

## CITY OF OAKLAND

### HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

RESOLUTION No. R04-0001

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#### RESOLUTION ADOPTING REGULATIONS FOR THE JUST CAUSE FOR EVICTION ORDINANCE (MEASURE EE, CODIFIED IN THE OAKLAND MUNICIPAL CODE AT 8.22.300, et seq.)

**WHEREAS**, on November 5, 2002; the Oakland electorate passed Measure EE, thereby adopting the "Just Cause for Eviction Ordinance";

**WHEREAS**, the Just Cause for Eviction Ordinance gives the Housing, Residential Rent and Relocation Board the express and implied authority to enact regulations to further the purposes and interpretation of the Just Cause for Eviction Ordinance; now, therefore, be it

**RESOLVED** that the Housing, Residential Rent and Relocation Board hereby adopts the Regulations for the Just Cause for Eviction Ordinance set out in this resolution; and be it further

**RESOLVED** that the regulations set out in this resolution will take effect 30 days after the Housing, Residential Rent and Relocation Board's action approving this resolution.

#### Introduction

The following regulations address portions of the Just Cause for Eviction Ordinance ("Just Cause Ordinance"). Only those sections where the Housing, Residential Rent and Relocation Board ("Rent Board") adopted regulations are included. For convenience, the applicable section of the Just Cause Ordinance is set out in italics prior to each regulation. The numbering system follows the codified version of the Just Cause Ordinance.

Applicability. [Section 5]  
Just Cause Ordinance

*The provisions of this Ordinance shall apply to all rental units in whole or in part, including where a notice to vacate/quit any such rental unit has been served as of the effective date of this Ordinance but where any such rental unit has not yet been vacated or an unlawful detainer judgment has not been issued as of the effective date of this Ordinance. However, Section 6 and Section 7(A)(E) of the Ordinance shall not apply to the following types of rental units:*

*B. Rental units in any hospital, skilled nursing facility, or health facility.*

*C. Rental units in a nonprofit facility that has the primary purpose of providing short term treatment, assistance, or therapy for alcohol, drug, or other substance abuse and the housing is provided incident to the recovery program, and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.*

*D. Rental units in a nonprofit facility which provides a structured living environment that has the primary purpose of helping homeless persons obtain the skills necessary for independent living in permanent housing and where occupancy is restricted to a limited and specific period of time of not more than 24 months and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.*

*H. Newly constructed rental units which are completed and offered for rent for the first time after the effective date of the initial Oakland Residential Rent, Relocation, and Arbitration Ordinance, provided that such new units were not created as a result of rehabilitation, improvement or conversion as opposed to new construction.*

8.22.350 Applicability. [Section 5]  
Regulation

**B. Health Facilities.**

1. Where a federal, state, county, or local license or permit is required in order to lawfully engage in the activity that qualifies for the exemption, the landlord must plead and prove that the facility is properly licensed.

**C. Substance Abuse Treatment Facilities.**

1. Where a federal, state, county, or local license or permit is required in order to lawfully engage in the activity that qualifies for the exemption, the landlord must plead and prove that the facility is properly licensed.

**D. Homeless Transitional Facilities.**

1. Where federal, state or local license or permit is required in order to lawfully engage in the activity that qualifies for the exemption, the landlord must plead and prove that the facility is properly licensed.

**H. New Construction Exemption.**

1. **Date to Qualify for Exemption.** The new construction exemptions under the Just Cause Ordinance and the Rent Adjustment Ordinance differ as the date after which units must be constructed for the units to qualify for the new construction exemption. For purposes of O.M.C. 8.22.350 H (exemption under the Just Cause Ordinance for newly constructed units), newly constructed rental

units are residential rental units that have a certificate of occupancy as new construction issued after October 14, 1980 and are first offered for rent on or after that date. (The new construction exemption under the Rent Adjustment Ordinance is for units newly constructed and that received a certificate of occupancy on or after January 1, 1983 (O.M.C. 8.22.030 A5)).

