CITY OF OAKLAND

AGENDA REPORT

TO:	City Council and members of the Public	**FROM:**	Noel Gallo & Dan Kalb, City Councilmembers
SUBJECT:	Just Cause Amendment Ballot Measure	**DATE:**	July 5, 2018

RECOMMENDATION

ADOPT A RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION PROPOSED AMENDMENTS TO O.M.C. 8.22.300 ET SEQ. (JUST CAUSE FOR EVICTION ORDINANCE) TO: (1) REMOVE THE EXEMPTION FOR OWNER OCCUPIED DUPLEXES AND TRIPLEXES; (2) PERMIT THE CITY COUNCIL TO ADD EVICTION DEFENSES TO THE JUST CAUSE ORDINANCE; AND TO DIRECT THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH CITY OF OAKLAND'S GENERAL MUNICIPAL ELECTION ON NOVEMBER 6, 2018

SUMMARY

This legislation would make the following changes to the Just Cause for Eviction Ordinance:

(1) Eliminate the exemption for residential properties divided into a maximum of three units, one of which is occupied by the owner as his or her principal residence;

(2) Allow the City Council to pass future amendments adding additional restrictions on the ability to evict.

BACKGROUND/LEGISLATIVE HISTORY

On November 5, 2002, Oakland voters passed the Just Cause for Eviction Ordinance (Measure EE), codified in the Oakland Municipal Code at Chapter 8.22, Article II. Measure EE contained a number of exemptions from the provisions of the ordinance, including one for residential properties divided into a maximum of three units, one of which is occupied by the owner as his or her principal residence. On November 8, 2016, Oakland voters passed an amendment to the Just Cause for Eviction Ordinance and Rent Adjustment Ordinance (Measure JJ). The latter amendments to the Just Cause for Eviction Ordinance consisted of extending just-cause

eviction requirements for residential rental units from applying to those offered for rent on or before October 14, 1980 to those approved for occupancy before December 31, 1995.

ANALYSIS

For years, the City of Oakland has been experiencing a severe housing affordability and displacement crisis that requires action by the City government. There is a significant demand for rental housing in Oakland leading to rising market rents, caused in part by the spillover of increasingly expensive housing costs in San Francisco

The increased housing pressures for residents across a range of lower and middle income levels warrants expanded rent stabilization and tenant protection policies. Displacement through evictions has a direct impact on the health, safety and/or welfare of Oakland's citizens by uprooting children from their schools and friends, disrupting longstanding community networks that are integral to residents' welfare, forcing lower income residents to pay unaffordable relocation costs, segregating low-income residents into less healthy, less safe and more overcrowded housing that is often further removed from vital public services and leaving residents with unhealthy levels of stress and anxiety as they attempt to cope with the threat of homelessness.

Over 60 percent of occupied housing units in Oakland are occupied by renters, many of whom would not be able to locate affordable housing within Oakland if displaced (U.S. Census Bureau, ACS 2016). In June 2018, the median rental price for a one-bedroom unit in Oakland was $2,100 per month and the median rental price for a two-bedroom unit was $2,480 per month (Zumper National Rent Report: July 2018). Mean (averaged) rents for Oakland are even higher, $2,997 per month as of June 2018 (www.rentjungle.com). Oakland's rental housing costs were recently noted as the seventh highest in the nation (Zumper National Rent Report: July 2018).

In 2016, the estimated annual median household income for households that rented in Oakland was $40,321, (U.S. Census Bureau, Census Reporter Table B25119). Since affordable rent for a family is generally understood as paying no more than thirty percent of income, affordable rent for a family earning $40,321 is approximately $1,008 per month. As of the end of the 2015, 22.5% of Oakland's households were "housing insecure," defined as facing high housing costs, poor housing quality, unstable neighborhoods, overcrowding, or homelessness (March 2016 Oakland at Home report, p. 17). Oakland's minimum wage is $13.23 per hour and a full-time hourly worker must earn an hourly wage of $35.67 to afford a one bedroom apartment in Oakland (Out of Reach 2018, National Low income Housing Coalition). Over 26,000 Oakland households are severely rent burdened, which is defined as spending 50 percent or more of monthly household income on rent (Oakland Consolidated Housing Needs Assessment 2015 Analysis of HUD Data, as reported in the City's March 2016 Oakland at Home report, pp. 10-11).

