



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

**INTRODUCED BY COUNCIL PRESIDENT FORTUNATO BAS AND VICE MAYOR
KAPLAN**

EMERGENCY ORDINANCE DECLARING A SHELTER CRISIS IN THE CITY OF OAKLAND; MAKING FINDINGS THAT A SIGNIFICANT NUMBER OF PERSONS ARE WITHOUT THE ABILITY TO OBTAIN SHELTER, AND THAT THE SITUATION HAS RESULTED IN A THREAT TO THE HEALTH AND SAFETY OF THOSE PERSONS; AND AUTHORIZING THE CITY ADMINISTRATOR TO SUSPEND PROVISIONS OF STATE OR LOCAL REGULATORY STATUTES, REGULATIONS, AND ORDINANCES PRESCRIBING STANDARDS OR PROCEDURES RELATING TO HOUSING, HEALTH, OR SAFETY FOR ADDITIONAL SHELTER FACILITIES IF NEEDED; AND MAKING CALIFORNIA ENVIRONMENTAL QUALITY ACT EXEMPTION FINDINGS

WHEREAS, the City acknowledges that it is facing a serious affordable housing crisis with thousands of residents living in unhoused or in substandard housing conditions; and

WHEREAS, the number of homeless persons in the City of Oakland continues to increase, with the latest 2019 point-in-time count of 4,071 individuals experiencing homelessness in Oakland, an increase of 1,310 individuals (+47%) from 2017, with the largest growth in people living in their RVs and cars, and this number is likely to increase given the substantial upward pressure of residential rents; and

WHEREAS, COVID-19, a highly infectious virus, was first identified in late 2019 and is marked by severe and acute respiratory illness that has overwhelmed hospitals across the world and whose mortality rates disproportionately impact older individuals and those with underlying diseases; and

WHEREAS, the Center for Disease Control has stated, in relation to COVID-19, that the “lack of housing contributes to poor health outcomes, and linkage to permanent housing should continue to be a priority;” and

WHEREAS, the shelter crisis exists substantially across the City of Oakland, and has been heightened by the COVID-19 pandemic; and

WHEREAS, the shelter crisis exposes houseless and often disabled elders, individuals, and families to the risk of death, illness and injury due to disease, physical threats, exposure to weather and rodents, lack of adequate sanitation and debris services, as well as regular involuntary removal and disposal of personal belonging, forced migration to other parts of the City or outside of the City, and extreme emotional trauma and other conditions that are detrimental to their health and safety; and

WHEREAS, this shelter crisis affects Oakland's citizens disproportionately with more African American, Latino and elderly individuals experiencing homelessness; and

WHEREAS, the long term and recent decreases in Federal and State funding for housing programs has resulted in an erosion of shelter options for the most vulnerable populations including the elderly, youth, victims of domestic violence, sexually exploited minors and persons suffering from mental illness, HIV/AIDS, substance abuse and disabilities; and

WHEREAS, the current number of homeless individuals in Oakland far outpaces the number of existing shelter beds, transitional housing or permanent supportive housing units available; and

WHEREAS, unauthorized homelessness encampments have increased substantially across Oakland, within the public right of way, thus exposing homeless individuals to traffic hazards, increased vulnerability to crime, risk of death and injury, exposure to weather, lack of adequate sanitation and debris services and other conditions that are detrimental to their health and safety; and

WHEREAS, Oakland residents are being affected by the increasing number of unsheltered individuals with regard to traffic and pedestrian safety, lack of sanitation and debris services; and

WHEREAS, analysis and evidence has demonstrated that providing decent, safe and stable housing combined with crucial support services are two primary components of successful transition from homelessness to a safer and healthier way of living; and

WHEREAS, the City Council has committed an increased number of resources to addressing this homelessness crisis in the adopted FY 2021-23 City Biennial Budget, Resolution No. 88717 C.M.S., and both the City of Oakland and Alameda County voters passed capital bonds devoted to housing, including providing more permanent supportive housing and transitional housing to serve the unsheltered population; and

WHEREAS, the City Council finds that urgent and expeditious efforts are necessary to develop additional shelter solutions that are safe and meet basic habitability standards, and that flexibility and broad-based approaches are essential to increase capacity, particularly given the funding and staff resources that have been committed; and

WHEREAS, the City Council previously approved Ordinance No. 13456 C.M.S. declaring a shelter crisis on October 3, 2017, expiring on October 3, 2019; and

WHEREAS, on October 1, 2019, the City Council passed Ordinance No. 13564, extending the previous declaration of a shelter crisis for another two years until October 1, 2021; and