2. The intent of this regulation is to conform the definitions of what constitutes new construction in the Just Cause Ordinance and the Rent Adjustment Ordinance for purposes of the new construction exemption. To qualify as a newly constructed rental unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential.

a. Newly constructed units include legal conversions of uninhabited spaces not used by tenants, such as:

- i. Garages;
- ii. Attics;
- iii. Basements;
- iv. Spaces that were formerly entirely commercial.

b. Dwelling units not eligible for the new construction exemption include:

- i. Live/work space where the work portion of the space was converted into a separate dwelling unit;
- ii. Common area converted to a separate dwelling unit.

#### 8.22.360 Good Cause Required for Eviction. [Section 6] Just Cause Ordinance

*A. No landlord shall endeavor to recover possession, issue a notice terminating tenancy, or recover possession of a rental unit in the City of Oakland unless the landlord is able to prove the existence of one of the following grounds:*

. . .

2. *The tenant has continued, after written notice to cease, to substantially violate a material term of the tenancy other than the obligation to surrender possession on proper notice as required by law, provided further that notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit as a result of subletting of the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet following a written request by the tenant, so long as the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord.*

#### 8.22.360 Good Cause Required for Eviction. Regulation

A.2. a. A "material term of the tenancy" of the lease includes obligations that are implied by law into a residential tenancy or rental agreement and are an obligation of the tenant. Such obligations that are material terms of the tenancy include, but are not limited to:

i. The obligation not to commit a nuisance, as the term nuisance may be applicable to a residential tenancy under California Civil Code § 1161 or City of Oakland law. Except that a termination of tenancy for any conduct that falls under O.M.C. 8.22.360 A4 (causing substantial damage), A5 (disorderly conduct), or A6 (using premises for illegal purpose) is also considered a nuisance, but must follow the requirements of those sections in lieu of this section (O.M.C 8.22.360 A2).

ii. The obligation not to commit waste, as the term waste may be applicable to a residential tenancy under California Civil Code § 1161. Except that a termination of tenancy for any conduct that falls under O.M.C. 8.22.360 A4 (causing substantial damage) and is also considered waste, but must follow the requirements of that section in lieu of this section (O.M.C 8.22.360 A2).

b. By giving a tenant a notice that the tenant has violated a material term of the tenancy, the landlord is not precluded from also noticing a possible eviction for the same conduct under a separate subsection of O.M.C. 8.22.360 so long as the notices are not contradictory or conflicting.

#### 8.22.360 Good Cause Required for Eviction. Just Cause Ordinance

A.6. *The tenant has used the rental unit or the common areas of the premises for an illegal purpose including the manufacture, sale, or use of illegal drugs.*

#### 8.22.360 Good Cause Required for Eviction. [Section 6] Regulation

A.5 For purposes of Subparagraph O.M.C. 8.22.360 A.5 a person who illegally sell a controlled substance upon the premises or uses the premises to further that purpose is deemed to have committed the illegal act on the premises, in accordance with California Code of Civil Procedure § 1161(4).

#### 8.22.360 Good Cause Required for Eviction. Just Cause Ordinance

A.9. *The owner of record seeks in good faith, without ulterior reasons and with honest intent, to recover possession for his or her own use and occupancy as his or her principal residence, or for the use and occupancy as a principal residence by the owner of record's spouse, domestic partner, child, parent, or grandparent.*

. . .

e. *A landlord may not recover possession of a unit from a tenant under Subsection 6(A)(9) [8.22.360 A.9], if the landlord has or receives notice, any time before recovery of possession, that any tenant in the rental unit:*

