



CITY OF OAKLAND

AGENDA REPORT

DATE: March 25, 2020
TO: City Council and Members of the Public
FROM: Councilmember Nikki Fortunato Bas
Council President Pro Tempore Dan Kalb
City Attorney Barbara J. Parker
SUBJECT: Eviction Moratorium Emergency Ordinance

RECOMMENDATION

We Respectfully Request That The City Council: Adopt An Emergency Ordinance (1) Imposing A Moratorium On Residential Evictions, Rent Increase, And Late Fees During The Local Emergency Proclaimed In Response To The Novel Coronavirus (COVID-19) Pandemic; (2) Prohibiting Residential And Commercial Evictions Based On Nonpayment Of Rent That Became Due During The Local Emergency When Tenant Suffered A Substantial Loss Of Income Due To COVID-19; (3) Prohibiting Residential Evictions For Non-Payment Of Rent When The Landlord Impeded The Payment Of Rent; And (4) Calling On State And Federal Legislators And On Financial Institutions To Provide Relief To Low-income Homeowners And Landlords.

EXECUTIVE SUMMARY

This emergency ordinance will immediately establish moratoriums on residential evictions, residential rent increases, residential late fees, commercial evictions, and residential evictions for nonpayment of rent that became due during the local emergency.

The public health emergency caused by the COVID-19 pandemic is rapidly evolving, and this crisis requires extraordinary government measures to protect the health and safety of our community, our state and nation, and the entire world. As governments at all levels grapple with this emergency, it is incumbent upon Oakland and other cities to take steps to protect the health and welfare of our residents, especially seniors, homeless people and individuals with chronic medical conditions, who are the most vulnerable. With “shelter in place” mandates issued by six Bay Area counties and a statewide “stay at home” order from California Governor Newsom, the City of Oakland has a duty to assist residents in safely staying in their homes and “sheltering in place.”

Approximately 4,000 residents in Oakland do not have shelter, and a growing number of residents are housing insecure (at risk of becoming homeless). Homelessness can exacerbate vulnerability to COVID-19. This emergency ordinance can alleviate three of

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the leading causes of homelessness in Oakland —evictions, rent increases and job loss — and create greater housing stability for the majority of Oaklanders who are renters, thereby helping to ensure the public’s health and safety during this emergency and crisis. In addition, small businesses employ the majority of Oakland’s workers. The shelter in place order has severely impacted small businesses, forcing many to close their doors, while some maintain a fraction of their regular operations.

For the foregoing reasons, it is critical that Oakland adopt the emergency ordinance.

BACKGROUND

On March 1, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP declared a Local Health Emergency. On March 4, 2020, California Governor Gavin Newsom proclaimed that a State of Emergency exists in California as a result of the threat of the novel coronavirus, COVID-19. On March 9, 2020, the Oakland City Administrator issued a proclamation of Local Emergency. At the City Council’s Special Meeting on March 12, 2020, when the proclamation was ratified, numerous members of the public gave commentary about the need to prevent residential evictions during the COVID-19 crisis.

On March 16, 2020, six Bay Area counties (Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara) issued Shelter-in-Place Orders, directing nearly seven million residents to shelter in place through April 7, the strongest and most serious effort up to that point in the U.S. to contain the spread of the coronavirus and forestall health systems becoming overwhelmed with new cases. County health officials convened prior to issuing the orders and concluded the orders were necessary to slow the spread of the pandemic. On the same day, Governor Newsom issued an executive order that authorizes local governments to create ordinances to halt evictions for residential and commercial renters in California who are affected by COVID-19. On March 19, 2020, Governor Newsom announced a statewide stay-at-home order to reduce the spread of COVID-19.

As the public health emergency intensifies and the number of people infected by the COVID-19 virus increases exponentially, many people in the City of Oakland are at particularly high risk of infection and severe and potentially life threatening illness. Oakland has the highest per capita rate of homelessness of all large California cities. On any given night, approximately 4,000 Oakland residents do not have shelter, according to the Alameda County 2019 Point-In-Time Count. Oakland has experienced a severe housing affordability crisis for years. Sixty percent (60%) of Oakland residents are renters, who will not be able to locate affordable housing in the City if they lose their housing. Many Oakland residents are suffering substantial losses of income as a result of business closures, the reduction of hours or wages, or layoffs related to COVID-19.

