

19 FEB -8 AM 9:00

# AGENDA REPORT

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**TO:** City Council and members of the Public  
**FROM:** City Councilmembers  
Nikki Fortunato Bas and  
Lynette Gibson McElhaney  
**SUBJECT:** Interim Emergency Ordinance to Temporarily Eliminate Exemptions  
**DATE:** February 8, 2019

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## RECOMMENDATION

Councilmembers Bas and McElhaney recommend that the City Council adopt an interim emergency ordinance to temporarily eliminate the exemptions from the Rent Adjustment Ordinance (O.M.C. 8.22.030) for owner-occupied parcels with two or three units, consistent with the Just Cause for Eviction Amendment (Measure Y) recently adopted by voters.

## EMERGENCY FINDING

Pursuant to City Charter Section 213, the City Council may introduce and adopt an emergency ordinance at the same City Council meeting by an affirmative six votes of the council.

The City of Oakland has been experiencing a severe housing crisis that requires action by City government. Low-income residents, many of whom have lived in Oakland for decades and make up the over 60 per cent of occupied housing units in Oakland that are occupied by renters (U.S. Census Bureau, ACS 2016), are being displaced at an alarming rate, and many cannot afford to relocate within Oakland. While the City Council completes its deliberations over the permanent reforms described below, the City needs a temporary emergency ordinance to mitigate the harm of speculators who subvert Oakland's tenant protection laws and contribute to destabilization of Oakland's neighborhoods and residents through rapidly escalating rents despite the clear intent of the City to regulate such practices.

In July 2018, the City Council placed on the ballot Measure Y, proposing to remove from the Just Cause for Eviction Ordinance exemption for owner-occupied two to three unit properties. In the July 5, 2018 agenda report for the Just Cause for Eviction Amendment (Measure Y), Councilmembers noted their intention to introduce a parallel ordinance to remove the Rent Stabilization exemption for owner-occupied buildings with three or fewer units. On November 6, 2018, Oakland voters passed Measure Y, which effectively

Councilmember Nikki Fortunato Bas

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eliminated the exemption for Just Cause for owner-occupied parcels with two or three units. At the January 29, 2019 public meeting of the Community & Economic Development Committee, the Committee forwarded legislation to the full council that would remove the exemptions from the Rent Adjustment Ordinance and the Tenant Protection Ordinance (TPO) for owner-occupied parcels with two or three units, consistent with the Just Cause for Eviction Amendment (Measure Y) adopted by voters. The legislation was introduced at the City Council meeting on February 5 but was put over to the next Council meeting upon advice from the City Attorney and not acted upon by Council. The legislation is scheduled to be before the City Council on February 26 and would then likely be adopted on second reading at the subsequent Council meeting on March 12. The effective date will be even later if the City Council deliberates the legislation past the March 12 Council meeting.

If the City Council does not enact an interim emergency ordinance implementing temporary rent stabilization measures, in the time before a non-emergency ordinance was introduced, received a second reading, and became effective, many tenants could be further subject to rent increases and displacement. Members of the public testified at the public meetings on January 29 and February 5 that some tenants have already subject to large rent increases as a result of the exemption while deliberations on a permanent policy proposal are ongoing. The City's announcement of its intention to act would exacerbate the instability of the housing market and the uncertainty of public peace, health, and welfare by, in effect, providing for a brief incentive period during which landlords could increase rents despite the clear intent of the City to regulate such practices, furthering the need for the Council to enact an interim emergency ordinance that is effective immediately.

### **FISCAL IMPACT**

This legislation would result in Rent Adjustment requirements being temporarily extended to owner-occupied duplexes and triplexes, which could potentially result in some minimal cost increases to the City.

### **PUBLIC OUTREACH/INTEREST**

This report is posted on the City's website, which meets the minimum requirements. In addition, Councilmembers' offices are conducting outreach about this legislation to several Oakland-based organizations representing tenants or landlords.

### **COORDINATION**

Item: \_\_\_\_\_  
Special City Council Meeting  
February 14, 2019

Councilmember Nikki Fortunato Bas

Subject: Interim Emergency Ordinance to Temporarily Eliminate Exemptions

This report and legislation were coordinated with the City Attorney's office and the Department of Housing and Community Development.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** The interim ordinance is intended to protect the economic vitality of Oakland by discouraging real estate speculation that seeks to capitalize on higher rents that are commanded in new construction by displacing tenants and owners in older housing units and providing interim protections for tenants who reside in two- and three-unit buildings and not subjecting them to displacement.

**Environmental:** While there is no immediate environmental impact to the interim or permanent housing reforms that are under consideration, displacement of the lowest income residents of Oakland has often resulted in an increased number of residents living outdoors, exacerbating environmental and public health concerns related to improper sanitation practices. The ordinance is intended to promote neighborhood stability by reducing the likelihood of unscrupulous displacement of vulnerable tenants in residential rental properties.