"Oakland At Home: Recommendations for implementing *A Roadmap Towards Equity*," a report from the Oakland Housing Cabinet convened by Oakland Mayor Libby Schaaf published in 2016, included amongst its recommendations for strengthening renters' protections that Just Cause be extended to cover all renters in all building types—including owner-occupied duplexes and triplexes. Furthermore, numerous press stories have highlighted concerns about the potential for eviction when owners move in to duplexes and triplexes, including a May 9, 2017 East Bay Express article (*Neighbors Along One Fruitvale Street Are Organizing to Stop a Controversial Eviction*) concerning a landlord who purchased a triplex and published comments about his intent to evict the tenants, a June 21, 2017 East Bay Express article (*Living Downstairs, or Lying?: Advocates Say Oakland Landlords Pretending to Reside in Apartments so as to Evict Tenants*) about potential abuses of the duplex and triplex exemptions, a February 16, 2018 local NBC story (*Lack of Oversight May be Allowing Some Oakland Landlords to Wrongfully Evict Families, Elderly*) about a spike in "owner move-in" evictions which noted the lack of City data on the number of such evictions, particularly before the passage of the eviction tracking requirements in Measure JJ in 2016, and a June 25, 2018 local CBS story (*Caught On Video: Oakland Realtors Coach Buyers On How To Profit From Tenant Eviction*) about realtors coaching potential buyers on how to evict tenants from duplexes and triplexes in Oakland.

Tenants in owner-occupied duplexes and triplexes do not receive the same Just Cause eviction protection in Oakland as tenants in buildings of four or more units, and in duplexes and triplexes that are not owner-occupied. Several other cities with ordinances restricting evictions do not exempt owner-occupied duplexes and triplexes from their eviction limitations. Tenants in duplexes and triplexes would be at significantly reduced risk of displacement—whether from illegal schemes, a desire to sell a vacant building for a higher price, or lawful high rent increases—if duplexes and triplexes received just cause protections.

In addition, the sponsors note their intention to introduce a parallel ordinance being drafted for consideration in the Fall dealing with removing the Rent Stabilization exemption for multifamily buildings with three or fewer units, one of which is owner-occupied.

FISCAL IMPACT

This legislation would result in eviction notice requirements being extended to owner-occupied duplexes and triplexes, which could potentially result in some minimal cost increases to the City. On the other hand, ending the Just Cause exemption for such duplexes and triplexes will result in fewer regulatory requirements related to documenting owner move-ins, as the removal of the exemption will likely lead to a reduced incentive to do new owner move-ins for such units.

PUBLIC OUTREACH / INTEREST

The Councilmember's office conducted outreach about this legislation to several Oakland-based organizations representing tenants or landlords.

COORDINATION

The City Attorney's office was extensively consulted on the legislation.

SUSTAINABLE OPPORTUNITIES

Economic: The ordinance is intended to protect the economic vitality of Oakland by helping to keep existing renters in their homes, specifically maintaining the economic security of tenants who reside in two-and three-unit buildings and not subjecting them to evictions.

Environmental: There are no environmental opportunities associated with this report.

Social Equity: The ordinance is intended to promote social equity by protecting Oakland renters, who are less economically secure than Oakland homeowners and are somewhat more likely to be persons of color, and stabilize neighborhoods and communities by encouraging long term tenancies in rental housing.

ACTION REQUESTED BY THE CITY COUNCIL

Councilmembers Gallo and Kalb recommend the City Council:

Adopt A Resolution On The City Council's Own Motion Submitting To The Voters At The November 6, 2018 General Municipal Election Proposed Amendments To O.M.C. 8.22.300 et seq. (Just Cause For Eviction Ordinance) To: (1) Remove The Exemption For Owner Occupied Duplexes And Triplexes; (2) Permit The City Council To Add Eviction Defenses To The Just Cause Ordinance; And To Direct The City Clerk To Fix The Date For Submission Of Arguments And Provide For Notice And Publication In Accordance With City Of Oakland's General Municipal Election On November 6, 2018.

For questions regarding this report, please contact Oliver Luby, Chief of Staff, Office of Councilmember Dan Kalb, at 510-238-7013.

