



AGENDA REPORT

TO: Jestin D. Johnson
City Administrator

FROM: Scott Means
Interim Director, Human
Services

SUBJECT: Shelter Crisis Ordinance

DATE: August 31, 2023

City Administrator Approval

Date: Sep 7, 2023

RECOMMENDATION

Staff Recommends That The City Council Adopt An Emergency Ordinance:

(1) Declaring A Shelter Crisis In The City Of Oakland Pursuant To California Government Code Section 8698 And 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;

(2) For The Duration Of The Shelter Crisis, Authorizing The City Administrator To:

(A) Suspend Provisions Of State Or Local Regulatory Statutes, Regulations, And Ordinances Prescribing Standards Or Procedures Relating To Housing, Health, Or Safety For Shelter Facilities;

(B) Enter Into Below Market Leases Or Licenses With Homeless Service Providers On Land Owned Or Leased By The City For The Purpose Of Providing Emergency Shelter Or Transitional Housing,

(C) Renew Existing Professional Services And/Or Grant Agreements With Homeless Service Providers In Amounts Not To Exceed \$250,000 Above Previous Year, If Providers Meet Performance Outcomes In Previous Year;

(3) Accepting And Appropriating Funds For Emergency Shelter Or Transitional Housing From:

(A) United States Department Of Housing And Urban Development (HUD), Alameda County, And Oakland Housing Authority (OHA) Up To \$20,000,000 For Fiscal Years 24/25 and 25/26; And

(B) California Department Of Housing And Community Development (HCD) Homeless Housing, Assistance And Prevention (HHAP) And Encampment Resolution Funding (ERF) Up To \$65,000,000 For Fiscal Years 24/25 and 25/26;

(4) And Making California Environmental Quality Act Exemption Findings

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. The City Council has found the City of Oakland to be in a consistent state of shelter crises for the past eight years.

- On 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.
- With more resources now directed toward addressing homelessness for the 2019-21 fiscal year, 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.
- With special provisions in place to support the homeless population, on September 21, 2021, the City Council passed Ordinance No. 13662, extending the shelter crisis for an additional two years.

The shelter crisis now stands to end on September 21, 2023. With significant initiatives and investments in place and building of collaborations between partner jurisdictions, enacting this ordinance will ensure optimal utilization and execution of strategies to address homelessness in Oakland in an efficient and timely manner.

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 continuing and 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 for 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 for two years from the date of passage.

REASON FOR URGENCY

The current shelter crisis ordinance ends September 21, 2023. If the ordinance is not extended thousands of Oakland residents suffering from the homeless crisis stand to be without sufficient access to resources and support because new shelters could not take advantage of streamlined approvals, and existing shelters would be immediately nonconforming under existing planning and building requirements. Further, the Shelter Crisis statute shields the City from liability

related to its emergency shelters, and expiration of this Ordinance would pause this immunity and open the City to lawsuits.

BACKGROUND / LEGISLATIVE HISTORY

Homelessness has been, and continues to be, a crisis throughout California with Oakland being the most impacted City in Alameda County. Oakland residents are regularly displaced from their homes to the streets of the City and are in need of urgent support. As of the most recent 2021 point-in-time count, the number of homeless persons in Oakland has nearly doubled over the last five years to more than 5,000. Of those counted, there are an estimated 3,337 individuals living without shelter. Over fifty percent of the unsheltered have taken up residence in some type of vehicle on the streets of Oakland. The City currently funds over 1,000 shelter beds and over 200 RV program spaces. In addition, there are approximately 110 beds added to the system during the winter months. These interventions are in addition to County funded resources. The homelessness problem affects Oakland's population disproportionately: a majority of the homeless identify as Black or African American while Black and African American households are a minority in the City's overall population. Similarly, the majority of homeless residents identify as male.