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These economic impacts hinder or imperil their ability to make rent payments. In addition, many Oakland businesses are suffering economic losses related to COVID-19, in particular since the March 16, 2020, Shelter in Place Order, which required that many businesses close or decrease customer capacity through April 7, 2020, including bars and restaurants. According to media reports, a number of businesses in Oakland have already begun to lay employees off. Anecdotally, some residential and commercial landlords are working with their tenants on a case-by-case basis, and some commercial landlords have discounted commercial rent or waived it during the crisis. Accordingly, immediate legislative action is needed to support vulnerable tenants and to stabilize small businesses.

According to a 2019 survey of ten homeless encampments in Oakland, the three top causes of homelessness are job loss, rent increases, and evictions.¹ Because homelessness can exacerbate vulnerability to COVID-19, it is necessary for Oakland to take measures to preserve and increase housing security for Oakland residents.

It is also necessary to protect the economic security of small businesses in Oakland, so that they may continue to employ Oakland residents and provide essential goods and services to the community at large. Many small business owners and their employees are facing serious economic impacts caused by the Shelter-in-Place Order. The City of Oakland must do what is within our authority to help ensure our small businesses can continue to survive during and after this pandemic crisis. These measures will play a critical role in preserving the economic and racial diversity that make Oakland such a unique and vibrant community and our goal of providing equity for our residents.

The federal government is currently negotiating a nearly \$2 trillion stimulus plan that could provide important relief to impacted workers and small businesses. California cities continue to urge the state government to take additional action to support workers and small businesses.

While an eviction moratorium would provide immediate protection during COVID-19 by allowing renters to shelter in place in their homes, delaying rent payments would create additional debt for workers living paycheck to paycheck and those who have lost their jobs. It also creates pressure on landlords who must still pay their mortgages. Last week, about 106,000 people a day filed unemployment insurance claims in California, compared to the average 2,500 claims a day before the COVID-19 crisis. In order to address the broader, long-term economic impact of the health emergency, it's imperative for state and federal legislators, banks and financial institutions to take action

¹ Tsai, Tim (2019) "Standing Together: A Prevention Oriented Approach to Ending Homelessness in Oakland," *available at* <https://www.justcities.work/resources>.

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that cities do not have the authority to take, including mortgage moratoriums and forgiveness of rent and mortgage payments during the health emergency.

ANALYSIS

This emergency ordinance will prevent displacement, reduce transmission of the novel Coronavirus (COVID-19), and promote the stability and the health and safety of the residents of Oakland during the Local Emergency declared by the City Administrator on March 9, 2020, and ratified by the Oakland City Council on March 12, 2020, in response to the COVID-19 pandemic.

This emergency ordinance establishes moratoriums on:

1. **Residential evictions:** For any unlawful detainer action filed under Just Cause for Eviction Ordinance, Section 8.22.360.A, subsections (1) – (10), if the notice was served or expired, or the complaint was filed or served, during the Local Emergency, except when the tenant poses an imminent threat to the health or safety of other occupants of the property. This section shall remain in effect until May 31, 2020, unless extended.
2. **Rent increases:** For rental units regulated by Oakland Municipal Code 8.22.010 et seq, no notice of rent increase in excess of the CPI Rent Adjustment shall be effective if the notice is served or expires during the Local Emergency, unless required to provide a fair return.
3. **Residential late fees:** For residential tenancies, no late fees may be imposed for unpaid rent that became due during the Local Emergency if the rent was late for reasons resulting from the COVID-19 pandemic.
4. **Commercial evictions:** For any unlawful detainer action for a commercial unit of a small business with 100 or fewer employees or a nonprofit organization when the basis for the eviction is nonpayment of rent arising out of a substantial decrease in income (including but not limited to a decrease caused by a reduction in hours or consumer demand) and the decrease in income was caused by the COVID-19 pandemic or by any local, state, or federal government response to COVID-19, and is documented. This section shall remain in effect until May 31, 2020, unless extended. Nothing in this subsection shall relieve the tenant of liability for the unpaid rent.
5. **Residential evictions for nonpayment of rent that became due during the Local Emergency:** In any action for unlawful detainer filed under Oakland Municipal Code 8.22.360.A.1, it shall be a defense that the unpaid rent became due or accrued during the Local Emergency and was unpaid because of a substantial reduction in household income or substantial increase in expenses resulting from the Coronavirus pandemic. This includes, but is not limited to, where, as a result of the Coronavirus pandemic, the tenant suffered a loss of

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employment or a reduction in hours, or was unable to work because their children were out of school, or was unable to work because they were sick with COVID-19 or caring for a household or family member who was sick with COVID-19, or they were complying with a recommendation from a government agency to self-quarantine, or they incurred substantial out of pocket medical expenses due to COVID-19. Nothing in this subsection shall relieve the tenant of liability for the unpaid rent.