Respectfully submitted,

Noel Gallo
Councilmember, District 5

Dan Kalb
Councilmember, District 1

Prepared by:
Oliver Luby, Chief of Staff
Office of Councilmember Dan Kalb

Approved as to Form and Legality

DRAFT

City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER GALLO AND KALB

A RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION PROPOSED AMENDMENTS TO O.M.C. 8.22.300 ET SEQ. (JUST CAUSE FOR EVICTION ORDINANCE) TO: (1) REMOVE THE EXEMPTION FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES; (2) PERMIT THE CITY COUNCIL TO ADD LIMITATIONS ON A LANDLORD'S RIGHT TO EVICT; AND TO DIRECT THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH CITY OF OAKLAND'S GENERAL MUNICIPAL ELECTION ON NOVEMBER 6, 2018

WHEREAS, On November 5, 2002, Oakland voters passed the Just Cause for Eviction Ordinance (Measure EE), codified in the Oakland Municipal Code at Chapter 8.22, Article II; and

WHEREAS, the City of Oakland is experiencing a severe housing affordability and displacement crisis that requires action by the City government; and

WHEREAS, there is a significant demand for rental housing in Oakland leading to rising market rents, caused in part by the spillover of increasingly expensive housing costs in San Francisco, and the increased housing pressures for residents across a range of lower and middle income levels warrants expanded rent stabilization and tenant protection policies; and

WHEREAS, the housing affordability crisis threatens the public health, safety and/or welfare of our citizenry; and

WHEREAS, over 60 percent of occupied housing units in Oakland are occupied by renters, many of whom would not be able to locate affordable housing within Oakland if displaced (U.S. Census Bureau, ACS 2016); and

WHEREAS, in June 2018, the median rental price for a one-bedroom unit in Oakland was $2,100 per month and the median rental price for a two-bedroom unit was $2,480 per month (Zumper National Rent Report: July 2018); and

WHEREAS, Oakland's rental housing costs were recently noted as the seventh highest in the nation (Zumper National Rent Report: July 2018); and

WHEREAS, in 2016 the estimated annual median household income for households that rented in Oakland was $40,321 (U.S. Census Bureau, Census Reporter Table B25119); and

WHEREAS, since affordable rent for a family is generally understood as paying no more than thirty percent of income, affordable rent for a family earning $40,321 is approximately $1,008 per month; and

WHEREAS, as of the end of the 2015, 22.5% of Oakland's households were "housing insecure," defined as facing high housing costs, poor housing quality, unstable neighborhoods, overcrowding, or homelessness (March 2016 Oakland at Home report, p. 17); and

WHEREAS, Oakland's minimum wage is $13.23 per hour and a full-time hourly worker must earn an hourly wage of $35.67 to afford a one-bedroom apartment in Oakland (Out of Reach 2018, National Low income Housing Coalition); and

WHEREAS, over 26,000 Oakland households are severely rent burdened, which is defined as spending 50 percent or more of monthly household income on rent (Oakland Consolidated Housing Needs Assessment 2015 Analysis of HUD Data, as reported in the City's March 2016 Oakland at Home report, pp. 10-11); and

WHEREAS, displacement through evictions has a direct impact on the health, safety and/or welfare of Oakland's citizens by uprooting children from their schools, disrupting longstanding community networks that are integral to citizens' welfare, forcing lower income residents to pay unaffordable relocation costs, segregating low-income residents into less healthy, less safe and more overcrowded housing that is often further removed from vital public services and leaving residents with unhealthy levels of stress and anxiety as they attempt to cope with the threat of homelessness; and

WHEREAS, the City of Oakland is interested in putting forth policies that help to maintain the ability of people in all income categories to live in our city; 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 health, safety, and the general welfare of the public; and

WHEREAS, "Oakland At Home: Recommendations for implementing *A Roadmap Towards Equity*," a report from the Oakland Housing Cabinet convened by Oakland Mayor Libby Schaaf published in 2016, included amongst its recommendations for strengthening renters' protections that Just Cause be extended to cover all renters in all building types—including owner-occupied duplexes and triplexes; and

WHEREAS, numerous press stories have highlighted concerns about the potential for eviction when owners move in to duplexes and triplexes, including a May 9, 2017 East Bay Express article (*Neighbors Along One Fruitvale Street Are Organizing to Stop a Controversial Eviction*) concerning a landlord who purchased a triplex and published comments about his intent to evict the tenants, a June 21, 2017 East Bay Express article (*Living Downstairs, or Lying?: Advocates Say Oakland Landlords Pretending to Reside in Apartments so as to Evict Tenants*) about potential abuses of the duplex and triplex exemptions, a February 16, 2018 local NBC story (*Lack of Oversight May be Allowing Some Oakland Landlords to Wrongfully Evict Families, Elderly*) about a spike in "owner move-in" evictions which noted the lack of City data on the number of such evictions, particularly before the passage of the eviction tracking requirements in Measure JJ in 2016, and a June 25, 2018 local CBS story (*Caught On Video: Oakland Realtors Coach Buyers On How To Profit From Tenant Eviction*) about realtors coaching potential buyers on how to evict tenants from duplexes and triplexes in Oakland; and

