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

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. The numbering system follows the codified version of the Just Cause Ordinance. These Regulations were originally adopted in 2004 and include the 2007 and 2009 Amendments.

8.22.350 Applicability. [Section 5]

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.

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. Nuisance. The obligation not to commit a nuisance. A nuisance, as used in these regulations, is any conduct that constitutes a nuisance under Code of Civil Procedure § 1161 (4). Provided that a termination of tenancy for any conduct that might be included under O.M.C. 8.22.360 A4 (causing substantial damage), A5 (disorderly conduct), or A6 (using premises for illegal purpose) and which also be considered a nuisance, can follow the requirements of those sections in lieu of this section (O.M.C 8.22.360 A2). Nuisance also includes conduct by the tenant occurring on the property that substantially interferes with the use and enjoyment of neighboring properties that rises to the level of a nuisance under Code of Civil Procedures § 1161 (4). [revised reg. 12/06/07]

ii. Waste. The obligation not to commit waste, as the term waste may be applicable to a residential tenancy under California Code of Civil Procedure § 1161. Waste, as used in these regulations, is any conduct that constitutes waste under Code of Civil Procedure § 1161 (4). Provided that a termination of tenancy for any conduct that falls under O.M.C 8.22.360 A4 (causing substantial damage) and might also be considered waste can follow the requirements of that section in lieu of this section (O.M.C 8.22360 A2). [revised reg. 12/06/07].

b. Repeated violations for nuisance, waste or dangerous conduct. [new reg. 12/06/07]

i. Repeating the same nuisance, waste, or dangerous conduct within 12 months. The first time a tenant engages in conduct that constitutes nuisance, waste or is dangerous to persons or property within any 12 month period, the landlord must give the tenant a warning notice to cease and not repeat the conduct. If the tenant repeats the same or substantially similar nuisance, waste or

dangerous conduct within 12 months after the landlord served the prior notice to cease, the landlord need not serve a further notice to cease, but may give a notice pursuant to Code of Civil Procedure § 1161 for the repeated conduct.

ii. Repeating different nuisance or waste conduct within 24 months. The first two times a tenant engages in different conduct that constitutes waste or a nuisance that interferes with the right of quiet enjoyment of other tenants at the property, the landlord must give the tenant a warning notice to cease and not repeat the conduct. If within 24 months after the landlord served the first of the two notices to cease for the waste or nuisance conduct, the tenant again engages conduct that constitutes waste or a nuisance that interferes with the right of quiet enjoyment of other tenants at the property, the landlord need not serve a further notice to cease, but may give a notice pursuant to Code of Civil Procedure § 1161 for the third incident of waste or nuisance conduct. [new reg. 12/06/07]

c. By giving a tenant a notice that the tenant has violated a material term of 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. [existing reg. renumbered]

Reg. 8.22.360A.4.

A notice that the tenant has willfully caused substantial damage must give the tenant at least 45 days after service of the notice to repair the damage or pay the landlord for the reasonable cost of repairing such damage. [new reg. 12/06/07]

Reg. 8.22.360A.5.

Destroying the peace and quiet of other tenants at the property is conduct that substantially interferes with the peace, quiet, and enjoyment of other tenants at the property. [new reg. 12/06/07]

Reg. 8.22.360A.6.

a. For purposes of Subparagraph O.M.C. 8.22.360 A.6 a person who illegally sells 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).

b. Using the premises for an unlawful purpose is any conduct that constitutes using the premises for an unlawful purpose under Code of Civil Procedure § 1161 (4). [new reg. 12/06/07]

Reg. 8.22.360A.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 with 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.

Reg 8.22.360A. 6. Illegal Use of the Premises

a. For purposes of Subparagraph O.M.C. 8.22.360 A.6 a person who illegally sells 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).

b. Using the premises for an unlawful purpose is any conduct that constitutes using the premises for an unlawful purpose under Code of Civil Procedure §1161(4). [new reg. 12/06/07]

c. Where a unit has been cited for housing, building, or planning code violations, and the landlord is unwilling or unable to make the necessary repairs or corrections, the tenant will not be deemed to have "committed an illegal act on the premises" pursuant to this Regulation 8.22.360 A.6.. Where a unit is being taken off the rental market due to housing, building, or planning code violations, the landlord must follow the procedures found in Regulation 8.22.360 A.10(b)

herein to evict the tenant.

Reg8.22.360A.10. Eviction for Repairs or to Bring Unit in Compliance With Municipal Code or Other Laws Affecting Health and Safety of Tenants.

a. Petitioning to extend time for tenant vacancy.

i. 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.

ii. 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:

(A) 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.

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

iii. Time for Petitioning.

(A) 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.

(B) 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.