The emergency ordinance includes a provision that prevents eviction if the landlord impeded the payment of rent by a tenant. The emergency ordinance does not relieve the tenant of liability for unpaid rent that becomes due during the Local Emergency. The rent will become a consumer debt and may be collected as any other debt owed but not through the unlawful detainer process. Landlords are encouraged to work with local agencies that are or will be making rental assistance available for qualifying tenants. The emergency ordinance requires that landlords provide a statement of tenants' rights under this emergency ordinance when they serve notice to residential tenants during the Local Emergency.

The emergency ordinance also includes policy statements from the City Council, urging action by the state and federal governments and financial institutions. The ordinance urges state and federal governments to enact comprehensive legislation to protect the people who are suffering and at greatest risk during this public health emergency. Many of these people already were severely burdened by high housing costs in the City of Oakland and throughout California. Many who were already living paycheck-to-paycheck are losing their jobs as businesses struggle during this emergency. Even the temporary moratoriums on residential and commercial evictions will require that homeowners and renters pay back what may become insurmountable debts. In addition to urging federal and state legislator to issue moratoriums on mortgage foreclosures and commercial increases, the Council's policy statement urges federal and state legislators to create emergency direct assistance programs for rent and mortgage payments, create emergency grant programs to small businesses and nonprofit organizations, and create emergency programs that provide homes and expanded services for people experiencing homelessness.

In a second policy statement, the Council urges banks and financial institutions to suspend mortgage payments, foreclosures and late fees for low-income homeowners and landlords, and encourages financial institutions to provide zero-interest emergency unsecured loans and grants to small businesses and nonprofit organizations in Oakland that are unable to meet rent, mortgage, or other fixed operating costs.

While an eviction moratorium would provide immediate protection during COVID-19 by allowing renters to shelter in place in their homes, delaying rent payments would create

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additional debt for workers living paycheck to paycheck and those who have lost their jobs. It also creates pressure on landlords who must still pay their mortgages. Last week, about 106,000 people a day filed unemployment insurance claims in California, compared to the average 2,500 claims a day before the COVID-19 crisis. In order to address the broader, long-term economic impact of the health emergency, it's imperative for state and federal legislators, banks and financial institutions to take action that cities do not have the authority to take, including mortgage moratoriums and forgiveness of rent and mortgage payments during the health emergency.

FISCAL IMPACT

This legislation would establish moratoriums on residential evictions, residential rent increases, residential late fees, commercial evictions, and residential evictions for nonpayment of rent that became due during the Local Emergency and would not result in additional staffing cost increases to the City.

PUBLIC OUTREACH / INTEREST

Councilmember Bas' office engaged with several Oakland-based community organizations serving the homeless, tenant and small business communities, and Councilmember Bas and President Pro Tempore Kalb engaged with the Oakland Chamber, small business owners, and many individual residential renters as well.

COORDINATION

The City Attorney's Office was extensively consulted for this legislation. The City Administrator's Office, the Department of Housing and Community Development, the Department of Economic and Workforce Development, and the Mayor's Office were consulted as well. The Housing and Community Development Department Rent Program staff is preparing to conduct outreach about this legislation.

SUSTAINABLE OPPORTUNITIES

Economic: This ordinance will increase housing and small business stability, alleviating financial and economic pressures during the emergency on residents and small businesses, and increasing their ability to contribute to the local economy.

Environmental: Protecting tenants and allowing primarily lower income individuals and families to remain housed effectively prevents displacement and homelessness, reducing waste and greenhouse gas emissions that may be increased if individuals are forced to move further away from their workplaces or forced to live on the streets.

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Social Equity: This ordinance protects communities of color in Oakland. The 2018 City of Oakland Equity Indicators Report showed that 74 percent of African American residents are renters, 69 percent of Latinx residents are renters, and 48 percent of Asian residents are renters. Fifty-eight (58) percent of African American and 53 percent of Latino residents are rent burdened in Oakland, and African American residents are twice as likely to receive an eviction notice than all residents.