To understand the shelter crisis, it is necessary to look at all conditions causing and extending homelessness for many community members. The primary reason identified for entering into homelessness is around financial constraints. This includes the inability to afford housing prices, lack of adequate employment, and the inability to save money which is key to maintaining permanent housing. In addition, homelessness may be accompanied by co-occurring challenges which the trauma of homelessness either creates or exacerbates. These challenges range from mental health disorders, chronic physical illness including debilitating disorders, and selective victimization. Overtime, the trauma associated with these challenges may lead to self-devaluation creating further complexities for people to reintegrate into society in addition to the previously noted financial barriers. Homelessness may also lead to desperate acts such as participation in criminal activities and self-medication, reinforcing negative stereotypes of the homeless population and again adding additional barriers. In response to the homeless crisis, encampments have developed and increased in number throughout the city. Despite the number of shelter beds and resources offered by both the City and the County, the need continues to exceed the capacity. With the current deficiency in support and the need for stronger State and Federal legislation, many homeless residents have come together to build community and develop their own homes outdoors. Unfortunately, these encampments often present public health and safety threats to both those residing in the encampments and housed residents in the vicinity of the encampments. Those residing on the street in encampments or alone, have an increased vulnerability to crime, including robbery, sexual attacks, and violence. Those encampments lacking hygiene services are also at high risk for spreading communicable diseases, including COVID. Many homeless residents and advocates urge for increased support for individuals living on the street and in emergency shelters. The lack of affordable housing and need for additional housing and supportive services maintains the need for a shelter crisis ordinance.

In October 2017, the City Council adopted an ordinance pursuant to Government Code 8698 declaring a shelter crisis and allowing flexibility or suspension of certain state and local regulations as they apply to Government Code 8698 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 homeless services, provide additional budget resources and designate staff to lead more focused efforts. A community cabin pilot program operated in West Oakland for nearly 7 months in late 2016-early 2017. Many lessons were learned about how to operate these facilities and what provisions are necessary. The City Council established specific performance objectives in the 2017-19 adopted budget including developing an additional Henry Robinson facility for supportive housing and establishing a sanctioned facility for cleaner and safer encampments until more permanent housing can be found. In addition to more 2017-19 budget funds, the voters in Oakland and in Alameda County both passed measures which will enable a variety of approaches to increase the supply of affordable housing. Since the last shelter crisis ordinance was approved, programs for RVs have opened across the city to support homeless households that have taken up shelter in trailers. In addition, over 200 beds were added through the Homebase and Lake Merritt Lodge programs. A key priority remains the development of a multi-vehicle parking navigation center.

ANALYSIS AND POLICY ALTERNATIVES

Proposed Re-enactment of Minimum Shelter Standards. The re-enactment of the shelter crisis declaration represents a set of tools that can be applied to a variety of facilities to support homeless residents without further Council action. City staff is actively pursuing potential sites, facilities, and funding. 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 apply standards more flexibly or to establish alternative standards that meet minimum requirements. The minimum health and safety standards are included in Appendix P to the California Building Code, but these only apply for the duration of a declared shelter crisis. The City Council would not review and approve projects that used this approach prior to implementation. Program staff would provide a summary of actions taken each year in an annual summary.

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

Authority to license or lease City property. This Ordinance would make findings that leases or licenses to shelter operators for below market value are in the best interest of the City and would authorize the City administrator to enter into such real property agreements with shelter providers for the duration of the shelter crisis.

Authority to renew existing program agreements. This Ordinance would authorize the City administrator to renew professional service agreements and/or grant agreements with homeless

services providers operating the City's emergency shelter and transitional housing interventions, if the providers have met the performance outcomes described in the contracts the previous year. Council will have already approved such providers in previous fiscal years. The amount of each contract would not exceed 10% above the previous fiscal year contract amount. This authority would provide an incentive to providers to meet performance outcomes related to exits into permanent housing. Without such authority, contracts often lapse after the end of the fiscal year due to staffing constraints. Providers often must choose between working out of contract without payment or pausing services while out of contract.

