased Housing Service Cost calculations before acting on the matter.

For the reasons discussed above, the City Attorney's Office recommends that the Council refer the issue of eviction costs to the Rent Adjustment Program so that this issue can be addressed in the regulations. If the Council wishes to declare that certain costs are not Housing Service Costs, it should exclude only the fees and penalties assessed against landlords from Housing Service Costs. The landlord could have "avoided" those costs by taking the action to evict the tenant on his/her own without investigation and prompting by the City; such costs therefore are "avoidable" and the City would be justified in not permitting a landlord to pass such costs on to a tenant.

D. Rent Adjustment Program Notice.

The Rent Adjustment Ordinance requires that a landlord give a tenant two types of program notices:

- A notice at the commencement of the tenancy that gives the tenant general rent program information; and
- A more limited notice at the time of each rent increase that reminds the tenant of the right to contest rent increases and the time-frame in which to do so.

NEO requires inclusion of language regarding NEO in the notice the landlord is required to provide at the commencement of tenancy --the notice in which general program information is transmitted to the tenant. The landlord is not required to include information on NEO in the rent increase notice. Tenant comments seem to confuse these two notices; the notices are not the same. Requiring a separate notice for NEO information, as tenants suggest, would put an additional, unnecessary burden on the Rent Program and landlords. Moreover, requiring an additional notice would also require a companion enforcement mechanism to ensure tenants get the notice; otherwise the requirement for a separate NEO notice might be meaningless. For these reasons, the Council should retain the requirement for adding information on NEO to the Rent Program notice at the commencement of tenancy.

E. City Liability Under NEO.

Some Councilmembers raised questions about the City's potential liability under NEO. The most likely lawsuit would be filed against the City by a tenant who prevails in an unlawful detainer that a landlord initiated based on the City's notice to evict. The City is not likely to be liable for issuing notices to landlords to evict tenants under NEO. Los Angeles has not been sued for issuing an eviction notice in the five years it has operated

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its nuisance eviction program. However, as with any law enforcement action, we cannot state for certainty that the City might not incur some liability

A city is generally not liable under state law for the acts or omissions when its employees are not liable. California Government Code §§ 8.15.2(b). City employees are not liable for their actions in various circumstances set out in the California Government Code. Several sections of the state Government Code that provide immunity for city employees might be applicable to actions under NEO.

- City employees are not liable when taking discretionary actions. Cal. Gov. Code § 820.2. Under NEO, the Case Manager is exercising discretion in deciding whether or not to issue a notice to evict.
- City employees are not liable when instituting or prosecuting any judicial or administrative action within the scope of employment, even if the employee acts with malice and without probable cause. Cal. Gov. Code § 821.6. This includes the investigation that takes place before the official action. *Javor v. Taggart*, 98 Cal.App.4th (2nd Dist. 2002). A notice under NEO could be regarded as the triggering event for the landlord instituting an unlawful detainer against the tenant and the City's investigation and issuing of the notice should be immune.
- Cities are not liable for making negligent property inspections for compliance with or violations of health and safety or other laws. Cal. Gov. Code § 816.6. NEO's purpose is to enforce health and safety laws.

If a tenant evicted pursuant to NEO was wrongfully arrested and the City had liability for the wrongful arrest under state law or federal civil rights laws, the tenant might claim additional damages for the eviction. Even if liability is not absolutely ruled out by the immunities discussed above, in issuing a notice to evict under NEO, the City could argue that it is acting in the capacity similar to that of a prosecutor and has a qualified immunity from liability for the eviction similar to that of prosecutors and judges. See e.g. *Smiddy v. Varney*, 665 F.2d. 261 (9th Cir. 1981).¹ Similarly, cities are not liable for malicious prosecutions under state law. *Asgari v. City of Los Angeles*, 15 Cal.4th 744 (1997)(citing to Cal. Gov. Code § 821.6).

