

INTRODUCED BY COUNCIL PRESIDENT NIKKI FORTUNATO BAS
AND COUNCILMEMBER DAN KALB

CITY ATTORNEY’S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE ESTABLISHING A TIMELINE FOR TERMINATION OF THE MORATORIUM ON RESIDENTIAL EVICTIONS, RENT INCREASES, AND LATE FEES ENACTED IN RESPONSE TO THE COVID-19 PANDEMIC (ORDINANCE NOS. 13589 C.M.S., 13594 C.M.S., 13606 C.M.S.); AND AMENDING THE JUST CAUSE FOR EVICTION ORDINANCE TO: (1) PERMANENTLY CODIFY CERTAIN PROTECTIONS ESTABLISHED BY THE MORATORIUM; (2) PROHIBIT EVICTIONS BASED ON NON-PAYMENT OF RENT WHERE THE AMOUNT DEMANDED IS LESS THAN ONE MONTH OF HUD FAIR MARKET RENT; (3) REQUIRE LANDLORDS TO DEMONSTRATE SUBSTANTIAL DAMAGE BEFORE EVICTING TENANTS FOR BREACH OF LEASE; (4) CONFORM OCCUPANCY LIMITATIONS TO STATE LAW; ~~(5) LIMIT EVICTIONS OF RESIDENT MANAGERS WITH PRE-EXISTING TENANCIES; AND (6) AND (5)~~ MAKE OTHER NON-SUBSTANTIVE CLARIFYING AMENDMENTS

WHEREAS, on March 27, 2020, the City Council approved Ordinance No. 13589 C.M.S., which imposed a moratorium on most residential evictions and on rent increases above CPI in response to the COVID-19 pandemic; and

WHEREAS, on May 19, 2020, the City Council approved Ordinance No. 13594 C.M.S., which extended the residential eviction moratorium until August 31, 2020; and

WHEREAS, on July 21, 2020, the City Council approved Ordinance No. 13606 C.M.S., which extended the residential eviction moratorium until the end of the Local COVID-19 Emergency declared by City Council on March 9, 2020; and

WHEREAS, on February 21, 2023, the City Council approved Resolution No. 89600 C.M.S., which renewed and continued the City Council’s Declaration of a Local Emergency due to COVID-19; and

WHEREAS, on March 21, 2023, the City Council approved Ordinance No. 13729 C.M.S., which amended Oakland Municipal Code Chapter 8.50 (Emergency Services Organization and Disaster Council) to require Council to review the need for continuing a local emergency at least once every 60 days, in conformance with state law; and

WHEREAS, the residential eviction moratorium and rent increase moratorium were enacted in response to the COVID-19 pandemic to, among other things, promote housing stability, encourage compliance with shelter-in-place orders, prevent transmission of COVID-19, account for significant financial losses incurred as a result of closures and lost wages, avoid unnecessary displacement and increased homelessness, and otherwise promote public health and safety during a time of unprecedented economic hardship and uncertainty; and

WHEREAS, although the COVID-19 pandemic is not over, significant progress has been made since the moratoriums were first enacted to ameliorate negative impacts of the pandemic, such as through the development of vaccines, the lifting of shelter-in-place orders, and businesses and schools re-opening; and

WHEREAS, the City seeks to establish a timeline for gradually ending the moratoriums, rather than leaving their expiration dates tied to the end of the Local Emergency, the date for which remains uncertain; and

WHEREAS, establishing a set timeline for the gradual termination of the moratoriums will benefit both tenants and landlords by providing advanced notice and predictability as to the future of evictions and rent increases in Oakland; and

WHEREAS, on November 5, 2002, Oakland voters passed the Just Cause for Eviction Ordinance (Measure EE), codified in Chapter 8.22, Article II of the Oakland Municipal Code, establishing various tenant protections and procedures pertaining to residential evictions in Oakland; and

WHEREAS, the Just Cause for Eviction Ordinance plays a crucial role in the City's ongoing efforts to slow, reduce, and prevent displacement and homelessness within the City of Oakland; and

WHEREAS, the Just Cause for Eviction Ordinance applies to most residential rental units in Oakland, with the main exceptions being units constructed within the past 10 years and owner-occupied properties where the owner shares use of kitchen or bath facilities with tenants; and

WHEREAS, the Just Cause for Eviction Ordinance authorizes City Council to modify the Ordinance for the purpose of adding limitations on a landlord's right to evict (O.M.C. 8.22.360F); and

WHEREAS, since the Just Cause for Eviction Ordinance was passed in 2002, voters and City Council have on numerous occasions recognized the need to expand coverage of the

Ordinance by adding additional protections and removing exemptions, and that doing so is in the best interest of the City; and