ACTION REQUESTED BY THE CITY COUNCIL

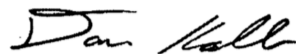
We Respectfully Request That The City Council: Adopt An Emergency Ordinance (1) Imposing A Moratorium On Residential Evictions, Rent Increase, And Late Fees During The Local Emergency Proclaimed In Response To The Novel Coronavirus (COVID-19) Pandemic; (2) Prohibiting Residential And Commercial Evictions Based On Nonpayment Of Rent That Became Due During The Local Emergency When Tenant Suffered A Substantial Loss Of Income Due To COVID-19; (3) Prohibiting Residential Evictions For Non-Payment Of Rent When The Landlord Impeded The Payment Of Rent; And (4) Calling On State And Federal Legislators And On Financial Institutions To Provide Relief To Low-income Homeowners And Landlords.

For questions regarding this report, please contact Miya Saika Chen, Chief of Staff, Office of Councilmember Nikki Fortunato Bas, at mchen@oaklandca.gov.

Respectfully Submitted,



Nikki Fortunato Bas
Councilmember, District 2



Dan Kalb
Council President Pro Tempore, District 1



Barbara J. Parker
City Attorney

INTRODUCED BY COUNCILMEMBER NIKKI FORTUNATO BAS,
COUNCIL PRESIDENT PRO TEMPORE DAN KALB, AND
CITY ATTORNEY BARBARA J. PARKER



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

6 Affirmative Votes Required

EMERGENCY ORDINANCE (1) IMPOSING A MORATORIUM ON RESIDENTIAL EVICTIONS, RENT INCREASES, AND LATE FEES DURING THE LOCAL EMERGENCY PROCLAIMED IN RESPONSE TO THE NOVEL CORONAVIRUS (COVID-19) PANDEMIC; (2) PROHIBITING RESIDENTIAL AND COMMERCIAL EVICTIONS BASED ON NONPAYMENT OF RENT THAT BECAME DUE DURING THE LOCAL EMERGENCY WHEN TENANT SUFFERED A SUBSTANTIAL LOSS OF INCOME DUE TO COVID-19; (3) PROHIBITING RESIDENTIAL EVICTIONS FOR NON-PAYMENT OF RENT WHERE THE LANDLORD IMPEDED THE PAYMENT OF RENT; AND (4) CALLING ON STATE AND FEDERAL LEGISLATORS AND FINANCIAL INSTITUTIONS TO PROVIDE RELIEF TO LOW-INCOME HOMEOWNERS AND LANDLORDS

WHEREAS, COVID-19 is a respiratory disease which was first detected in China and has now spread across the globe, with multiple confirmed cases in California, including the Bay Area; and

WHEREAS, On March 1, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP declared a Local Health Emergency, and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom proclaimed that a State of Emergency exists in California as a result of the threat of COVID-19; and

WHEREAS, Oakland is experiencing a severe housing affordability crisis and 60 percent of Oakland residents are renters, who would not be able to locate affordable housing within the City if they lose their housing; and

WHEREAS, in the City of Oakland, more than 4000 of our community members are homeless and live outdoors, in tents or in vehicles; and

WHEREAS, because homelessness can exacerbate vulnerability to COVID-19, it is necessary to take measures to preserve and increase housing security for Oakland residents; and

WHEREAS, the World Health Organization announced on March 11, 2020, that it has characterized COVID-19 as a pandemic; and

WHEREAS, on March 9, 2020, the Oakland City Administrator issued a proclamation of Local Emergency which was ratified by the Oakland City Council on March 12, 2020; and

WHEREAS, at the City Council's Special Meeting on March 12, 2020, numerous members of the public gave commentary about the need to prevent residential evictions during the COVID-19 crisis; and

WHEREAS, on March 16, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP issued a Shelter-in-Place Order, requiring all Alameda County Residents to stay in their homes and leave only for specified essential purposes; and

WHEREAS, on March 17, 2020, the California Public Utilities Commission's (CPUC) Executive Director determined that energy, water, sewer, and communications companies under CPUC jurisdiction should halt customer disconnections for non-payment as a result of the State of Emergency called by Gov. Gavin Newsom. (Source: <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M329/K673/329673725.PDF>); and

WHEREAS, the following California cities have enacted emergency eviction moratoriums: San Francisco, Berkeley, Emeryville, Alameda, San Jose, Los Angeles and San Diego, among others; and

WHEREAS, many Oakland residents are experiencing substantial losses of income as a result of business closures, the loss of hours or wages, or layoffs related to COVID-19, hindering their ability to keep up with rent payments; and