In cases where the evidence of the tenant's culpability may be more questionable, the City has the option of not issuing the notice to evict, or waiting until a criminal complaint is filed against the tenant. The City also could receive better assurance of the tenant's culpability if a court issues a subpoena in the case, which means the court found probable cause that the tenant engaged in the unlawful activity. Damages flowing from a

¹ This rule applies except where the arresting officers acted with malice or disregard of the arrested person's rights. *Smiddy* at 267.

questionable arrest cease with the filing of a criminal complaint. *County of Los Angeles v. Superior Court*, 78 Cal.App.4th 212 (2nd Dist. 2000).

Additionally, the amended version of NEO gives the tenant an opportunity to ask the City to reconsider its issuance of the notice to evict. This would give City the opportunity to rescind/withdraw the notice if City learns of information that contradicts the City's evidence or exculpates the tenant.³

In sum, the City should not have significant risk of liability in carrying out NEO. Although there is no case evaluating a program like NEO, the City's risk should be minimal.

V. STATUS OF STATE LEGISLATION.

At its meeting of February 3, 2004, the City Council authorized the City's Director of Intergovernmental Affairs to seek Oakland's inclusion in the Los Angeles drug nuisance eviction program authorized by state law. California Health and Safety Code § 11571.1. Assemblymember Frommer introduced AB 2523 which includes Oakland in Section 1157.1 (a copy of the bill is attached to the resolution asking seeking the Council support for the bill). As previously discussed with the City Council, Oakland's inclusion in the LA program would benefit the City by allowing the City to take over an eviction when the landlord fails or refuses to do so, and would make partial evictions easier. However, Section 11571.1 has some detrimental provisions:

- Section 11571.1 requires landlords to commence an eviction in 15 days after the City's notice, NEO permits 25 days
- It limits the City's attorney's fees payable by a landlord to \$600 when the landlord voluntarily turns an eviction over to the City for safety-related reasons, NEO requires the landlord to pay all the City; and
- It authorizes the City Attorney to take the actions on behalf of the City, including issuing the notices to evict, under NEO, the City Manager issues the notices.

Because of the differences between Section 11571.1 and NEO, the Director of Intergovernmental Affairs, in conjunction with the City Attorney's Office and LA will seek to amend the bill to allow each covered city to develop its eviction program according to its individual needs and constituencies. If the state legislature does not make the changes we request, the City can assess whether it wants to continue to be included in the legislation.

³ A further check on the City's potential liability would be for the City Attorney's Office to sign off on the eviction notices along with the City Manager's Office; however, the City Council did not fund a City Attorney position for NEO.


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NEO is crafted so that the actions of the City are within the ambit of the City's authority to address nuisances and, thus, do not require further state legislation. If Oakland is included in Section 11571.1 as it is currently written, some changes to NEO might be necessary.

The CAO prepared a resolution in support of AB 2523 for the Council's consideration.

Respectfully submitted,


for JOHN A. RUSSO
City Attorney

Attorney assigned: Richard Illgen

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INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 1: THAT SECTION 8.23 100 IS HEREBY ADDED TO THE OAKLAND MUNICIPAL CODE AS FOLLOWS:

8.23.100 EVICTION FOR NUISANCE AND ILLEGAL ACTIVITY ORDINANCE

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

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

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

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

1. **COMMERCIAL RENTAL UNIT.** Any Rental Unit that is rented or offered for rent for commercial, not residential use.
2. **CONTROLLED SUBSTANCE.** A drug, substance, or immediate precursor, as listed in the Uniform Controlled Substances Act, Health and Safety Code Section 11000, *et. seq.*
3. **DRUG-RELATED NUISANCE.** Any activity related to the possession, sale, use or manufacturing of a controlled substance that creates an unreasonable interference with the comfortable enjoyment of life, property or safety of other residents of the premises. These activities include, but are not limited to, any activity commonly associated with illegal drug dealing, such as noise, steady foot and vehicle traffic day and night to a particular unit, barricaded units, possession of weapons, or drug loitering as defined in California Health and Safety Code §11532, or other drug-related activities. Activity relating to the sale of a controlled substance that occurs off the premises is regarded as having occurred on the premises if, the activity occurs within such proximity to the premises that the Tenant's activity either unreasonably interferes with the comfortable enjoyment of life, property or safety of other residents of the premises or the Tenant likely uses the premises to further the drug sale activity.
4. **GANG-RELATED CRIME.** Any crime motivated by gang membership in which the perpetrator, victim, or intended victim is a known member of a gang,
5. **ILLEGAL DRUG ACTIVITY.** A violation of any of the provisions of Chapter 6 (commencing with Section 11350) or Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code.
6. **ILLEGAL POSSESSION SALE, OR USE OF WEAPON.** Illegal possession of a weapon by anyone occupying a Rental Unit who is not authorized to possess such a weapon, who sells such weapon and is not legally permitted to do so, or who uses or possesses the weapon in an illegal manner. Weapon includes, but is not limited to, a "Deadly Weapon" as defined in California Business and Professions Code § 7500.1 and "includes any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger, pistol, or revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club."
7. **OWNER.** An owner, landlord, lessor, or sublessor (including any person, firm, corporation, partnership, or other entity) of residential or commercial rental property who receives or is entitled to receive rent directly or through an agent for the use of any Rental Unit, or the agent, representative including a property manager, or successor of any of the foregoing.

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

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

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

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

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

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

is committed against a person who is residing in the same rental unit as the person making the threat. "Immediate family" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household. "Electronic communication device" includes but is not limited to, telephones, cellular telephones, video recorders, fax machines, or pagers. "Electronic communications" has the same meaning as the term is defined in subsection 12 of Section 2510 of Title 18 of the United States Code.

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

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

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

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

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

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

b. A Tenant to use or occupy the Premises if the Tenant commits, permits, maintains, or is involved in any Drug-Related Nuisance, Gang-Related

Crime, Illegal Drug Activity, Illegal Possession or Use of Weapon, Violent Crime, or Threat of Violent Crime.

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

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

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

E. EVICTION OF OFFENDING TENANT.

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

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

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

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

F. NOTIFICATION BY THE CITY TO REMOVE TENANT.

1. Evaluation Of Facts And Evidence By City.

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

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

2. Notice by City to Owner and Tenant.

a. When the City Manager or designee determines that a Tenant committed, permitted, maintained, or was involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale or Use of

Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides, the City will give the Owner written notice, requiring the Owner to file an action for the removal of the Tenants in the unit within 25 days of the date of mailing the notice (subject to any extensions permitted by O.M.C. 8.23.100 F.3). Included with the notice will be the amount of City's fee assessing the Owner the costs of investigating and evaluating the facts and evidence leading to the notice and the costs of sending the notice pursuant to Subsection 8.23.1004. If the Owner fails to file the unlawful detainer action within the 25 days, the City make take further action against the Owner for maintenance of a nuisance, including the assessment of Civil Penalties pursuant to O.M.C. 1.08.100.

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

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

e. Within 25 days of the City's mailing the written notice to remove a Tenant to the Owner (subject to any extensions pursuant to O.M.C. 8.23100 F.3), the Owner must respond to the notice in one of the following ways:

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

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

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

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

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

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

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

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

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

4. Contents of Notice to Tenant. The notice to the Tenant requiring the Tenant's eviction must include the following:

- a. A summary of the purpose and procedures under this O.M.C. 8.23.100;
- b. A statement of where general information concerning evictions is available, (which can be a reference to the City's Rent Program);
- c. Information on settlement of the eviction where the offending Tenant is removed or where a minor is the offending Tenant;
- d. A summary of the factual basis for requiring the eviction of the Tenant and the availability of documentary evidence supporting the eviction; and
- e. Any other information the City Manager deems appropriate.

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

6. In response to the City's notice to the Tenant, the Tenant may make the following requests to the City:

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

b. Request the City review whether there is sufficient evidence for the Owner to prevail in an unlawful detainer, including the existence of any contrary or exculpatory evidence, and whether the Owner should be required to evict the Tenant. In order to have the City review its decision to issue the notice to the Owner, the Tenant must state with specificity why the Tenant believes the evidence is insufficient to prevail in an unlawful detainer. The Tenant should make this request for review within 15 days after the date of the City's notice to the Tenant advising the Tenant that City noticed the Owner to evict the Tenant.