- i. *Has been residing in the unit for 5 years or more; and*
    - (a) *Is 60 years of age or older; or*
    - (b) *Is a disabled tenant as defined in the California Fair Employment and Housing Act (California Government Code §12926); or*
  - ii. *Has been residing in the unit for five (5) years or more, and is a catastrophically ill tenant, defined as a person who is disabled as defined by Subsection (e)(i)(b) [8.22.360 A.9.e.i.b] and who suffers from a life threatening illness as certified by his or her primary care physician.*
- f. *The provisions of Subsection (e) [8.22.360 A.9.e] above shall not apply where the landlord's qualified relative who will move into the unit is 60 years of age or older, disabled or catastrophically ill as defined by Subsection (e) [8.22.360 A.9.e], and where every rental unit owned by the landlord is occupied by a tenant otherwise protected from eviction by Subsection (e) [8.22.360 A.9.e].*
- g. *A tenant who claims to be a member of one of the classes protected by Subsection 6(A)(9)(e) [8.22.360 A.9.e] must submit a statement, with supporting evidence, to the landlord. A landlord may challenge a tenant's claim of protected status by requesting a hearing from the Rent Board. In the Rent Board hearing, the tenant shall have the burden of proof to show protected status. No civil or criminal liability shall be imposed upon a landlord for challenging a tenant's claim of protected status. The Rent Board shall adopt rules and regulations to implement the hearing procedure.*

#### 8.22.360 Good Cause Required for Eviction. [Section 6] Regulation

A.9.g. This regulation addresses a tenant's claim of "protected status" as elderly, disabled, or catastrophically ill pursuant to Section 8.22.360 A.9.e. and how it may be contested by a landlord.

i Statement With Supporting Evidence Of Protected Status. In order to present a claim for protected status, a tenant must give the landlord a statement claiming protected status along with evidence supporting the claim. The evidence must include a statement that the tenant has resided in the unit for more than five years. The supporting evidence must be of the tenant's age, or that the tenant has a disability that limits a major life activity, or that he or she has a catastrophic illness. If the tenant produces evidence of protected status sufficient to establish a facial claim of protected status, the landlord has the burden of producing evidence to contradict the tenant's evidence. Below are examples of types of evidence concerning protected status that may be used to present a claim that a tenant is entitled to protected status. :

(a) Elderly status: driver's license, DMV identity card, birth certificate, or other document in which the age or date of birth must be submitted under oath.

(b) Disabled status: Evidence that a tenant has a disability that limits a major life activity may be in the form of a statement from a treating physician or other appropriate health care provider authorized to provide treatment, such as a psychologist. A tenant may also submit evidence of a medical determination from another forum, such as Social Security or workers' compensation, so long as it



includes the fact of that the tenant has a disability and its probable duration.

(c) Catastrophically ill status. Evidence of disabled status plus a statement from the tenant's primary care physician or other appropriate health care provider that the tenant has a life threatening illness. The evidence need not provide any information on the nature of the disability or catastrophic illness.

ii. Jurisdiction Over Challenges to Protected Status. Courts have concurrent jurisdiction with the Rent Program over landlord challenges to a tenant's claim to protected status.

a. Court. A tenant may defend against an eviction by claiming protected status claim where the landlord seeks recovery of the unit for occupancy by the owner or the landlord's eligible relative.

b. Rent Program.

1. A landlord and a tenant may agree at any time to have the Rent Program address a tenant's claim for protected status. Either the landlord or the tenant may petition the Rent Program at any time to seek resolution of the claim for protected status, but the Rent Program will not assume jurisdiction over the petition unless the other party agrees to Rent Program jurisdiction.

2. A landlord who is selling a property may request that a tenant state whether the tenant will claim protected status if the landlord's successor seeks to evict the tenant for occupancy by the owner or the owner's close relative.

(a). The owner may make this request under the conditions and procedures:

i. The building contains 6 or fewer rental units.

ii. The building contains more than 6 rental units and the unit the tenant occupies is unique. Unique means that no more than 5 percent of the units in the building are similar in size, location, and/or amenities.

iii. The landlord has an accepted offer from a purchaser and the offer is contingent upon the availability of a unit to owner-occupy.

iv. The landlord makes the request to the tenant on a form provided by the Rent Program verifying the appropriate information under penalty of perjury.

(b) The tenant must respond within 15 calendar days of service of the request. A tenant who fails to respond within the 15 calendar days is deemed to have waived any claim of entitlement to protected status as of the last date the response was due.

iii. Rent Program Hearings Contesting Protected Status.

