

2019 SEP 19 PM 4:05

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

REBECCA KAPLAN  
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(510) 238-7008

NIKKI FORTUNATO BAS  
Councilmember, District 2  
district2@oaklandca.gov  
(510) 238-7002

Date: September 19, 2019

To: Members of City Council and Members of the Public

From: Councilmember Bas and Council President Kaplan

Re: 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 Of Housing, Health, Or Safety For Additional Shelter Facilities If Needed

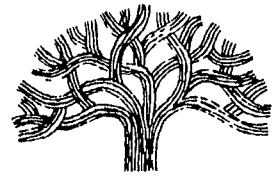
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Dear Colleagues on the City Council and Members of the Public,

Councilmember Bas and Council President Kaplan request the adoption of an 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 of housing, health, or safety for additional shelter facilities if needed.

Additionally, this emergency ordinance includes an amendment to alleviate the urgent and increasing issue of towing inoperable vehicles during homeless encampment closures. There appears to be no City policy and protocol for inoperable vehicles, when the Point-In-Time Count shows that an increased number of people are living in their vehicles in Oakland. Council member Bas and President Kaplan request that the City Administrator or designee allocate allowable parking places for individuals.

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## EXECUTIVE SUMMARY

The California Government Code Sections 8698, 8698.1, and 8698.2 allows a governing body of a city 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. In December 2015, the City Council enacted such an ordinance and it was in effect for one year. In October 3, 2017, the City Council adopted Ordinance No. 13456 C.M.S. declaring a shelter crisis in the City of Oakland for two years that expires on October 3, 2019. With more resources now directed toward addressing homelessness for the 2019-21 budget year, along with the capital facilities financing from City Measure KK and County Measure A 1, re-enacting this ordinance would provide additional tools and flexibility.

By declaring such a crisis, the City Council would authorize, without further Council action, the suspension of certain rules and regulations concerning housing, health and safety, as applied to specific public facilities, to the extent that strict compliance would hinder the mitigation of the shelter crisis, thus enabling a more flexible set of building, land use and other related requirements so a project could proceed in a more cost effective and expeditious manner. The proposed ordinance before the Council also allows the City to establish alternative minimum health and safety standards to such public facilities during the duration of the crisis. The authority under this ordinance only affects additional public facilities open to the homeless and needed to mitigate the shelter crisis. The declaration would be in effect for two years.

## BACKGROUND / LEGISLATIVE HISTORY

Homelessness in Oakland and the Bay Area is an incessant problem and has reached crisis proportions due to displacement and extreme upward pressure on rents. The number of homeless persons in Oakland continues to increase, with the latest 2019 Alameda County 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. According to the 2019 Point-In-Time Count, the total number of persons residing in their vehicles increased by 124% (1,558 individuals), with the number of persons residing in RVs increasing by 146% (823 individuals) and the number of persons residing in cars or vans increasing by 106% (735 individuals). The homelessness problem affects Oakland's population disproportionately: a majority of the homeless are African American and Latino. Often

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homelessness is accompanied by other challenges such as mental health difficulties, chronic physical illness, victims of domestic violence, and substance abuse.

An outgrowth of these limited shelter options is the growing number of unauthorized homelessness encampments throughout the City. These encampments present public health and safety threats to the persons who live in them in multiple ways: increased vulnerability to crime, lack of sanitation and debris collection facilities, weather exposure, traffic hazards and other risks.

In December 2015 and October 2017, the City Council adopted an ordinance declaring a shelter crisis and allowing flexibility or suspension of certain state and local regulations as they apply to City facilities to address the homelessness problem, to the extent that strict compliance would prevent, hinder, or delay efforts to mitigate the shelter crisis.

Since that time, the City Council and staff have taken substantial steps to coordinate homelessness services, provide additional budget resources and designate staff to lead more focused efforts. A sanctioned encampment pilot program operated in West Oakland for nearly 7 months in late 2016-early 2017, and many lessons were learned about how to operate these facilities and what provisions are necessary.

## **ANALYSIS AND POLICY ALTERNATIVES**

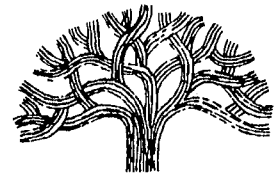
The re-enactment of the shelter crisis declaration represents a set of tools that can be applied to a variety of facilities for the homelessness without further Council action. City staff is actively pursuing potential sites or facilities. The authority under the ordinance would enable a more flexible interpretation of standard building, planning and other requirements, potentially resulting in developing facilities that could not have been previously considered.