7. Should the City decide to rescind a notice to an Owner to evict a Tenant, the City will attempt to notify the Owner and the Tenant as soon as feasible after the decision is made.

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

G. ASSIGNMENT OF UNLAWFUL DETAINER TO THE CITY.

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

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

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

4. Litigation Costs.

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

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

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

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

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

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

9. Once the City Attorney accepts an assignment, the Owner may not revoke the assignment without the agreement of the City Attorney. Such an

agreement may include payment of all attorney costs and litigation costs incurred by the City and assurance the unlawful detainer will be satisfactorily prosecuted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. EVICTION UNDER THIS SECTION DEEMED IN GOOD FAITH.

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

1. The Owner knew or should have known that that there was contrary or exculpatory evidence tending to show that the City's evidence is not sufficient to warrant the Tenant's eviction;
2. The City did not consider the additional evidence prior to issuing its notice to the Owner; and
3. The Owner did not seek reconsideration of the City's issuing the notice for the Tenant's eviction pursuant to O.M.C 8.23.100 F.2.e.ii based on the additional evidence.

K. ASSESSMENT OF CITY'S COST TO OWNER

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

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

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

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

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

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

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

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

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

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

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

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

M. OWNER'S RECOVERY OF COSTS FROM TENANT.

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

N. TIME.

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

O. PROCEDURES AND FORMS.

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

P. PARTIAL INVALIDITY.

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

Q. EFFECTIVE DATE.

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

SECTION 2:

That the Rent Adjustment Board develop and propose amendments to the Rent Adjustment Program Regulations to the City Council that would address the following:

a. Exclude as Housing Service Costs (operating expenses) any fees or penalties assessed under the Nuisance Eviction Ordinance in the calculation of a rent increase based on Housing Service Costs or Debt Service;

b. Evaluate the possibility of excluding as Housing Service Costs the costs of evicting tenants under the Nuisance Eviction Ordinance.

SECTION 3:

That the City Manager report back to the Public Safety Committee, or other Committee designated by the City Council, on statistics of notices and evictions

THIRD REVISED

FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY 01 MAR 16 4 47

INTRODUCED BY COUNCILMEMBER _____

CITY ATTORNEY _____

ORDINANCE NO. _____ C.M.S.

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

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

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

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

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

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

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Item: _____
City Council
March 16, 2004

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16.1 Alternative "Z"

**ORA/COUNCIL
MAR 16 2004**

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

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

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

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

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

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

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

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

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

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

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

SECTION 1: THAT SECTION 8.23 100 IS HEREBY ADDED TO THE OAKLAND MUNICIPAL CODE AS FOLLOWS:

8.23.100 EVICTION FOR NUISANCE AND ILLEGAL ACTIVITY ORDINANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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is committed against a person who is residing in the same rental unit as the person making the threat. "Immediate family" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity of affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household. "Electronic communication device" includes but is not limited to, telephones, cellular telephones, video recorders, fax machines, or pagers. "Electronic communications" has the same meaning as the term is defined in subsection 12 of Section 2510 of Title 18 of the United States Code.

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

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

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

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

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

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

b. A Tenant to use or occupy the Premises if the Tenant commits, permits, maintains, or is involved in any Drug-Related Nuisance, Gang-Related

Crime, Illegal Drug Activity, Illegal Possession or Use of Weapon, Violent Crime, or Threat of Violent Crime.