(a) Procedure. Rent Program hearings contesting a tenant's disability or catastrophic illness are conducted in accordance with the procedures set forth in Rent Adjustment Program Regulation 8.22.090. Rent Program staff may establish any additional specialized procedures necessary for hearings under this section.

(b) Confidential Nature of Hearings. Evidence of a tenant's disability or illness is deemed confidential. Hearings, records of hearings, and decisions (except for whether the tenant has protected status) based on disability, or

catastrophic illness will not be open to the public. Records of the decision will not be considered public records for purposes of the California Public Records Act (Cal. Government Code § 6250, *et seq.*). The landlord or his/her representative, agent, or attorney may not release any evidence or records or information contained in such evidence or records pertaining to the tenant's disability or illness to a person other than the parties or their representatives for the hearing. Rent Program staff may adopt supplementary rules to conduct hearings so as to protect the medical privacy of tenants while permitting parties to obtain necessary evidence.

(c) Tenant's Burden. The tenant has the burden of proving protected status.

(d) Health Care Examination.

(1) Landlord's Request. If the landlord reasonably determines that in order to respond the tenant's evidence of disability or illness a medical examination is necessary, the landlord may request the Rent Program order the tenant to obtain the opinion of a second health care provider, designated or approved by the landlord, concerning any information on which the tenant bases her/his claim for protected status. The examination will be at the landlord's own expense.

(2) Independent Examination. The landlord and tenant may agree to have an independent examination conducted by a health care provider agreed to by the parties or appointed by the Hearing Officer. The parties must agree that the results of the independent examination will be binding on the parties as to the tenant's status as disabled or catastrophically ill. The independent examination will be at the landlord's expense unless the parties agree otherwise.

(3) Limitation on Examination. Any health care examination under this subsection must be limited to the health related condition that the tenant claims is the basis for the disability or catastrophically ill status. The Hearing Officer may issue such orders or place such conditions on the examination as may be necessary to limit the examination to the tenant's condition at issue.

(4) Tenant Refusal to be Examined. At tenant's refusal to be examined at the landlord's request or to cooperate with such examination will defeat the tenant's claim of protected status, unless the tenant can prove her/his claim by clear and convincing evidence and the landlord's request for an examination is unreasonable.

iv. No Appeal to Rent Board for Disability or Catastrophically Ill Claims Unless Tenant Waives Privacy in Medical Records. Neither party may appeal the Hearing Officer's decision to the Rent Board unless the tenant is willing to waive any privacy or confidentiality to medical records or other confidential records pertaining to the tenant's disability or illness. Without such a waiver, a decision of the Hearing Officer is final as to the administrative processes of the City of Oakland and any party wishing to further contest the Hearing Officer's decision must seek judicial review.

v. Landlord or Landlord's Relative or Other Tenant for Claims Protected Status. A landlord may still evict a tenant with protected status where the landlord or the landlord's relative who will be occupying the unit has protected status, or where

every other unit of the landlord is occupied by a tenant claiming protected status. In either of the aforementioned circumstances, any challenge to the landlord's right to evict a tenant with protected status would be addressed in an unlawful detainer or other court proceeding.

8.22.360 Good Cause Required for Eviction. [Section 6]  
Just Cause Ordinance

*A.10. The owner of record, after having obtained all necessary permits from the City of Oakland on or before the date upon which notice to vacate is given, seeks in good faith to undertake substantial repairs that cannot be completed while the unit is occupied, and that are necessary either to bring the property into compliance with applicable codes and laws affecting health and safety of tenants of the building, or under an outstanding notice of code violations affecting the health and safety of tenants of the building.*

*a. Upon recovery of possession of the rental unit, owner of record shall proceed without unreasonable delay to effect the needed repairs. The tenant shall not be required to vacate pursuant to this Section, for a period in excess of three months; provided, however, that such time period may be extended by the Rent Board upon application by the landlord. The Rent Board shall adopt rules and regulations to implement the application procedure.*