**Social Equity:** The ordinance is intended to promote social equity by providing interim protections to Oakland renters who are, on the whole, less economically secure than Oakland homeowners. A large number of Oakland renters are persons of color, single women with children, and lower income who face discrimination in the housing market when seeking to secure units for rent or purchase and have been among those most vulnerable to real estate speculators who seek to subvert Oakland's tenant protections law. The Council also recognizes the vulnerability and pressure placed on low and moderate income homeowners of duplex and triplexes, many of whom are also people of color, single parents and senior citizens who are vulnerable to both escalating costs and real estate speculators who may entice them to sell their properties with large cash offers. This moratorium seeks to stabilize the housing market as the Council considers appropriate reforms to discourage speculation and other practices that displace low and moderate income tenants and renters from our neighborhoods.

### **ACTION REQUESTED BY THE CITY COUNCIL**

Councilmembers Bas and McElhaney recommend the City Council:

Adopt an interim emergency ordinance to temporarily eliminate the exemptions from the Rent Adjustment Ordinance (O.M.C. 8.22.030) for owner-occupied parcels with two or three units, consistent with the Just Cause for Eviction Amendment (Measure Y) recently adopted by voters.

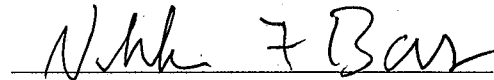
Item: \_\_\_\_\_  
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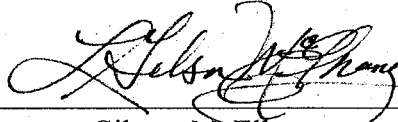
Subject: Interim Emergency Ordinance to Temporarily Eliminate Exemptions

For questions regarding this report, please contact Miya Saika Chen, Chief of Staff,  
Office of Councilmember Nikki Fortunato Bas, at 510-238-7246.

Respectfully Submitted,



Nikki Fortunato Bas  
Councilmember, District 2



Lynette Gibson McElhaney  
Councilmember, District 3

Prepared by:

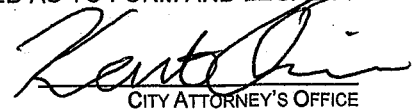
Miya Saika Chen, Chief of Staff  
Office of Councilmember  
Nikki Fortunato Bas

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

INTRODUCED BY COUNCIL MEMBER FORTUNATO BAS AND MCELHANEY

19 FEB -8 AM 9:00

APPROVED AS TO FORM AND LEGALITY

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

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

6 Affirmative Votes Required

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**INTERIM EMERGENCY ORDINANCE TO: 1) TEMPORARILY ELIMINATE THE EXEMPTIONS FROM RENT CONTROL FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES; 2) PLACE A MORATORIUM ON RENT INCREASES ABOVE THE ANNUAL CPI ADJUSTMENT FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES; 3) AFFIRM THE CITY'S PROHIBITION ON ILLEGAL EVICTIONS; AND 4) AFFIRM THE CITY'S DUTY TO PUBLICIZE CITY POLICIES ESTABLISHING TENANT RIGHTS**

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

**WHEREAS**, the housing affordability crisis threatens the public health and welfare of our citizenry; and

**WHEREAS**, 60 percent of Oakland residents are renters, who would not be able to locate affordable housing within the city if displaced by rent increases (U.S. Census Bureau, ACS 2017 Table S1101); and

**WHEREAS**, in January 2019 the median rental price for a one-bedroom unit in Oakland was \$2,370 per month, a 12.9 percent increase over January 2018, and the median rental price for a two-bedroom unit in January 2019 was \$2,860, a 15.8 percent increase over January 2019 (Zumper National Rent Report: February 2019); and

**WHEREAS**, Oakland's rental housing costs are the sixth highest in the nation, behind San Francisco, New York, San Jose, Boston, and Los Angeles (Zumper National Rent Report: February 2019); and

**WHEREAS**, in July 2018, the City Council placed on the ballot Measure Y, proposing to remove from the Just Cause for Eviction Ordinance exemption for owner-occupied two to three unit properties; and

**WHEREAS**, only the voters may modify the exemptions from the Just Cause for Eviction Ordinance, but the City Council has the authority to modify exemptions from the rent stabilization ordinance; and

**WHEREAS**, in staff reports proposing the ballot measure, Councilmembers Kalb and Gallo announced their intention to introduce an ordinance to eliminate the rent control exemption on these properties upon passage of Measure Y; and

**WHEREAS**, on November 6, 2018, Oakland voters passed Measure Y; and

**WHEREAS**, the City's current rent stabilization ordinance (O.M.C. Chapter 8.22) currently exempts from its provisions owner-occupied two to three unit properties after the owner lived in the unit for more than two years; and

**WHEREAS**, the City Council is currently considering a policy proposal to eliminate the exemptions from rent control for owner-occupied two- and three-unit properties; and

**WHEREAS**, members of the public testified at public meetings that tenants may face large rent increases as a result of the exemption while deliberations on a permanent policy proposals are ongoing; and

**WHEREAS**, members of the public testified at public meetings that removal of the exemption will create financial pressures that compel owners to remove units from the rental market which would increase displacement and further constrain access to affordable rental stock; and