WHEREAS, Oakland continues to experience a severe housing shortage and an unprecedented number of unhoused or marginally housed residents; and

WHEREAS, the City Council finds that reasonable regulation of aspects of the landlord-tenant relationship is necessary to foster constructive communication, maintain an adequate supply of a variety of rental housing options, and protect the health, safety, and general welfare of the public; and

WHEREAS, forfeiture of a rental agreement is a drastic legal remedy that should be pursued only in drastic circumstances; and

WHEREAS, by limiting evictions for nonpayment of less than one month of rent, City Council seeks to deter actions seeking forfeiture based on a relatively small amount of money to allow tenants an opportunity to become current and maintain their housing; and

WHEREAS, rental agreements frequently contain a myriad of terms and restrictions, many of which are not negotiated by tenants, and it is reasonable to limit the extreme remedy of lease forfeiture to violations that are directly linked to a showing of harm, as opposed to lease violations that are trivial or do not otherwise rise to a level that should trigger the loss of housing; and

WHEREAS, the rental market in the Bay Area is one of the most expensive in the country, and lower income residents frequently need to live together with roommates or family members in order to stay housed and afford rent; to the extent that state law occupancy limits are not exceeded, tenants should be able to live together with others without facing eviction for doing so; and

WHEREAS, a study by Princeton University's Eviction Lab found that the two years after local, state and federal eviction moratoriums were enacted saw the largest drop, nationally, in eviction filings on record, and Oakland's Rent Adjustment Program shows similar data — 6,714 eviction notices were received in FY 2018-19, 4,696 in FY 2019-20, 881 in FY 2020-21, and 807 in FY 2021-22; and

WHEREAS, nearly \$220 million in emergency rental assistance has been committed in Alameda County, including nearly \$60 million in Oakland (Alameda County Housing and Community Development, All City Call presentation, March 17, 2023); and

WHEREAS, the California Housing Finance Agency of the U.S. Department of the Treasury provides assistance for homeowners facing COVID-19 related financial hardships including, mortgage relief up to \$80,000 and property tax assistance up to \$20,000 (<https://camortgagerelief.org/>); and

WHEREAS, robust outreach, education, and support to tenants and property owners about the provisions of this legislation is necessary which requires that the Administration prioritize filling budgeted, vacant positions in the Housing and Community Development Department’s Rental Adjustment Program to provide services to promote housing stability; and

WHEREAS, continued advocacy of County, State, and Federal government partners is necessary to secure additional resources to address the economic and housing impacts of COVID-19 on tenants and property owners; and

WHEREAS, the City Council finds that the Just Cause for Eviction Ordinance is consistent with Civil Code Section 1946.2 (as enacted by the Tenant Protection Act of 2019), and, in comparison to Civil Code Section 1946.2, further limits the reasons for termination of residential tenancy, provides additional tenant protections, and, in conjunction with other City ordinances, provides for higher relocation assistance amounts; and

WHEREAS, the City Council finds that the Just Cause for Eviction Ordinance as amended herein is more protective than the provisions of Civil Code Section 1946.2; and

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

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

SECTION 1. Recitals. The City Council finds the foregoing recitals to be true and correct and hereby incorporates such findings into this ordinance.

SECTION 2. Purpose and Intent. The purpose and intent of this Ordinance is to establish a phasing out of the moratorium on residential evictions, rent increases, and late fees that was enacted in March of 2020 in response to the COVID-19 pandemic. By setting forth a timeline and incremental revocation of the moratorium, the City seeks to provide adequate notice to residential tenants and landlords of the impending termination of the moratorium and to revoke the moratorium in phases to avoid a surge of evictions. The Ordinance also permanently codifies certain protections from the moratorium within the Just Cause For Eviction Ordinance, along with other eviction protections.

SECTION 3. Residential Eviction Moratorium. Section 3 of Ordinance No. 13589 C.M.S., as amended by Ordinance Nos. 13594 C.M.S. and 13606 C.M.S., is hereby repealed and reenacted with amendments, as set forth below (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

Residential Eviction Moratorium. Except when the tenant poses an imminent threat to the health or safety of other occupants of the property, and such threat is stated in the notice as the grounds for the eviction, it shall be an absolute defense to any unlawful detainer action filed under Oakland Municipal Code 8.22.360A subsections (1) - (10) that the notice was served or expired, or that the complaint was filed or served, between March 9, 2020, and August 31, 2023, ~~during the Local Emergency.~~ Any notice served pursuant to ~~Oakland Municipal Code 8.22.360A (1) – (10)~~ on a tenant during the Local Emergency shall include the following statement in bold underlined 12 point font: **“Except to protect the health and safety of other occupants of the property, you may not be evicted during the Local Emergency declared by the City of Oakland in response to the COVID-19 pandemic. This does not relieve you of the obligation to pay back rent in the future. You may contact the Rent Adjustment Program at (510) 238-3721 for additional information and referrals.”** This section shall remain in effect until the Local Emergency declared on March 9, 2020, has been terminated by the City Council.