8.22.360 Good Cause Required for Eviction. [Section 6]  
Regulation

A.10 Eviction for Repairs. Petitioning to extend time for tenant vacancy.

a. Purpose. When a landlord seeks to recover possession of a unit to make repairs, the repairs must be completed in time to permit the tenant to reoccupy the unit after three months of vacancy. If more than three months of vacancy are required to complete the repairs, the landlord may petition the Rent Program to extend this time.

b. Additional Notice Requirements. In addition to the other requirements for the notice terminating tenancy in the Just Cause Ordinance or by state law, the landlord must include the following information in a prominent place on the front of the notice:

i. If the tenant wishes to return to the rental unit, the tenant must provide the landlord with a forwarding address and telephone number or other contact information. A tenant who fails to provide this information may not be entitled to return to the rental unit.

ii. Rent Program staff will issue a form notice for evictions brought pursuant to this Section.

c. Time for Petitioning.

i. When the landlord knows before the notice to terminate tenancy is served on the tenant that the repairs cannot be completed within the three-month period, the landlord must file the petition with the Rent Program and serve the tenant with a copy of the petition to extend time with or before the notice to terminate



tenancy.

ii. When the landlord discovers, after serving the notice to terminate tenancy, that the work will require longer than 3 months, the landlord must file the petition within 15 days of first learning that the work will not be completed within 3 months.

d. Petition and response contents. Rent Program staff will issue form petitions and responses that will specify the required contents.

e. Priority. The nature and subject matter of the petition requires an expeditious decision on these petitions. The Rent Program will give priority to the hearing on the petition.

f. Tenant Response. To expedite the landlord's petition, no formal response from the tenant will be required until the hearing.

g. Conduct of Hearings. Rent Program hearings contesting the rent for an available vacant unit are conducted in accordance with the procedures set forth in Rent Adjustment Program Regulation 8.22.090.

h. Appeals. The hearing officer's decision may be appealed to the Rent Board within the time frame set forth in O.M.C. 8.22.120 and in accordance with Rent Adjustment Program Regulations. Rent Program staff may assign the appeal to a panel of the Board to expedite it.

i. Penalty. In addition to any other remedies a tenant may have, a landlord who fails to timely file a petition seeking an extension or unreasonably delays completing the repairs will forfeit one month of any rent increase based the repairs that necessitated the tenant's eviction for each month, or fraction thereof that the tenant's return is unreasonably delayed.

#### 8.22.360 Good Cause Required for Eviction. [Section 6] Just Cause Ordinance

*A. No landlord shall endeavor to recover possession, issue a notice terminating tenancy, or recover possession of a rental unit in the City of Oakland unless the landlord is able to prove the existence of one of the following grounds:*

2. *The tenant has continued, after written notice to cease, to substantially violate a material term of the tenancy other than the obligation to surrender possession on proper notice as required by law, provided further that notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit as a result of subletting of the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet following a written request by the tenant, so long as the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord.*

3. *The tenant, who had an oral or written agreement with the landlord which has terminated, has refused after written request or demand by the landlord to execute a written extension or renewal thereof for a further term of like duration and under such terms which are materially the same as in the previous agreement; provided, that such terms do not conflict with any of the provisions of this Chapter. [O.M.C. Chapter 8.22, Article II].*

4. *The tenant has willfully caused substantial damage to the premises*

beyond normal wear and tear and, after written notice, has refused to cease damaging the premises, or has refused to either make satisfactory correction or to pay the reasonable costs of repairing such damage over a reasonable period of time.

5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants at the property

. . .

7. The tenant has, after written notice to cease, continued to deny landlord access to the unit as required by state law.

. . .

B. The following additional provisions shall apply to a landlord who seeks to recover a rental unit pursuant to Subsection 6(A) [8.22.360 A]:

. . .

4. Any written notice as described in Subsection 6(A)(2, 3, 4, 5, 7) [8.22.360 A.2, 3, 4, 7] shall be served by the landlord prior to a notice to terminate tenancy and shall include a provision informing tenant that a failure to cure may result in the initiation of eviction proceedings.