WHEREAS, Ordinance No. 13564 declaring a shelter crisis was adopted pursuant to California Government Code Section 8698 *et seq.*, and specifically section 8698.4, which allows the governing body of the City of Oakland to declare a shelter crisis when a significant number of persons are without the ability to obtain shelter, resulting in a threat to their health and safety; and

WHEREAS, California Government Code Section 8698.2 provides that, upon a declaration of a shelter crisis, a city may allow persons unable to obtain housing to occupy designated public facilities (including facilities leased by the city) during the duration of the crisis; and

WHEREAS, California Government Code Section 8698.4 provides that, upon a declaration of a shelter crisis, the City may apply reasonable local standards and procedures for the design, site development, and operation of homeless shelters and emergency housing that the City adopts by an ordinance reviewed and approved by the State Department of Housing and Community Development (HCD); and

WHEREAS, California Government Code Section 8698.4(a)(2)(A)(ii) provides that during the period in which the City of Oakland has adopted a shelter crisis, and provided that the City has adopted and complies with such health and safety standards and procedures approved by HCD consistent with ensuring minimal public health and safety, the provisions of any housing, health, habitability, planning and zoning, or safety standards, procedures, or laws shall be suspended for homeless shelters, and landlord tenant laws providing a cause of action for habitability or tenantability shall be suspended for homeless shelters; and

WHEREAS, California Government Code Section 8698.4 provides that during a declaration of a shelter crisis, the local and state law requirements for homeless shelters to be consistent with local land use plans and the General Plan shall be suspended; and

WHEREAS, on May 21, 2019, after review and approval by HCD, the City Council adopted an Ordinance for Emergency Building Standards Amendments to the 2016 California Building Standards Code that incorporated emergency building standards for emergency housing buildings and facilities, including health and safety standards for recreational vehicles, emergency sleeping cabins, membrane structures, and other emergency housing on property owned or leased by the City of Oakland; and

WHEREAS, Statewide building standards for emergency housing were incorporated into the 2019 California Building Code through Appendix O, and the 2019 California Residential Code through Appendix X, and on December 10, 2019, the City Council passed Ordinance No. 13576 adopting the Emergency Housing appendices, including local amendments that had been previously approved by HCD; and

WHEREAS, on June 4, 2019, upon recommendation from the City of Oakland Planning Commission, the City Council adopted an Ordinance Amending the Oakland Planning Code to allow “Emergency Shelter Residential Activities” and “Emergency Housing Facilities,” including recreational vehicles and other emergency housing, on property designated by the City Administrator and owned or leased by the City; and

WHEREAS, the City Council finds that the suspension of local laws within the meaning of California Government Code Section 8698.4 may include suspension of provisions in Oakland Municipal Code ("OMC") Chapter 8.22 related to residential rent adjustments and evictions, in order to provide appropriate shelter without establishing tenancy; and

WHEREAS, pursuant to section 213 of the Oakland City Charter, an ordinance declared by the Council to be necessary for preserving the public peace, health, or safety in an emergency, and containing a statement of the reasons constituting such necessity, may be introduced and adopted at the same meeting if passed by the affirmative vote of at least six members;

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

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Emergency Ordinance.

SECTION 2. The City Council hereby finds that a significant number of persons in Oakland are without the ability to obtain shelter, and that this situation has resulted in a threat to the health and safety of these persons, for the reasons set forth above and in the staff report accompanying this Ordinance. The Council therefore hereby declares a shelter crisis in the City of Oakland under the authority set forth in California Government Code Section 8698, et seq.

SECTION 3. The Council hereby authorizes the City Administrator or his designee to allow persons unable to obtain housing to occupy designated City facilities or facilities leased by the City as shelters during the period of this crisis.

SECTION 4. For the term of this Emergency Ordinance, the City Administrator is hereby authorized in his discretion to suspend provisions of state and local standards or laws prescribing standards or procedures relating to housing, health, or safety as needed for the establishment of emergency housing to the extent that strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis, provided that the City complies with the adopted health and safety standards approved by HCD.

SECTION 5. The Council hereby authorizes the City Administrator to designate sites appropriate for emergency housing activities and facilities on properties owned or leased by the City.

SECTION 6. The Council determines that the emergency provisions of Section 15.04.3.2.095 of the Oakland Building Code, Section 15.04.3.25.150 of the Oakland Residential Code, and Section 17.07.060 of the Oakland Planning Code apply for the duration of this declaration of shelter crisis, to all properties owned or leased by the City and designated by the City Administrator as appropriate for emergency housing activities and facilities.