WHEREAS, tenants in owner-occupied duplexes and triplexes do not receive the same Just Cause eviction protection in Oakland as tenants in buildings of four or more units, and in duplexes and triplexes that are not owner-occupied; and

WHEREAS, tenants in duplexes and triplexes would be at significantly reduced risk of displacement—whether from illegal schemes, a desire to sell a vacant building for a higher price, or lawful high rent increases—if duplexes and triplexes received just cause protections; and

WHEREAS, several other cities with rent and eviction ordinances do not exempt owner-occupied duplexes and triplexes; and

WHEREAS, this action is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (no significant effect on the environment), and 15183 (projects consistent with a community plan, general plan, or zoning), each as a separate and independent basis, and when viewed collectively provide an overall basis for CEQA clearance; and

WHEREAS, unlike the Just Cause for Eviction Ordinance, Oakland's Rent Stabilization Ordinance was passed by the City Council, allowing the Council flexibility to respond to new issues and abuses impacting rent stabilization, and, therefore, including a limited ability for the City Council to amend the Just Cause for Eviction Ordinance, specifically to add additional limitations on evictions, would enable the City Council to better maintain existing protections for tenants, and allow the City to more swiftly deal with changing conditions affecting eviction impacts on Oakland's rental housing without having to return to the ballot; and

WHEREAS, in Alameda Superior Court No. RG03081362 (Kim v. City of Oakland) the Court ruled invalid portions of Measure EE ([O.M.C., Chapter 8, Article II (8.22.300, *et seq.*)]) which ruling was accepted in the settlement of California Court of Appeals (1st District) No. A114855 (Rental Housing Association of Northern Alameda County v. City of Oakland) effective November 13, 2007, and the invalidated language was not removed from Measure EE; and

WHEREAS, California Election Code Section 9217 requires that an ordinance adopted by voters may be amended only by a vote of the people, unless provision is otherwise made in the original ordinance, and such provision for amendment by the City Council was not authorized by the voters in the Just Cause for Eviction Ordinance; now, therefore, be it

RESOLVED: That the City Council hereby authorizes and directs the City Clerk, at least 88 days prior to the next general municipal election date, to file with the Alameda County Board of Supervisors and the Registrar of Voters certified copies of this resolution; and be it

FURTHER RESOLVED: That the proposed amendments to the Just Cause for Eviction Ordinance (Measure EE [O.M.C., Chapter 8, Article II (8.22.300, *et seq.*)]) text is set out below. Added text is shown as double underlined type; deleted text is shown as ~~strikethrough~~ type; language for those portions invalidated in Alameda Superior Court No. RG03081362 (Kim v. City of Oakland) and deleted herein are shown as ~~*italicized and strikethrough*~~ type.

The people of the City of Oakland do ordain as follows:

Section 1. Amendments to Section 5 of Measure EE [O.M.C. Section 8.22.350]. Added text is shown as double underlined type; deleted text is shown as ~~strikethrough~~ type; language for those portions invalidated in Alameda Superior Court No. RG03081362 (Kim v. City of Oakland) and deleted herein are shown as ~~*italicized and strikethrough*~~ type.

Section 5 [8.22.350] - Applicability and Exemptions.

The provisions of this chapter shall apply to all rental units in whole or in part, including where a notice to vacate/quit any such rental unit has been served as of the effective date of this chapter but where any such rental unit has not yet been vacated or an unlawful detainer judgment has not been issued as of the effective date of this chapter. However, Section 6 [8.22.360] and Section 7(A)-(E) [8.22.370(A) through 8.22.370(E)] of the chapter [O.M.C. Chapter 8.22, Article II] shall not apply to the following types of rental units:

A. Rental units exempted from Part 4, Title 4, Chapter 2 of the California Civil Code (CCC) by CCC § 1940(b).

B. Rental units in any hospital, skilled nursing facility, or health facility.

C. Rental units in a nonprofit facility that has the primary purpose of providing short term treatment, assistance, or therapy for alcohol, drug, or other substance abuse and the housing is provided incident to the recovery program, and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.

D. Rental units in a nonprofit facility which provides a structured living environment that has the primary purpose of helping homeless persons obtain the skills necessary for independent living in permanent housing and where occupancy is restricted to a limited and specific period of time of not more than twenty-four (24) months and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.