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

v. 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.

vi. Tenant Response. To expedite the landlord's petition, no formal response from the tenant will be required until the hearing. However, if the tenant wishes to submit to submit any documentary evidence (including pictures) in response to the landlord's petition, the tenant must file such evidence with the Rent Program and send a copy to the landlord not less than 5 days prior to the hearing, unless the tenant can show the evidence was unavailable at that time.

vii. 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.

viii 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.

ix. 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.

b. Removal of Unit(s) or Change of Use Required by Code Violation. [new reg. 7/30/09]

i. Purpose. The City of Oakland or other regulatory agency may require a Landlord to make repairs or corrections, or cease renting a unit or units in a building because the unit or building has been cited with a code violation. In such cases, often the landlord is unwilling to make such repairs or corrections, or the corrections cannot be made without taking the unit(s) or building off the market, converting the unit(s) or building to another use, or demolishing the unit(s). This Regulation 8.22.360A(10)(b) applies to foregoing circumstances. Before this Regulation 8.22.360A(10)(b) was enacted, landlords would often evict tenants citing Regulation 8.22.360A(6) herein, which applies to circumstances where a tenant has committed an illegal act on the premises, such as selling controlled substances. In those cases, while the eviction was through no fault of their own, tenants were only given three days notice to vacate, and the evictions were often reported to credit reporting agencies as being related to illegal uses of the premises. This Regulation 8.22.360A(10)(b) is intended to provide landlords with an appropriate mechanism for evicting a tenant where a unit is being taken off the residential rental market due to a code violation.

ii. All Units Withdrawn from the Rental Market. If the City of Oakland or other regulatory agency has cited the building with a code violation, and the landlord is unable or unwilling to make the necessary repairs or corrections, and all the residential units in the building are similarly affected and can be withdrawn from the residential rental market pursuant to the Ellis Act Ordinance (O.M.C. 8.22.400, *et seq.*), the Landlord must use the procedures and notice provisions of the Ellis Act Ordinance to take all the units off the market.

iii. Not All Units Withdrawn from the Rental Market. If the landlord withdraws a unit from the residential rental market due to a code violation cited by the City of Oakland or other regulatory agency, and other units in the building will remain on the residential rental market, the landlord must use the procedures and notice provisions of this Regulation 8.22.360A(10)(b)(v) to take the affected unit off the market.

iv. Units Subject to an "Imminent Hazard" – 72-Hour Notice to Vacate. Where the City or other public agency has issued a 72-hour notice to vacate ("red-tagged") the unit or building, the provisions of the Just Cause Ordinance do not apply as this order to vacate is brought by the City or governmental entity and not the landlord.

v. Units or Buildings Wherein Corrections Cannot Be Made. If the Landlord determines that the corrections required to address the code violation(s) cannot be made to the unit or if the Landlord is unwilling to make the corrections and will cease renting the affected unit for residential purposes, the Landlord must do the following:

(A) Follow the eviction process established in California Civil Code §1946 and §1946.1 providing for a 30-day or 60-day notice period.

(B) Provide the information on the notice terminating tenancy required by O.M.C. 8.22.360A.10.c as follows:

(1) A statement informing tenants as to any right to payment under the City of Oakland's Code Enforcement Relocation Ordinance (O.M.C. Chapter 5.60).

(2) A short, simple statement describing the violations or attaching the report noticing the violations and that the landlord has decided that the landlord will cease using the unit for residential rental purposes and terminate the tenant's tenancy. This information on the notice terminating tenancy must be signed under penalty of perjury.

(3) A statement that the termination of tenancy is brought in good faith, with honest intent, and without ulterior reasons, including but not limited to: retaliating against the tenant, facilitating repairs or permits necessary to retain the unit(s) as residential, or to re-rent the unit(s). This information on the notice terminating tenancy must be signed under penalty of perjury.

(4) A statement that "If the needed repairs are completed on your unit, the landlord must offer you the opportunity to return to your unit with a rental agreement containing the same terms as your original rental agreement and with the same rent (although the landlord may be able to obtain a rent increase under the Oakland Residential Rent Arbitration Ordinance [O.M.C. Chapter 8.22, Article I). This statement only applies if your landlord restores your unit to the residential rental market."

1. File the notice terminating the tenancy with the Rent Program as required by O.M.C. 8.22.

(b)

Reg8.22.360B.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.

g. A Notice to Cease pursuant to Sections 8.22.360A 2, 4, 5 and 7 must give the tenant at least 7 days after service to cure the violation. If the violation presents an immediate and substantial danger to persons or the property the landlord may give the tenant a notice that the violation must be corrected within 24 hours after service of the notice. [new reg. 12/06/07]

h. Appendix A provides forms of notices to cease that are the preferred forms that landlords may use where notices to cease are required by Section 8.22.360. Nothing herein precludes the use of a different notice to cease form, so long as it provides the information required by law. [new reg. 12/06/07]

Reg 8.22.360B.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 is 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 5313, Oakland, CA 94612, (510) 238-3721, website: www.oaklandnet.com. (as of January 2004)"

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.

Reg 8.22.370A. 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 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.

Reg. 8.22.380 Non-Waiverability.

Nothing in the Ordinance is intended to prevent or interfere with parties entering into knowing, voluntary agreements for valuable consideration to settle disputes regarding possession of rental units. Any provision in a rental agreement or any amendment thereto which waives or modifies any provision of the Ordinance is contrary to public policy and void. [new reg. 12/06/07]