#### 8.22.360 Good Cause Required for Eviction. Regulation

##### B.4. Notice to Cease Substantial Violation of Material Term of Tenancy.

a. The purpose of a "Notice to Cease" under O.M.C. 8.22.360 is to advise the tenant of specific conduct that, if repeated, not stopped, or not cured, may cause the tenant to be evicted.

b. A Notice to Cease must state:

- i. The term of tenancy or Just Cause Ordinance that has been violated;
- ii. With specificity the conduct that violates the term of the tenancy;
- iii. The date(s) on which the conduct occurred, or if that date is not known to the landlord, the approximate date on which conduct occurred.
- iv. If the conduct is repeated, not stopped, or not cured, that the landlord may initiate eviction proceedings against the tenant. If the violation can be cured, the date by which the violation must be cured or a notice of termination of tenancy may be given. The tenant must be given a reasonable opportunity to cure the violation.

c. Service of Notice to Cease.

i. Service of the notice to cease may be accomplished by any means authorized by California Civil Code § 1946. California Civil Code §1946 permits service by any one of the following means, either:

- (a) By delivering a copy to the tenant personally; or;
- (b) If he or she is absent from his or her place of residence, and from his or her usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his or her place of residence; or;

(c) If such place of residence and business can not be ascertained, or a person of suitable age or discretion there can not be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner; or

(d) By sending a copy by certified or registered mail addressed to the other party.

d. Effective Date of Notice to Cease.

i. A Notice to Cease is effective upon receipt if:

(a) The notice is personally delivered to the tenant;

(b) The notice is affixed to the property and a copy is personally delivered to a person residing there.

ii. A Notice to Cease is effective 5 days after the Notice is placed in the mails if:

(a) The notice is left with a person residing in the unit and mailed;

(b) The notice is delivered by certified or registered mail.

e. Notice to Terminate Tenancy. If the conduct described in the notice is repeated, not stopped, or not cured within the cure period, the Landlord may serve a notice pursuant to California Code of Civil Procedure § 1161.

f. Further Interpretation. The notice to cease required by this section is similar to provisions addressing notices of default found in commercial leases. These provisions in commercial leases give the tenant an opportunity to cure a default prior to being served with a notice to cure or quit or to terminate tenancy pursuant to California Code of Civil Procedure § 1161. Landlords and tenants may look to case law interpreting such provisions in commercial leases for further guidance on addressing issues that may arise under this section.

#### 8.22.360 Good Cause Required for Eviction. [Section 6] Just Cause Ordinance

*B. The following additional provisions shall apply to a landlord who seeks to recover a rental unit pursuant to Subsection 6(A) [8.22.360 A]*

6. A notice terminating tenancy must additionally include the following:

b. A statement that advice regarding the notice terminating tenancy is available from the Rent Board.

#### 8.22.360 Good Cause Required for Eviction. [Section 6] Regulation

6B.6.b. This regulation sets out the preferred language landlords must insert into notices terminating tenancy or notices to cure or quit regarding advice from the Rent Program. As preferred language, the language used in this regulation is "safe harbor" language that, if used by a landlord in applicable notices, cannot be

challenged by the tenant as being not in compliance with the O.M.C. 8.22.360 B.6.b. Other language imparting the same information may also be acceptable.

i. The following statement must be included in notices terminating tenancy or notices to cure or quit regarding advice from the Rent Program. "Information regarding evictions is available from the City of Oakland's Rent Program. Parties seeking legal advice concerning evictions should consult with an attorney. The Rent Program is located at 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612, (510) 238-3501, website: [www.oaklandnet.com](http://www.oaklandnet.com). (as of January 2004)"

#### 8.22.360 Good Cause Required for Eviction. [Section 6] Just Cause Ordinance

C. *The following additional provisions shall apply to a landlord who seeks to recover a rental unit pursuant to Subsections 6(A)(9) [8.22.360 A.9 (occupancy by landlord or landlord's relative)] or (10) [8.22.360 A.10 (major repairs)]:*