Minimum health, safety and habitability standards will be maintained through the use of this authority. It does not mean a total suspension of standards but rather the ability to more flexibly apply standards or to establish alternative standards that meet minimum requirements.

Tenancy Provisions. State Government Code Section 8698, et seq. allows the governing body of a city to declare a shelter crisis and suspend the provisions of any state or local regulatory statute, regulation, or ordinance prescribing standards of housing, health, or safety to the extent that strict compliance would prevent or delay the mitigation of the shelter crisis, in order to address the

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problem more urgently and expeditiously. The suspension of local regulatory ordinances may include suspension of provisions in Oakland Municipal Code Chapter 8.22 related to residential rent adjustments and evictions, or other such codes, for public facilities used as shelters pursuant to the proposed Ordinance.

## **FISCAL IMPACT**

The adoption of this emergency ordinance authorizes the City Administrator or her designee 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, which would impact the collection of towing fees. Future projects using the authority provided under the ordinance, may involve additional funding in order to proceed.

## **PUBLIC OUTREACH /INTEREST**

There is growing public concern regarding the multiple, unauthorized homelessness encampments and a call for a more comprehensive and sustainable approach to assist this vulnerable population. Constituents have appealed to the Councilmembers and spoken publicly at Council meetings about their vehicles, which are not operable, getting towed. They have further said that they do not have the funds to get them out of impound and were not warned that their vehicles would be towed without having the ability to move them to a designated place to park.

## **COORDINATION**

Preparation of the ordinance included review and comments by the Office of the City Attorney.

## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** This ordinance seeks to alleviate the discriminatory impact of towing fees on low-income people of color and unhoused individuals.

***Environmental:*** The authority under this ordinance would potentially result in cleaning up unauthorized homelessness encampments and provide facilities that more environmentally sustainable.

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***Social Equity:*** This ordinance enables a more flexible approach to be applied to potential public facilities to shelter homelessness persons, thereby removing barriers and assisting a vulnerable population.

## **ACTION REQUESTED OF THE CITY COUNCIL**

To adopt an 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 of housing, health, or safety for additional shelter facilities if needed.

For questions regarding this report, please contact Miya Saika Chen at (510) 238-7246 or Bobbi Lopez at (510) 238-7082.

Sincerely,

Handwritten signature of Rebecca Kaplan in black ink.

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Rebecca Kaplan  
Oakland City Council President

Handwritten signature of Nikki Fortunato Bas in black ink.

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Nikki Fortunato Bas  
Councilmember, District 2

City Council  
October 1, 2019  
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**DRAFT**

CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

**ORDINANCE NO. \_\_\_\_\_ C.M.S.**

**INTRODUCED BY COUNCILMEMBER FORTUNATO BAS AND COUNCIL PRESIDENT  
KAPLAN**

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**EMERGENCY ORDINANCE DECLARING A SHELTER CRISIS IN THE CITY 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 OF HOUSING, HEALTH, OR SAFETY FOR ADDITIONAL SHELTER FACILITIES IF NEEDED**

**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**, 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 2019-21 City Biennial Budget, Resolution No. 87759 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**, the previous Ordinance No. 13456 declaring a shelter crisis was adopted pursuant to California Government Code Section 8698.1, and since its adoption, the State has adopted Government Code Section 8698.4 that specifically 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 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**, 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 her 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 her discretion to suspend the provisions of state and local standards or laws prescribing standards of 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 15.04.3.2400 of the Oakland Building 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 her 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 of 1970 (Public Resources Code section 21000 et seq. "CEQA") and the CEQA Guidelines (Cal. Code Regs., title 14, section 15000 et seq. "CEQA Guidelines") under CEQA Guidelines section 15303, "New Construction or Conversion of Small Structures," which exempts the construction of limited numbers of new structures or facilities, and/or CEQA Guidelines section 15304, "Minor Alterations to Land," which

exempts minor alterations in the condition of public land, including temporary uses, and/or CEQA Guidelines section 15311, "Accessory Structures," which exempts the construction of minor structures appurtenant to existing facilities, and/or CEQA Guidelines section 15332, "In Fill Development Projects," which exempts projects characterized as in fill development meeting certain specified criteria, and 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 - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
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 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 OF HOUSING, HEALTH, OR SAFETY FOR ADDITIONAL SHELTER FACILITIES IF NEEDED**

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 her discretion to suspend provisions of state or local regulatory statutes, regulations, and ordinances prescribing standards of 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 ordinance would allow the City Administrator in her discretion to establish interim health and safety standards to ensure minimal public health and safety. This ordinance would also authorize the City Administrator in her discretion to allow persons unable to obtain housing to occupy designated public facilities, including facilities leased by the City, during the shelter crisis. 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.