Funding Authority: The City receives funding from several federal, state, and local funding sources each year, including HUD, State HCD, Alameda County, and OHA. This Ordinance would accept and appropriate up to \$125,000,000 for emergency housing, Oakland PATH Rehousing Initiative (OPRI), and Continuum of Care (CoC) transitional housing programs. Funding for CoC and OPRI programs is awarded pursuant to binding contracts with HUD and Alameda County that the City Council cannot change. State HCD funding programs are typically on extremely tight timelines and staff does not always have the lead time necessary to prepare reports and seek Council approval. Accordingly, the City risks losing out on valuable State funding for emergency interventions. Adoption of this Ordinance would allow the City Administrator to enter into agreements directly with HUD, State HCD, Alameda County, and OHA to accept funds up to the amounts specified in this Ordinance, for the duration of this Ordinance. As the Ordinance expires in September 2025, the approval would include fiscal year 2024-25 and 2025-26 because the awards are accepted by June of each year.

Vehicle towing policy: In 2021, the Shelter Crisis declaration authorized the City Administrator to designate safe parking programs for people living in recreational vehicles and passenger vehicles. The 2021 Ordinance also included a policy not to tow inhabited inoperable vehicles unless the City designated a safe parking spot for those vehicles. No public comment was received on this addition and no recitals were added to the Ordinance or the agenda report to support or explain this policy.

Since 2020, the City has opened four Safe RV Parking Programs for people living in RVs, but the need outstrips the supply of available spots. Staff is actively pursuing a program that would allow short-term stays in passenger vehicles while being connected to longer-term shelter options. Parking is available at community cabin programs for operable passenger vehicles. However, parking is not available for inoperable vehicles because they are not intended for long-term shelter and have no value for transportation and employment. Since 2021, it has become clear that many vehicles illegally on public rights of way are not in fact used as shelter, but rather used for storage or illegal activity. This policy has prevented the Department of Transportation from towing and impounding illegally parked, inhabited vehicles that could not relocate without towing. Staff recommends that the 2021 towing policy be removed from the Shelter Crisis Ordinance and addressed in a separate Resolution to be considered in the next month.

Adoption of this ordinance aligns policy priorities adopted by Council identifying homelessness as a primary concern to address in the City of Oakland. This ordinance supports homeless interventions and ultimately moving people off the street and into housing, thus advancing the Citywide Priorities of **housing and economic security** and **holistic community safety**.

Should the City Council choose not to extend the shelter crisis ordinance, thousands of homeless residents who could be urgently supported may be left without adequate timely resources.

FISCAL IMPACT

This Ordinance will accept and appropriate up to \$85,000,000 in new funding from federal, state, Alameda County, and Oakland Housing Authority sources for Fiscal Years 2024/25 and Fiscal Years 2025/26.

Each fiscal year, HUD requires 25% local matching funds for the CoC programs. In FY 23/24, the local match for the CoC funds came from Measure Q (\$1,871,346) and Measure W (\$184,000). Staff will work with Budget to identify local match funding up to \$5,000,000 for Fiscal Years 2024/25 and 25/26 during the next midcycle budget and biennial budget process. This may require adjustments to previously allocated funding in support of homelessness services.

The Ordinance also authorizes the City Administrator to enter into contracts with existing homeless shelter and transitional housing providers that meet performance outcomes in amounts not to exceed \$250,000 above the previous years' contracts. The current providers and 23/24 budgets are outlined in **Attachment A**.

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.

COORDINATION

Preparation of the ordinance and this staff report included collaboration, review, and comments from the Office of the City Attorney, the City Administrator's Office, Human Services Department, and the Department of Transportation.

SUSTAINABLE OPPORTUNITIES

Economic: This ordinance does not directly address economic opportunities.

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

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

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The actions authorized by this Emergency Ordinance are exempt from review 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).

ACTION REQUESTED OF THE CITY COUNCIL

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For questions regarding this report, please contact C'Mone Falls, Interim Manager, Community Homelessness Services Division at 510-238-6186.

Respectfully submitted,



SCOTT MEANS
Interim Director, Human Services

Prepared by:
C'Mone Falls, Interim Manager
Community Housing Services, Human Services

Attachment (1):
Attachment A: CHS Shelter Crisis Programs