1. *Where the landlord owns any other residential rental units, and any such unit is available or will become available between the time of service of written notice terminating tenancy and the earlier of the surrender of possession of the premises or the execution of a writ of possession pursuant to the judgment of a court of competent jurisdiction, the landlord shall, as a condition of obtaining possession pursuant to Section 6 [8.22.360], notify tenant in writing of the existence and address of each such vacant unit and offer tenant the right to choose any available rental unit and at the tenant's option: i) to enter into a temporary rental agreement; or ii) to enter into a new rental agreement. The landlord shall offer that unit to the tenant at a rent based on the rent that the tenant is currently paying, with upward or downward adjustments allowed based upon the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board.*

#### 8.22.360 Good Cause Required for Eviction. [Section 6] Regulation

C.1. **Determining Rent for a Replacement Unit.** The Just Cause for Eviction Ordinance requires a landlord to offer a replacement unit (if one is vacant) to a tenant being evicted for occupancy by the owner or the owner's relative (O.M.C. 8.22.360 A.9.), or for the rehabilitation of the tenant's unit (O.M.C. 8.22.360 A.10). This regulation addresses how to set the rent for the replacement unit in the event the landlord and tenant are not able to agree on the rent.

a. **When the Rent Program Can Determine Rent For The Replacement Unit.** The Rent Program can determine the amount of the rent for the vacant unit when the unit is not subject to vacancy decontrol under the Costa-Hawkins Rental Housing Act (California Civil Code § 1954.50, *et seq.*) or is exempt from the Rent Adjustment Ordinance by the ordinance itself or by or Costa-Hawkins. If the landlord contends that the replacement unit was vacancy decontrolled under Costa-Hawkins or is exempt, the landlord must produce the evidence showing that



the replacement unit is vacancy decontrolled or exempt. The tenant may then contest the landlord's evidence.

b. Landlord Offering Tenant Replacement Unit. A landlord seeking to evict a tenant for owner/relative occupancy or rehabilitation of the tenant's unit must give the tenant a notice of any units that are or will become available prior to the tenant vacating the tenant's unit. If no vacant units are available the landlord must provide written notice so stating. The notice must include the following:

- i. The date the replacement unit will be vacant and available for occupancy;
- ii. The landlord's proposed rent for the replacement unit.
- iii. The location and size of the replacement unit.
- iv. Whether the replacement unit is vacancy decontrolled or exempt.

c. Notice to Tenant of Available Vacant Unit. This notice must be served on the tenant:

- i. At the time of giving the notice to terminate tenancy if the unit is vacant or the landlord anticipates that it will become vacant prior to the tenant's vacating.

- ii. Within 5 days of the landlord's knowledge that a unit may be vacated.

d. Inspection of Vacant Units. The landlord must make reasonable efforts to make any vacant units available for inspection by the tenant.

e. Criteria for Setting Rent for Replacement Unit. If the landlord does not prove the vacant unit is vacancy decontrolled or exempt, then the rent for the replacement unit will be set according to the following criteria:

- i. Rent for the tenant's current unit.
- ii. The condition of the tenant's unit versus the replacement unit.
- iii. The size and number and types of rooms.
- iv. Other amenities, such as view, floor, location, furnishings.

f. Petitions For Determining Rent For Replacement Unit.

- i. Petitioning. A tenant being evicted for occupancy by the landlord or the landlord's relative, or for major repair of the unit may contest a landlord's proposed rent for a replacement unit (including a determination of the exempt or vacancy decontrol status of the replacement unit), by filing a petition on a form prescribed by the Rent Adjustment Program.

- ii. Time for Petitioning. The tenant may file the petition prior to occupying the replacement unit, but must file the petition not later than 60 days after the tenant first starts to occupy the available vacant unit.

- iii. Priority. The Rent Program will make efforts to prioritize the hearing on the petition.

- iv. Landlord Response. To expedite the tenant's petition, no formal response from the landlord will be required until the hearing.