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

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

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

E. EVICTION OF OFFENDING TENANT.

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

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

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

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

F. NOTIFICATION BY THE CITY TO REMOVE TENANT.

1. Evaluation Of Facts And Evidence By City.

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

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

2. Notice by City to Owner and Tenant.

a. When the City Manager or designee determines that a Tenant committed, permitted, maintained, or was involved in any Drug-Related Nuisance, Gang-Related Crime, Illegal Drug Activity, Illegal Possession, Sale or Use of

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Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides, the City will give the Owner written notice, requiring the Owner to file an action for the removal of the Tenants in the unit within 25 days of the date of mailing the notice (subject to any extensions permitted by O.M.C. 8.23.100 F.3). Included with the notice will be the amount of City's fee assessing the Owner the costs of investigating and evaluating the facts and evidence leading to the notice and the costs of sending the notice pursuant to Subsection 8.23.1004. If the Owner fails to file the unlawful detainer action within the 25 days, the City make take further action against the Owner for maintenance of a nuisance, including the assessment of Civil Penalties pursuant to O.M.C. 1.08.100.

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

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

e. Within 25 days of the City's mailing the written notice to remove a Tenant to the Owner (subject to any extensions pursuant to O.M.C. 8.23100 F.3), the Owner must respond to the notice in one of the following ways:

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

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

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

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

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

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

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

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

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

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4. Contents of Notice to Tenant. The notice to the Tenant requiring the Tenant's eviction must include the following:

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a. A summary of the purpose and procedures under this O.M.C. 8.23.100;

b. A statement of where general information concerning evictions is available, (which can be a reference to the City's Rent Program);

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c. Information on settlement of the eviction where the offending Tenant is removed or where a minor is the offending Tenant;

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d. A summary of the factual basis for requiring the eviction of the Tenant and the availability of documentary evidence supporting the eviction; and

e. Any other information the City Manager deems appropriate.

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

6. In response to the City's notice to the Tenant, the Tenant may make the following requests to the City:

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

b. Request the City review whether there is sufficient evidence for the Owner to prevail in an unlawful detainer, including the existence of any contrary or exculpatory evidence, and whether the Owner should be required to evict the Tenant. In order to have the City review its decision to issue the notice to the Owner, the Tenant must state with specificity why the Tenant believes the evidence is insufficient to prevail in an unlawful detainer. The Tenant should make this request for review within 15 days after the date of the City's notice to the Tenant advising the Tenant that City noticed the Owner to evict the Tenant.

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7. Should the City decide to rescind a notice to an Owner to evict a Tenant, the City will attempt to notify the Owner and the Tenant as soon as feasible after the decision is made.

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

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G. ASSIGNMENT OF UNLAWFUL DETAINER TO THE CITY.

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

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

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

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4. Litigation Costs.

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

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

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

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

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

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

9. Once the City Attorney accepts an assignment, the Owner may not revoke the assignment without the agreement of the City Attorney. Such an

agreement may include payment of all attorney costs and litigation costs incurred by the City and assurance the unlawful detainer will be satisfactorily prosecuted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. EVICTION UNDER THIS SECTION DEEMED IN GOOD FAITH.

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

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1. The Owner knew or should have known that there was contrary or exculpatory evidence tending to show that the City's evidence is not sufficient to warrant the Tenant's eviction;
2. The City did not consider the additional evidence prior to issuing its notice to the Owner; and
3. The Owner did not seek reconsideration of the City's issuing the notice for the Tenant's eviction pursuant to O.M.C 8.23.100 F.2.e.ii based on the additional evidence.

K. ASSESSMENT OF CITY'S COST TO OWNER

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

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

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

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

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

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

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

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

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

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

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

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

M. OWNER'S RECOVERY OF COSTS FROM TENANT.

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

N. TIME.

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

O. PROCEDURES AND FORMS.

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

P. PARTIAL INVALIDITY.

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

Q. EFFECTIVE DATE.

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

SECTION 2:

That the Rent Adjustment Board develop and propose amendments to the Rent Adjustment Program Regulations to the City Council that would address the following:

a. Exclude as Housing Service Costs (operating expenses) any fees or penalties assessed under the Nuisance Eviction Ordinance in the calculation of a rent increase based on Housing Service Costs or Debt Service;

b. Evaluate the possibility of excluding as Housing Service Costs the costs of evicting tenants under the Nuisance Eviction Ordinance.

SECTION 3:

That the City Manager report back to the Public Safety Committee, or other Committee designated by the City Council, on statistics of notices and evictions