**WHEREAS**, a temporary emergency ordinance would mitigate the harms caused by speculators subverting Oakland's tenant protection laws while the City Council deliberates permanent reforms; and

**WHEREAS**, pursuant to City Charter Section 213, the City Council may introduce and adopt an emergency ordinance at the same City Council meeting by an affirmative six votes of the council; and

**WHEREAS**, pursuant to City Charter Section 213, the City Council must state the reasons constituting the necessity of an emergency ordinance in order to preserve the public peace, health or safety of the City in an emergency; and

**WHEREAS**, if the Council does not enact an emergency ordinance implementing the above measures, the City's announcement of its intention to act would exacerbate the instability of the housing market and the uncertainty of public peace, health, and welfare by, in effect, providing for a brief incentive period during which landlords could increase rents despite the clear intent of the City to regulate such practices; and

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

**SECTION 1. Emergency Finding.** The City Council finds the foregoing recitals to be true and correct and hereby incorporates such findings into this ordinance. The City Council further finds that there is a necessity to pass an emergency ordinance by the powers given to the City Council under Section 213 of the City Charter due to rapidly escalating rents that, through the displacement of low and moderate income residents directly, threaten the welfare and public health of the City.

**SECTION 2. Duration of Emergency.** This emergency ordinance shall remain in effect for one hundred eighty (180) days from the date of its adoption or until an ordinance permanently eliminating the exemption for owner-occupied duplexes or triplexes becomes effective, whichever is earlier.

**SECTION 3. Discontinuance of Rent Exemption for Owner-Occupied Duplex and Triplex Properties.** The exemption from the Rent Adjustment Ordinance for owner-occupied properties of two- to three-units (Oakland Municipal Code section 8.22.030A.8) is discontinued. As of the effective date of this ordinance, the initial base rent for all newly covered units shall be the rent that was in effect for the rental unit on November 6, 2018. If no rent was in effect for the newly covered unit on November 6, 2018, the initial base rent shall be the first rent in effect after that date.

**SECTION 4. Rent Increase Moratorium; Petition for Relief.** From the effective date of this ordinance, no owner or manager of a newly covered unit may serve or give notice of a rent increase that exceeds the CPI Rent Adjustment, as defined in Section 8.22.020 of the Residential Rent Adjustment Ordinance, for the twelve (12) months preceding the increase. Any owner or manager of a newly covered unit who claims that the allowable rent under the moratorium is insufficient to provide a fair return based on maintaining the property's net operating income may file a petition with the Rent Program requesting relief from the moratorium by way of a rent increase in excess of the CPI Rent Adjustment necessary to provide a fair return.

**SECTION 5. City Policy on Illegal Evictions.** It remains the policy of the City of Oakland that no housing provider shall take action to terminate any tenancy in any unit covered by the Just Cause Ordinance (O.M.C. 8.22.300, et seq.) including, but not limited to, making a demand for possession of a rental unit, threatening to terminate a tenancy, serving any notice to quit or other eviction notice, or bringing any action to recover possession of a rental unit except for such "just cause" evictions as provided for in the city's current Just Cause for Eviction Ordinance as enacted by Measure EE and codified in Chapter 8.22 of the Oakland Municipal Code.

**SECTION 6. Duty to Publicize.** The City Administrator shall assist with publicizing and educating the public about tenant rights and landlord responsibilities established by City's Just Cause for Eviction Ordinance and Residential Rent Adjustment Program, and to refer to existing providers of access to legal assistance and rental assistance for tenants facing evictions.

**SECTION 7. Environmental Review.** This ordinance is exempt from the California Environmental Quality Act under CEQA Guidelines Section 15061 (b)(3), because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment, in that this ordinance applies the City's rent stabilization measures to existing residential units in the City, which is solely an administrative process resulting in no physical changes to the environment. Accordingly, this ordinance contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures.

**SECTION 8. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 9. Effective Date.** This ordinance shall become effective immediately if it receives six or more affirmative votes.

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: \_\_\_\_\_

2670906v1



**NOTICE AND DIGEST**

**INTERIM EMERGENCY ORDINANCE TO: 1) TEMPORARILY ELIMINATE THE EXEMPTIONS FROM RENT CONTROL FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES; 2) PLACE A MORATORIUM ON RENT INCREASES ABOVE THE ANNUAL CPI ADJUSTMENT FOR OWNER-OCCUPIED DUPLEXES AND TRIPLEXES; 3) AFFIRM THE CITY'S PROHIBITION ON ILLEGAL EVICTIONS; AND 4) AFFIRM THE CITY'S DUTY TO PUBLICIZE CITY POLICIES ESTABLISHING TENANT RIGHTS**

This Ordinance temporarily eliminates the owner-occupied duplex and triplex exemptions from the Rent Adjustment Ordinance and places a moratorium on rent increases above the annual CPI adjustments for newly covered owner-occupied duplexes and triplexes. It also affirms the city's prohibition on illegal evictions and the city's duty to publicize city policies establishing tenant rights.

**FILED  
OFFICE OF THE CITY CLERK  
OAKLAND**

**19 FEB -8 AM 9:08**