Notwithstanding the above, effective May 2, 2023, this defense shall not apply in unlawful detainer actions filed pursuant to Oakland Municipal Code 8.22.360A(9) (owner or qualified relative move-in) if the unit is the only rental unit owned by the landlord in Oakland, and in unlawful detainer actions filed pursuant to Oakland Municipal Code 8.22.360A(1) (nonpayment of rent) where the rent demanded first became due on or after May 1, 2023.

SECTION 4. Rent Increase Moratorium. Section 4 of Ordinance No. 13589 C.M.S., as amended by Ordinance Nos. 13594 C.M.S. and 13606 C.M.S., is hereby repealed and reenacted with amendments, as set forth below (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

Rent Increase Moratorium. For rental units regulated by Oakland Municipal Code 8.22.010 et seq, any notice of rent increase in excess of the CPI Rent Adjustment, as defined in Oakland Municipal Code Section 8.22.020, shall be void and unenforceable if the notice is served or has an effective date between March 9, 2020, and June 30, 2024 ~~during the Local Emergency,~~ unless required to provide a fair return. ~~Any notice of rent increase served during the Local Emergency include the following statement in bold underlined 12 point font:~~ **“During the Local Emergency declared by the City of Oakland in response to the COVID-19 pandemic, your rent may not be increased in excess of the CPI Rent Adjustment (3.5% until June 30, 2020), unless required for the landlord to obtain a fair return. You may contact the Rent Adjustment Program at (510) 238-3721 for additional information and referrals.”**

SECTION 5. Late Fee Moratorium. Section 5 of Ordinance No. 13589 C.M.S., as amended by Ordinance Nos. 13594 C.M.S. and 13606 C.M.S., is hereby repealed and reenacted with amendments, as set forth below (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

Late Fee Moratorium. Notwithstanding any lease provision to the contrary, for residential tenancies, no late fees may be imposed for rent that became due between March 9, 2020, and August 31, 2023 ~~during the Local Emergency~~ if the rent was late for reasons resulting from the COVID-19 pandemic. This includes, but is not limited to (1) the tenant was sick or incapacitated due to COVID-19, or was complying with a recommendation from a governmental agency to self-quarantine, (2) the tenant suffered a substantial reduction in household income because of a loss of employment or a reduction in hours, or because they were unable to work because they were caring for their child(ren) who were out of school or a household or family member who was sick with COVID-19, or because they were complying with a recommendation from a government agency to self-quarantine, and (3) the tenant incurred substantial out-of-pocket medical expenses caused by COVID-19. ~~Any notice demanding late fees for rent that became due during the Local Emergency shall include the following statement in bold underlined 12-point font:~~ **“You are not required to pay late fees for rent that became due during the Local Emergency declared by the City of Oakland in response to the COVID-19 pandemic if the rent was late for reasons related to the pandemic. You may contact the Rent Adjustment Program at (510) 238-3721 for additional information and referrals.”**

SECTION 6. Evictions for Nonpayment of Rent. Section 7 of Ordinance No. 13589 C.M.S., as amended by Ordinance Nos. 13594 C.M.S. and 13606 C.M.S., is hereby repealed and reenacted with amendments, as set forth below (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

No Residential Eviction for Nonpayment of Rent that Became Due During the Local Emergency. In any action for unlawful detainer filed under Oakland Municipal Code 8.22.360.A.1, it shall be a defense that the unpaid rent became due between March 9, 2020, and August 31, 2023 ~~during the Local Emergency~~ and was unpaid because of a substantial reduction in household income or substantial increase in expenses resulting from the Coronavirus pandemic. This includes, but is not limited to, where, as a result of the Coronavirus pandemic, the tenant suffered a loss of employment or a reduction in hours, or was unable to work because their children were out of school, or was unable to work because they were sick with COVID-19 or caring for a household or family member who was sick with COVID-19, or they were complying with a recommendation from a government agency to self-quarantine, or they incurred substantial out of pocket medical expenses due to COVID-19. ~~Any notice served on a residential tenant demanding rent that became due during the Local Emergency shall include the following statement in bold underlined 12-point type:~~ **“You may not be evicted for rent that became due during the Local Emergency if the rent was unpaid because of a substantial reduction in household income or a substantial increase in expenses related to the Coronavirus pandemic. This does not relieve you of the obligation to pay back rent in the future. You may contact the Rent Adjustment Program at (510) 238-3721 for additional information and referrals.”** Nothing in this subsection shall relieve the tenant of liability for the unpaid rent.