E. Rental units in a residential property where the owner of record occupies a unit in the same property as his or her principal residence and regularly shares in the use of kitchen or bath facilities with the tenants of such rental units. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the State of California.

F. ~~A rental unit in a residential property that is divided into a maximum of three units, one of which is occupied by the owner of record as his or her principal residence. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the State of California.~~Reserved.

G. A unit that is held in trust on behalf of a developmentally disabled individual who permanently occupies the unit, or a unit that is permanently occupied by a developmentally disabled parent, sibling, child, or grandparent of the owner of that unit.

H. Reserved.

I. A rental unit or rental units contained in a building that has a certificate of occupancy for the new construction of the unit or building in which the rental unit(s) is contained is issued on or after December 31, 1995.

1. This exemption applies only to rental units that were newly constructed from the ground up and does not apply to units that were created as a result of rehabilitation, improvement or conversion of commercial space, or other residential rental space.

2. If no certificate of occupancy was issued for the rental unit or building, in lieu of the date a certificate of occupancy, the date the last permit for the new construction was finalized prior to occupancy shall be used.

Section 2. Amendments to Section 6 of Measure EE [O.M.C. Section 8.22.360]. Added text is shown as double underlined type; deleted text is shown as ~~strikethrough~~ type; language for those portions invalidated in Alameda Superior Court No. RG03081362 (Kim v. City of Oakland) and deleted herein are shown as ~~*italicized and strikethrough*~~ type.

Section 6 [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.

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, provided further that 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.

3. The tenant, who had an oral or written agreement with the landlord which has terminated, has refused after written request or demand by the landlord to execute a written extension or renewal thereof for a further term of like duration

and under such terms which are materially the same as in the previous agreement; provided, that such terms do not conflict with any of the provisions of this chapter. [O.M.C. Chapter 8.22, Article II].

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.

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 his or her occupancy as a principal residence where he or she has previously occupied the rental unit as his or her principal residence and has the right to recover possession for his or her 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 his or her own use and occupancy as his or her 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. Here 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.

   d. ~~*When the owner seeking possession of a unit under Section 6(A)(9) [8.22.360 A.9] owns a similar vacant unit, the owner's decision not to occupy said similar unit shall create a rebuttable presumption that they are seeking to recover possession in bad faith.*~~ 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 his or her 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 him or her 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)(5) [8.22.360 B.5]:

~~ii [sic]~~ i. A listing of all property owned by the intended future occupant(s).

~~iii [sic]~~ ii. The address of the real property, if any, on which the intended future occupant(s) claims a homeowner's property tax exemption.

~~*iv [sic] A statement informing tenant of his or her rights under Subsection 6(C) [8.22.360 C].* *~~

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 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. Upon recovery of possession of the rental unit, owner of record shall proceed without unreasonable delay to effect 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. The Rent Board shall adopt rules and regulations to implement the application procedure.

b. Upon completion of the needed repairs, owner of record shall offer tenant the first right to return to the premises at the same rent and pursuant to a rental agreement of substantially the same terms, subject to the owner of record's right to obtain rent increase for capital improvements consistent with the terms of the Oakland Residential Rent Arbitration Ordinance or any successor ordinance.

c. A notice terminating tenancy 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 statement informing tenant of his or her rights under Subsection 6(C) [8.22.360 C].*~~ * Reserved.

iv. An 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 ~~*in good faith, without ulterior reasons and with honest intent,*~~ 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], she or he must do so according to the process established in CCC § 1946 (or successor provisions providing for 30 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], she or he 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.

   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].

   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].

   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. ~~*The following additional provisions shall apply to a landlord who seeks to recover a rental unit pursuant to Subsections 6(A)(9) [8.22.360 A.9] or (10) [8.22.360 A.10]:*~~

   ~~*1. Where the landlord owns any other residential rental units, and any such unit is available or will become available between the time of service of written notice terminating tenancy and the earlier of the surrender of possession of the*~~

~~*premises or the execution of a writ of possession pursuant to the judgment of a court of competent jurisdiction, the landlord shall, as a condition of obtaining possession pursuant to Section 6 [8.22.360], notify tenant in writing of the existence and address of each such vacant unit and offer tenant the right to choose any available rental unit and at the tenant's option: i) to enter into a temporary rental agreement; or ii) to enter into a new rental agreement. The landlord shall offer that unit to the tenant at a rent based on the rent that the tenant is currently paying, with upward or downward adjustments allowed based upon the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board.**~~