SECTION 7. The Council hereby authorizes the City Administrator or his designee to designate allowable parking sites for individuals living in inoperable vehicles, to use City funds to tow such vehicles to these sites, and to identify funds to assist in repair of vehicles to make them operable during the period of this crisis. Until such designated allowable parking is identified, the City shall refrain from towing such vehicles.

SECTION 8. The Council directs the City Administrator to report to the Senate Committee on Transportation and Housing and the Assembly Committee on Housing and Community Development the information required by California Government Code Section 8968.4(a)(6), including but not limited to the total number of residents in homeless shelters in the City of Oakland, the estimated number of permanent supportive housing units, the number of residents who have exited the system, and new actions the City is taking to better serve the homeless population.

SECTION 9. To the extent this Emergency Ordinance is inconsistent with any other provisions of the Oakland Municipal Code or the Oakland Planning Code, this Ordinance shall apply. This Ordinance suspends contrary regulations in the Oakland Municipal Code or Planning Code or requirements of the General Plan or implementing regulations.

SECTION 10. That the City Council hereby finds and determines, after independent review and consideration, as supported by substantial evidence in the record and for the reasons set forth in this Ordinance, and, each as a separate and independent basis, that the actions authorized by this Ordinance are exempt from additional review and analysis under the California Environmental Quality Act (“CEQA”) and the CEQA Guidelines (Cal. Code Regs., title 14, section 15000 et seq.) under CEQA Guidelines Section 15303 (New Construction of Conversion of Small Structures), Section 15304 (Minor Alterations to Land), Section 15311 (Accessory Structures), Section 15332 (In Fill Development Projects), and/or under the statutory CEQA exemption embodied in Government Code section 8698.4(a)(4). Each of the foregoing provides a separate and independent basis for CEQA compliance and, when viewed collectively, provides an overall basis for CEQA compliance.

SECTION 11. The Council hereby declares that this Emergency Ordinance is necessary for preserving the public health and safety for the reasons stated herein, and there is a necessity to immediately pass this Emergency Ordinance pursuant to the powers given to the City Council under Section 213 of the City Charter. This Ordinance shall be effective immediately upon its adoption by an affirmative vote of six members of the City Council pursuant to City Charter section 213.

SECTION 12. This Emergency Ordinance is enacted pursuant to the City of Oakland’s general police powers, Section 106 of the Charter of the City of Oakland, and Article XI of the California Constitution, as well as the other provisions of state and local law otherwise cited herein.

SECTION 13. This Emergency Ordinance shall remain in place for a period of two years from the date of passage.

SECTION 14. If any section, subsection, sentence, clause or phrase of this Emergency 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 Emergency 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.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO 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

EMERGENCY ORDINANCE DECLARING A SHELTER CRISIS IN THE CITY OF OAKLAND; MAKING FINDINGS THAT A SIGNIFICANT NUMBER OF PERSONS ARE WITHOUT THE ABILITY TO OBTAIN SHELTER, AND THAT THE SITUATION HAS RESULTED IN A THREAT TO THE HEALTH AND SAFETY OF THOSE PERSONS; AND AUTHORIZING THE CITY ADMINISTRATOR TO SUSPEND PROVISIONS OF STATE OR LOCAL REGULATORY STATUTES, REGULATIONS, AND ORDINANCES PRESCRIBING STANDARDS OR PROCEDURES RELATING TO HOUSING, HEALTH, OR SAFETY FOR ADDITIONAL SHELTER FACILITIES IF NEEDED; AND MAKING CALIFORNIA ENVIRONMENTAL QUALITY ACT EXEMPTION FINDINGS

This Emergency Ordinance would declare a shelter crisis in the City of Oakland pursuant to California Government Code section 8698 et seq. and authorize the City Administrator in his discretion to suspend provisions of state or local regulatory statutes, regulations, and ordinances prescribing standards or procedures relating to housing, health, or safety for additional public shelter facilities to the extent that strict compliance would prevent, hinder, or delay the mitigation of the effects of the shelter crisis. This Emergency Ordinance would also authorize the City Administrator in his discretion to allow persons unable to obtain housing to occupy designated public facilities, including facilities leased by the City, during the shelter crisis, to designate sites for emergency shelter and/or allowable parking sites and to refrain from towing inoperable vehicles used as dwellings until such sites are designated. Finally this Emergency Ordinance makes exemption findings under the California Environmental Quality Act. This Emergency Ordinance would be introduced and adopted at the same meeting if passed by the affirmative vote of at least six members of the City Council pursuant to Section 213 of the City Charter.