SECTION 7. Amendments to Section 6 of the Just Cause for Eviction Ordinance (Measure EE) (O.M.C. Section 8.22.360). Added text is shown as double underlined type; deleted text is shown as ~~strikethrough~~ type.

8.22.360- Good cause required for eviction.

- A. No landlord shall endeavor to recover possession, issue a notice terminating tenancy, or recover possession of a rental unit in the city of Oakland unless the landlord is able to prove the existence of one of the following grounds:
1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under provisions of state or local law, and said failure has continued after service on the tenant of a written notice correctly stating the amount of rent then due and requiring its payment within a period, stated in the notice, of not less than three days. However, this subsection shall not constitute grounds for eviction where tenant has withheld rent pursuant to applicable law or where the amount of rent demanded is less than one month of fair market rent for a unit of equivalent size in the Oakland metro area as determined by the U.S. Department of Housing and Urban Development.
 2. The tenant has continued, after written notice to cease, to substantially violate a material term of the tenancy other than the obligation to surrender possession on proper notice as required by law. To establish a substantial violation of a material term of the tenancy, the landlord must demonstrate all of the following: (1) that the tenant's lease violation caused substantial actual damage to the landlord or other tenants, (2) that the tenant's behavior was unreasonable, and (3) that the term of tenancy is reasonable, legal, and was accepted in writing by the tenant.
 - a. Notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit as a result of subletting of the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet following a written request by the tenant, so long as the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord.
 - b. Notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit based on the addition of occupants to the rental unit if the landlord has unreasonably refused a written request by the tenant to add such occupant(s) to the unit, so long as the maximum number of occupants does not exceed the lesser of the amounts allowed by Subsection (i) or (ii) of this Section 8.22.360A.2.b. If the landlord fails to respond in writing with a description of the reasons for the denial of the request within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord. However, for units restricted as affordable housing as defined by O.M.C. Section 15.72.030, a written resident request to add an occupant shall be deemed incomplete and inadequate until such resident has

provided all documentation required for qualification of such additional occupant and the household after the addition of such occupant under the rules restricting the housing. A landlord's reasonable refusal of the tenant's written request may not be based on either of the following: (1) the proposed additional occupant's lack of creditworthiness, if that person will not be legally obligated to pay some or all of the rent to the landlord, or (2) the number of occupants allowed by the rental agreement or lease. With the exception of the restrictions stated in the preceding sentence, a landlord's reasonable refusal of the tenant's written request may be based on, but is not limited to, the ground that the landlord resides in the same unit as the tenant or the ground that the total number of occupants in a unit exceeds (or with the proposed additional occupant(s) would exceed) ~~the lesser of (i) or (ii):~~

- ~~(i) Two persons in a studio unit, three persons in a one-bedroom unit, four persons in a two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four-bedroom unit;~~
- ~~(ii) The the maximum number permitted in the unit under state law and/or other local codes such as the Building, Fire, Housing and Planning Codes.~~

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

- c. Before endeavoring to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with a minimum of fourteen (14) days opportunity to cure the violation. The tenant may cure the violation by making a written request to add occupants referenced in Subsection a or b of Section 8.22.360 A.2. or by using other reasonable means to cure the violation, including, without limitation, the removal of any additional or unapproved occupant. Nothing in this Section 8.22.360 A.2.c. is intended to limit any other rights or remedies that the law otherwise provides to landlords or tenants.

d. For purposes of this section, failure to comply with income recertification requirements for deed-restricted affordable housing units shall be presumed to substantially violate a material term of the tenancy.

- 3. Reserved.
- 4. The tenant has willfully caused substantial damage to the premises beyond normal wear and tear and, after written notice, has refused to cease damaging the premises, or has refused to either make satisfactory correction or to pay the reasonable costs of repairing such damage over a reasonable period of time.