2. ~~*The following shall be considered rebuttably presumptive violations of this chapter by the landlord:**~~

   a. ~~*Where the event which the landlord claims as grounds to recover possession under Subsection 6(A)(9) [8.22.360 A.9] or (10) [8.22.360 A.10] is not initiated within three (3) months after the tenant vacates the unit.**~~

   b. ~~*Where a landlord times the service of the notice, or the filing of an action to recover possession, so as to avoid offering a tenant a replacement unit.**~~

   c. ~~*Where the individual (a landlord or qualified relative) for whom the Subsection 6(A)(9) [8.22.360 A.9] eviction occurred does not occupy a unit for a minimum of thirty-six (36) consecutive months.*~~

D. Substantive limitations on 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 8.22.360 A.11] above, was set forth in the notice of termination of tenancy or notice to quit;

   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. Failure to make such allegations in the notice shall be a defense to any unlawful detainer action.

3. This subsection (D) [8.22.360 D] is intended as both a substantive and procedural limitation on a landlord's right to evict. A landlord's failure to comply with the obligations described in Subsections 7(D)(1) or (2) [*sic*] [8.22.360 D.1 or 8.22.360 D.2] shall be a defense to any action for possession of a rental unit.

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.

Section 3. Amendments to Section 9 of Measure EE [O.M.C. Section 8.22.390]. Added text is shown as double underlined type; deleted text is shown as ~~strikethrough~~ type.

Section 9 [8.22.390] - Partial invalidity.

A. If any provision of this chapter or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this chapter are severable.

B. Should any provision of this Just Cause for Eviction Ordinance (Measure EE [O.M.C., Chapter 8, Article II (8.22.300, et seq.)]) be invalidated or required to be modified by a court decision or change in State or Federal law, the City Council is authorized to make such modifications to conform to the court decision or change in state law provided such modifications effectuate the purpose of the Just Cause for Eviction Ordinance and the original text.

Section 4. Applicability and Grandparenting.

A. Applicability to rental units. The amendments set out in Section 1 of this measure apply to all rental units that qualify for exemption prior to the effective date of this measure and to all rental units subsequent to the effective date.

B. Applicability to notices served prior to effective date of the measure. The amendments set out in Section 1 of this measure (1) do not apply to any valid notice terminating tenancy pursuant to Code of Civil Procedure 1161(2)-(4) served prior to the effective date of this measure; (2) apply to notices terminating tenancy pursuant to Civil Code 1946 or 1946.1 that have been served as of the effective date of this measure, but where such rental unit has not been vacated or an unlawful detainer judgment has not been issued as of the effective date of this measure.

Section 5. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: § 15378 (regulatory actions), § 15061(b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning).

Section 6. Severability. If any section, subsection, sentence, clause or phrase of this Measure 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 this Measure. The voters hereby declare that it would have passed this Measure 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 lieu of severance, any section declared invalid or unconstitutional may be modified pursuant to Section 3 above, as appropriate.

Section 7. Effective Date. This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council.

FURTHER RESOLVED: That in accordance with applicable law, the City Clerk will fix and determine a date for submission of arguments for or against said proposed amendment of the Just Cause for Eviction Ordinance, and said date will be posted by the Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with applicable law, the City Clerk will provide for notice and publication of said proposed amendment of the Just Cause for Eviction Ordinance in the manner provided by law; and be it

FURTHER RESOLVED: That each ballot used at said municipal election will have printed herein, in addition to any other matter required by law, the following:

PROPOSED AMENDMENTS TO OAKLAND'S JUST CAUSE FOR EVICTION ORDINANCE

MEASURE___

Measure ___. Shall The Measure Amending Oakland's Just Cause For Eviction Ordinance to: (1) Remove The Exemption For Owner Occupied Duplexes And Triplexes; and (2) Permit The City Council To Add Limitations On A Landlord's Right to Evict To The Just Cause Ordinance Be Adopted?	Yes	
	No	

and be it

FURTHER RESOLVED: That the City Clerk and City Administrator are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the next municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the next municipal election consistent with law; and be it

FURTHER RESOLVED: That the City Council has reviewed the proposed amendments to the Oakland Municipal Code to be considered by the voters and independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines sections 15060(c)(2) (no direct or reasonable foreseeable indirect physical change in the environment), 15061(b)(3) (no significant effect on the

environment), and 15183 (projects consistent with a community plan, general plan, or zoning), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN AND PRESIDENT REID

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California