- v. Conduct of Hearings. Rent Program hearings contesting the rent for an available vacant unit are conducted in accordance with the

procedures set forth in Rent Adjustment Program Regulation 8.22.090.

vi. Appeals. The hearing officer's decision may be appealed to the Rent Board within the time frame set forth in O.M.C. 8.22.120 and in accordance with Rent Adjustment Program Regulations. Rent Program staff may assign the appeal to a panel of the Board to expedite it.

O.M.C. 8.22.370 Remedies. [Section 7]  
Just Cause Ordinance

*A. Remedies for violation of eviction controls.*

1. *A tenant who prevails in an action brought by a landlord for possession of the premises shall be entitled to bring an action against the landlord and shall be entitled to recover actual and punitive damages, costs, and reasonable attorney's fees.*

2. *Whenever a landlord or anyone assisting a landlord wrongfully endeavors to recover possession or recovers possession of a rental unit in violation of Subsection 6(A) [8.22.360 A], the tenant or Board may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages (including damages for mental or emotional distress), and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of this Ordinance. The prevailing tenant shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.*

O.M.C. 8.22.370 Remedies. [Section 7]  
Regulation

*A. Remedies for violation of eviction controls.*

1. This regulation addresses the standard that a tenant who prevails in an unlawful detainer action must meet in order to recover against the landlord who brought the unlawful detainer action. In order to recover actual damages against the landlord, the tenant must show that the landlord did not have a reasonable basis for bringing the unlawful detainer action. A landlord lacks a reasonable basis for bringing an unlawful detainer when the landlord's dominant motive for bringing the eviction was not the stated reason for bringing the eviction or the landlord lacked good faith in bringing the unlawful detainer. See O.M.C. 8.22.350 B2. The mere fact that the landlord did not prevail is not sufficient for recovery of damages. In order to recover punitive damages in such an action, the tenant must prove, in accordance with California Civil Code § 3294 "by clear and convincing evidence that the [landlord] has been guilty of oppression, fraud, or malice."

2. This regulation addresses the liability standards when someone assists a landlord who wrongfully endeavors to recover possession or recovers possession of a rental unit covered by the Just Cause Ordinance. For liability to attach to a person assisting a landlord acting wrongfully, the person knew or, with the exercise of reasonable diligence, should have known that the landlord's conduct was wrongful.

3. This regulation addresses the circumstance where a landlord pursues an eviction based on a notice from the City of Oakland informing the landlord that the tenant is alleged to be engaging in, permitting, or using the premises to further certain illegal activities. When a landlord pursues evicting a tenant based on such a notice from the City, the landlord is deemed to be acting in good faith in bringing the eviction action and is not engaged in wrongful conduct except under the following circumstances:

- a. 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;
- b. The City did not consider the additional evidence prior to issuing its notice to the Owner; and
- c. 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.

4. This regulation addresses the circumstance where a landlord brings an unlawful detainer to recover possession for owner/relative occupancy and the tenant defends the eviction based on protected status under O.M.C. 8.22.360 A.9. The landlord's conduct in bringing the unlawful detainer is deemed to be acting in good faith in bringing the eviction action and is not engaged in wrongful conduct under the following circumstances:

- a. The tenant had not previously given a notice claiming protected status sufficiently in advance of the landlord's serving the tenant with the unlawful detainer complaint for the landlord to have contested the tenant's protect status claim with the Rent Program.
- b. The tenant claims protected status as a defense to the unlawful detainer;
- c. The landlord contests the tenant's protected status claim reasonably and in good faith;
- d. The landlord fails to dismiss the case within a reasonable time after the landlord has had the opportunity for full discovery of the facts concerning the tenant's protected status claim and the tenant's protected status claim is supported by clear and convincing evidence.

In the City of Oakland, Housing, Residential Rent and Relocation Board  
Oakland California, \_\_\_\_\_, 2004.


**Passed by the following vote**

AYES: EISEN, RUBSAMEN, MONTAG

NOES:

ABSENT:

ABSTENTION: BELL

ATTEST   
REBECCA EISEN  
Chairperson of the Housing, Rent and  
Relocation Board