5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants at the property.
6. The tenant has used the rental unit or the common areas of the premises for an illegal purpose including the manufacture, sale, or use of illegal drugs. Residing in a rental unit that lacks a certificate of occupancy, has not been approved by the city for residential use, or that has been cited for housing, building, or planning code violations does not constitute use of the premises for an illegal purpose.
7. The tenant has, after written notice to cease, continued to deny landlord access to the unit as required by state law.
8. The owner of record seeks in good faith, without ulterior reasons and with honest intent, to recover possession of the rental unit for their own occupancy as a principal residence where the owner has previously occupied the rental unit as their principal residence and has the right to recover possession for their occupancy as a principal residence under a written rental agreement with the current tenants.
9. The owner of record seeks in good faith, without ulterior reasons and with honest intent, to recover possession for their own use and occupancy as their principal residence, or for the use and occupancy as a principal residence by the owner of record's spouse, domestic partner, child, parent, or grandparent.
 - a. Where the owner of record recovers possession under this Subsection (9) [Paragraph 8.22.360 A.9], and where continuous occupancy for the purpose of recovery is less than thirty-six (36) months, such recovery of the residential unit shall be a presumed violation of this Chapter.
 - b. The owner of record may not recover possession pursuant to this subsection more than once in any thirty-six (36) month period,
 - c. The owner must move in to unit within three (3) months of the tenant's vacation of the premises. Such time period may be extended for good cause upon application to, and approval by, the Rent Adjustment Program.
 - d. Reserved.
 - e. A landlord may not recover possession of a unit from a tenant under Subsection 6(A)(9) [8.22.360 A.9], if the landlord has or receives notice, any time before recovery of possession, that any tenant in the rental unit:
 - i. Has been residing in the unit for five (5) years or more; and
 - (a) Is sixty (60) years of age or older; or
 - (b) Is a disabled tenant as defined in the California Fair Employment and Housing Act (California Government Code § 12926); or
 - ii. Has been residing in the unit for five (5) years or more, and is a catastrophically ill tenant, defined as a person who is disabled as defined by Subsection (e)(i)(b) [8.22.360 A.9.e.i.b]] and who suffers from a life threatening illness as certified by their primary care physician.

- f. The provisions of Subsection (e) [8.22.360 A.9.e] above shall not apply where the landlord's qualified relative who will move into the unit is 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 with the Rent Board. In the Rent Board hearing, the tenant shall have the burden of proof to show protected status. No civil or criminal liability shall be imposed upon a landlord for challenging a tenant's claim of protected status. The Rent Board shall adopt rules and regulations to implement the hearing procedure.
 - h. Once a landlord has successfully recovered possession of a rental unit pursuant to Subsection 6(A)(9) [8.22.360 A.9], no other current landlords may recover possession of any other rental unit in the building under Subsection 6(A)(9) [8.22.360 A.9]. Only one specific unit per building may undergo a Subsection 6(A)(9) [8.22.360 A.9] eviction. Any future evictions taking place in the same building under Subsection 6(A)(9) [8.22.360 A.9] must be of that same unit, provided that a landlord may file a petition with the Rent Board or, at the landlord's option, commence eviction proceedings, claiming that disability or other similar hardship prevents the landlord from occupying a unit which was previously the subject of a Subsection 6(A)(9) [8.22.360 A.9] eviction. The Rent Board shall adopt rules and regulations to implement the application procedure.
 - i. A notice terminating tenancy under this Subsection must contain, in addition to the provisions required under Subsection 6(B)(6) [8.22.360B.6] ~~6(B)(5) [8.22.360 B.5]~~:
 - i. A listing of all property owned by the intended future occupant(s).
 - ii. The address of the real property, if any, on which the intended future occupant(s) claims a homeowner's property tax exemption.
 - j. If the owner or relative specified on the notice terminating tenancy fails to occupy the rental unit for at least a consecutive thirty-six month period, or fails to occupy the rental unit within ninety days after the tenant vacates, absent Subsection (c), the owner shall do the following:
 - i. Offer the unit to the tenant who vacated it at the same rent in effect at the time the tenant vacated; and
 - ii. Pay to said tenant all reasonable expenses incurred in returning to the unit, including lease termination fees, if any. This subsection does not limit any other remedies a tenant may have under this Chapter or other applicable law.
10. The owner of record, after having obtained all necessary permits from the City of Oakland on or before the date upon which notice to vacate is given, seeks in good faith

to undertake substantial repairs that cannot safely be completed while the unit is occupied, and that are necessary either to bring the property into compliance with applicable codes and laws affecting health and safety of tenants of the building, or under an outstanding notice of code violations affecting the health and safety of tenants of the building.

- a. As soon as the tenant vacates the rental unit, the owner of record shall proceed without unreasonable delay to complete the needed repairs. The tenant shall not be required to vacate pursuant to this section, for a period in excess of three months; provided, however, that such time period may be extended ~~by the Rent Board upon application by the landlord for good cause upon application to, and approval by, the Rent Adjustment Program.~~ The Rent Board shall adopt rules and regulations to implement the application procedure.
 - b. Upon completion of the needed repairs, the owner of record shall offer the tenant the first right to return to the premises at the same rent and pursuant to the same terms of the rental agreement in effect as of the date of the notice to vacate, subject to the owner of record's right to petition the Rent Adjustment Program for a rent increase as provided by the Residential Rent Adjustment Ordinance.
 - c. A notice to vacate under this Subsection 6(A)(10) [8.22.360 A.10] must include the following information:
 - i. A statement informing tenants as to their right to payment under the Oakland Relocation Ordinance.
 - ii. A statement that "When the needed repairs are completed on your unit, the landlord must offer you the opportunity to return to your unit with a rental agreement containing the same terms as your original one and with the same rent (although landlord may be able to obtain a rent increase under the Oakland Residential Rent Arbitration Ordinance [O.M.C. Chapter 8.22, Article I)."
 - iii. A list of the code violations necessitating substantial repairs, a detailed description of the work to be performed, the permit numbers of any and all permits obtained to affect the required repairs, and a copy of the City-issued notice of code violations, if any.
 - iv. A good faith estimate of the time required to complete the repairs and the date upon which it is expected that the unit will be ready for habitation.
11. The owner of record seeks to remove the property from the rental market in accordance with the terms of the Ellis Act (California Government Code Section 7060 et seq.).
- B. The following additional provisions shall apply to a landlord who seeks to recover a rental unit pursuant to Subsection 6(A) [8.22.360 A]:
1. The burden of proof shall be on the landlord in any eviction action to which this order is applicable to prove compliance with Section 6 [8.22.360].
 2. A landlord shall not endeavor to recover possession of a rental unit unless at least one of the grounds enumerated in Subsection 6(A) [8.22.360 A] above is stated in the

notice and that ground is the landlord's dominant motive for recovering possession and the landlord acts in good faith in seeking to recover possession.

3. Where a landlord seeks to evict a tenant under a just cause ground specified in Subsections 6(A)(7, 8, 9, 10, 11) [8.22.360 A.7, 8, 9, 10, 11], the landlord must do so according to the process established in CCC § 1946 (or successor provisions providing for a 30 or 60 day notice period); where a landlord seeks to evict a tenant for the grounds specified in Subsections 6(A)(1, 2, 3, 4, 5, 6) [8.22.360 A.1, 2, 3, 4, 5, 6], the landlord must do so according to the process established in CCP § 1161 (or successor provisions providing for 3 day notice period).
4. Any written notice as described in Subsection 6(A)(2, 3, 4, 5, 7) [8.22.360 A.2, 3, 4, 7] shall be served by the landlord prior to a notice to terminate tenancy and shall include a provision informing tenant that a failure to cure may result in the initiation of eviction proceedings.
5. Subsection 6(B)(3) [8.22.360 B.3] shall not be construed to obviate the need for a notice terminating tenancy to be stated in the alternative where so required under CCP § 1161.
6. A notice terminating tenancy must additionally include the following:
 - a. A statement setting forth the basis for eviction, as described in Subsections 6(A)(1) [8.22.360 A.1] through 6(A)(11) [8.22.360 A.11];
 - b. A statement that advice regarding the notice terminating tenancy is available from the ~~Rent Board~~ Rent Adjustment Program (RAP), along with information about how the tenant may seek assistance, including the RAP phone number and email address.
 - c. Where an eviction is based on the ground specified in Subsection 6(A)(9) [8.22.360 A.9], the notice must additionally contain the provisions specified in Subsection 6(A)(9)(i) [8.22.360 A.9.i] and a statement informing tenants of the limitations on evictions as set forth in Subsection 6(D)(8) [8.22.360D.8].
 - d. Where an eviction is based on the ground specified in Subsection 6(A)(10) [8.22.360 A.10], the notice must additionally contain the provisions specified in Subsection 6(A)(10)(c) [8.22.360 A.10] and a statement informing tenants of the limitations on evictions as set forth in Subsection 6(D)(8) [8.22.360D.8].
 - e. Failure to include any of the required statements in the notice shall be a defense to any unlawful detainer action.
7. Within ten (10) days of service of a notice terminating tenancy upon a tenant, a copy of the same notice and any accompanying materials must be filed with the Rent Board. Each notice shall be indexed by property address and by the name of the landlord. Such notices shall constitute public records of the City of Oakland, and shall be maintained by the Rent Board and made available for inspection during normal business hours. Failure to file the notice within ten (10) days of service shall be a defense to any unlawful detainer action.

C. Reserved.

- D. Substantive limitations on landlord's right to evict. This Subsection 8.22.360 D. is intended as both a substantive and procedural limitation on a landlord's right to evict.
1. In any action to recover possession of a rental unit pursuant to Section 6 [8.22.360], a landlord must allege and prove the following:
 - a. the basis for eviction, as set forth in Subsection 6(A)(1) through 6(A)(11) [8.22.360 A.1 ~~though~~ through 8.22.360 A.11] above, was set forth in the notice of termination of tenancy or notice to quit; and
 - b. that the landlord seeks to recover possession of the unit with good faith, honest intent and with no ulterior motive;
 2. If landlord claims the unit is exempt from this ordinance, landlord must allege and prove that the unit is covered by one of the exceptions enumerated in Section 5 [8.22.350] of this Chapter. Such allegations must appear both in the notice of termination of tenancy or notice to quit, and in the complaint to recover possession, and must specify on what grounds exemption is claimed. Failure to make such allegations in the notice shall be a defense to any unlawful detainer action.
 3. A landlord's failure to comply with the obligations described in Subsections (D)(1) or (2) [~~site~~] [8.22.360 D.1. or 8.22.360 D.2.] shall be a defense to any action for possession of a rental unit.
 4. In any action to recover possession of a rental unit filed under subsection 8.22.360 A.1, it shall be a defense if the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party as long as either the landlord or the tenant provide written notice that no new tenancy is intended.
 5. A landlord's failure to fully comply with any applicable law requiring payment of relocation benefits to the tenant, such as those provided by Articles III, VII, and VIII of this Chapter and Chapter 15.60 of the Oakland Municipal Code, including but not limited to required notice, amount, timing, and any other requirement necessary to withdraw or repair a unit shall be a defense to any action for possession of a rental unit.
 6. Notwithstanding any change in the terms of a tenancy pursuant to Civil Code Section 827, a tenant may not be evicted for a violation of a covenant or obligation that was not included in the tenant's written or oral rental agreement at the inception of the tenancy unless: (1) the change in the terms of the tenancy is authorized by the Rent Ordinance or California Civil Code Sections 1947.5 or 1947.12, or required by federal, state, or local law, or regulatory agreement with a government agency; or (2) the change in the terms of the tenancy was accepted in writing by the tenant after receipt of written notice from the landlord that the tenant need not accept such new term as part of the rental agreement and in exchange for valid consideration.
 7. In any action to recover possession of a rental unit filed under Subsections 8.22.360 A.1.—10., it shall be a defense if the landlord was not in compliance with ~~failed to~~

~~substantially comply with~~ O.M.C. 8.22.510 at the time the notice terminating tenancy was served.

8. When a landlord seeks to evict a tenant under Subsection 6(A)(9) or (10) [8.22.360 A.9, 10], it shall be an affirmative defense if any child under the age of 18 enrolled in a school or any educator resides in the unit, the child or educator is a tenant in the unit or has a custodial or family relationship with a tenant in the unit, the tenant has resided in the unit for at least 90 days, and the effective date of the notice of termination of tenancy falls during the regular school year of the Oakland Unified School District.
 - a. For purposes of this Section, the following terms shall have the following meanings:
 - i. “Custodial relationship” means that the person is a legal guardian of the child, has a court-recognized caregiver authorization affidavit for the child, or has provided full-time custodial care of the child pursuant to an agreement with the child’s legal guardian or court-recognized caregiver and has been providing that care for at least one year or half of the child’s lifetime, whichever is less.
 - ii. “Educator” means any person who works on-site at a school in Oakland as an employee of the school or of the Oakland Unified School District, including, without limitation, all teachers, classroom and student support providers, school administrators and administrative staff, counselors, social workers, school health services workers, speech pathologists, custodial or maintenance workers, nutrition and/or food services workers, library services workers, child welfare workers, and attendance liaisons.
 - iii. “Family relationship” means that the person is the parent, grandparent, sibling, niece, nephew, aunt, or uncle of the child or educator, or the spouse or domestic partner of such relation.
 - iv. “School” for purposes of this Section means any state-licensed child care center, state-licensed family child care home, accredited community or junior college, and/or any public, private, or parochial institution that provides educational instruction for students in any or all of the grades from kindergarten through twelfth grade.

~~9.~~ In any action to recover possession of a rental unit from a resident manager or other employee of the landlord due to termination of employment, it shall be a defense if the resident manager or other employee was a tenant at the property prior to assuming the role of manager or employee. The terms of tenancy in effect prior to employment shall be reinstated, subject to any rent increase allowed pursuant to O.M.C. 8.22.070 B.

~~9-10.~~ Nonpayment of rent during COVID-19 pandemic. In an any unlawful detainer action based on nonpayment of rent or late fees that accrued between March 9, 2020, and August 31, 2023, it shall be a defense that the rent was late or unpaid because of a substantial reduction in household income or substantial increase in expenses resulting

from the Coronavirus pandemic. Any notice demanding rent or late fees that accrued during this time period must:

- a. be served together with a form developed by the Rent Adjustment Program that, among other things, allows the tenant to indicate that the financial hardship defense applies; and
 - b. include the following statement in bold underlined 12-point font: “If you were unable to pay the rent or other fees demanded in this notice due a substantial reduction in household income or substantial increase in expenses as a result of the COVID-19 pandemic, you may raise this as a defense to any eviction action based on this notice.”
- E. In the event that new state or federal legislation confers a right upon landlords to evict tenants for a reason not stated herein, evictions proceeding under such legislation shall conform to the specifications set out in this Chapter [O.M.C. Chapter 8.22, Article II].
- F. The City Council is authorized to modify the Just Cause for Eviction Ordinance (Measure EE, O.M.C., Chapter 8, Article II (8.22.300 et seq.)) for the purpose of adding limitations on a landlord's right to evict, but the City Council may not modify any exemption from the ordinance from which this section is derived contained in Section 8.22.350.

SECTION 8. Outreach. City Council directs the City Administrator to conduct robust outreach, education, and support to tenants and property owners about the provisions of this legislation.

SECTION 9. Direction to the City Administrator. City Council directs the City Administrator to prioritize the filling of vacant, budgeted positions in the Housing and Community Development Department that help ensure services to promote housing stability. These vacant, budgeted positions include: the following positions in the Rental Adjustment Program — one (1) Rental Adjustment Program Assistant Manager, two (2) Program Analysts II, one (1) Administrative Analyst I, and one (1) Administrative Assistant, as well as one (1) Monitoring Supervisory and Program Analyst II in the Community Development and Engagement unit. These positions are supported by dedicated funds, not the General Purpose Fund. City Council also directs the City Administrator to seek additional financial resources to address the economic and housing impacts of COVID-19 on tenants and property owners.

SECTION 10. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 11. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

SECTION 12. Direction to Rent Board. The City Council directs the City Administrator to work with the Rent Board to revise the Just Cause for Eviction Ordinance Regulations to implement newly added Just Cause provisions including, but not limited to, establishing further guidance on what constitutes “substantial actual damage” pursuant to O.M.C. 8.22.360A2.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES –
ABSENT –
ABSTENTION –

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

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE ESTABLISHING A TIMELINE FOR TERMINATION OF THE MORATORIUM ON RESIDENTIAL EVICTIONS, RENT INCREASES, AND LATE FEES ENACTED IN RESPONSE TO THE COVID-19 PANDEMIC (ORDINANCE NOS. 13589 C.M.S., 13594 C.M.S., 13606 C.M.S.); AND AMENDING THE JUST CAUSE FOR EVICTION ORDINANCE TO: (1) PERMANENTLY CODIFY CERTAIN PROTECTIONS ESTABLISHED BY THE MORATORIUM; (2) PROHIBIT EVICTIONS BASED ON NON-PAYMENT OF RENT WHERE THE AMOUNT DEMANDED IS LESS THAN ONE MONTH OF HUD FAIR MARKET RENT; (3) REQUIRE LANDLORDS TO DEMONSTRATE SUBSTANTIAL DAMAGE BEFORE EVICTING TENANTS FOR BREACH OF LEASE; (4) CONFORM OCCUPANCY LIMITATIONS TO STATE LAW; ~~(5) LIMIT EVICTIONS OF RESIDENT MANAGERS WITH PRE-EXISTING TENANCIES; AND (6) AND (5)~~ MAKE OTHER NON-SUBSTANTIVE CLARIFYING AMENDMENTS

This Ordinance would establish a timeline for ending the moratorium on residential evictions, rent increases, and late fees that has been in effect since March 27, 2020, in response to the COVID-19 pandemic. The current eviction moratorium prohibits most forms of residential evictions and is scheduled to end when the Local Emergency is terminated by City Council—a date that remains uncertain. This Ordinance would allow evictions based on O.M.C. 8.22.360A(1) (non-payment of rent) and O.M.C. 8.22.360A(9) (owner or relative move-in) to proceed immediately upon passage. All other evictions would be allowed to proceed as of September 1, 2023. The late fee moratorium would also end as of September 1, 2023. The Ordinance would terminate the rent increase moratorium as of ~~July~~ ~~March~~ 1, 2024. Permanent amendments to the Just Cause for Eviction Ordinance (O.M.C. 8.22.300 et seq.) include: codification of the defense for nonpayment of rent accrued during the moratorium that was unpaid due to pandemic-related reasons; limiting nonpayment evictions where the amount demanded is less than one month of HUD fair market rent; clarifying that landlords must demonstrate harm in order to evict for lease violations; conformity of occupancy standards to state law; protections for resident managers; and other non-substantive clarifications.