WHEREAS, many Oakland businesses are suffering economic losses related to COVID-19, in particular since the March 16, 2020, Shelter in Place Order; and

WHEREAS, the City of Oakland is supporting its small businesses and workers during this crisis by maintaining a new web page (www.oaklandbusinesscenter.com) to serve as a portal for all the local, state and federal resources available to support small businesses and workers during this crisis. These resources include assistance with small

business taxes, loan programs, worker benefits programs, and other direct business support; and

WHEREAS, many Landlords charge late fees which can operate as an unfair penalty if a tenant is unable to pay rent due to reasons related to COVID-19; and

WHEREAS, some Landlords refuse to provide a W-9 form when required for a tenant to access rental assistance from a government or non-profit agency; and

WHEREAS, pursuant to Oakland Municipal Code Section 8.22.360F, the City Council may add limitations to a landlord's right to evict under the Just Cause for Eviction Ordinance; and

WHEREAS, during this state of emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness; and

WHEREAS, an emergency ordinance restricting evictions during the COVID-19 crisis would help ensure that residents stay housed during the pandemic and would therefore reduce opportunities for transmission of the virus; and

WHEREAS, the City Council finds that the Just Cause for Eviction Ordinance, as amended herein, is consistent with Civil Code Section 1946.2 (as enacted by the Tenant Protection Act of 2019), is more protective than Civil Code Section 1946.2, and, in comparison to Civil Code Section 1946.2, further limits the reasons for termination of residential tenancy, provides additional tenant protections, and, in conjunction with other City ordinances, provides for higher relocation assistance payments; and

WHEREAS, on March 16, 2020, California Governor Gavin Newsom issued Executive Order N-28-20, which, among other things, suspended any provision of state law that would preempt or otherwise restrict a local government's exercise of its police power to impose substantive limitations on commercial evictions, if the basis for eviction was nonpayment of rent, or foreclosure, arising out of a substantial decrease in income or substantial out-of-pocket medical expenses caused by the COVID-19 pandemic, or a government agency's response to it, and is documented; and requests that financial institutions implement an immediate moratorium on foreclosures and related evictions that arise due to a substantial loss of household/business income, or substantial out-of-pocket medical expenses, due to COVID-19; and

WHEREAS, on March 18, 2020, the Federal Housing Administration (FHA) enacted a 60-day moratorium on foreclosures and evictions for single family homes with FHA-insured mortgages, and the Federal Housing Finance Agency suspended foreclosures and evictions for single family homes with mortgages backed by either the

Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) for 60-days; and

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued Executive Order N-33-20, ordering, with limited exceptions, all individuals living in the state of California to stay at home or at their place of residence, until further notice; and

WHEREAS, on March 19, 2020, the United States Senate introduced a \$1 trillion proposal for a coronavirus stimulus package, with support from the Trump Administration, which includes a direct payment to qualified individuals, small business loans, corporate tax cuts, and financial support for hard-hit industries such as airlines; and

WHEREAS, according to the 2018 City of Oakland Equity Indicators Report 74 percent of African American residents are renters, 69 percent of Latinx residents are renters, and 48 percent of Asian residents are renters; and 58 percent of African American and 53 percent of Latino residents are rent burdened in Oakland, and African American residents are twice as likely to receive an eviction notice than all residents; and

WHEREAS, this Ordinance will serve justice and promote racial equity for African American and Latinx renters; 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 six affirmative six votes; and

WHEREAS, the City Council finds that it is necessary to enact an emergency ordinance pursuant to the powers that City Charter Section 213 grants to the City Council to preserve the public health and safety which is threatened by COVID-19; and

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

SECTION 1. Recitals. The City Council finds the foregoing recitals to be true and correct and hereby incorporates such findings into this ordinance.

SECTION 2. Purpose and Intent. The purpose and intent of this ordinance is to prevent displacement, reduce transmission of the novel Coronavirus (COVID-19), and promote the stability and the health and safety of the residents and businesses of Oakland during the Local Emergency declared by the City Administrator on March 9, 2020, and ratified by the Oakland City Council on March 12, 2020, in response to the COVID-19 pandemic (hereinafter, "Local Emergency").

SECTION 3. Residential Eviction Moratorium. Except when the tenant poses an imminent threat to the health or safety of other occupants of the property, and such threat is stated in the notice as the grounds for the eviction, it shall be an absolute defense to any unlawful detainer action filed under Oakland Municipal Code 8.22.360A subsections (1) – (10) that the notice was served or expired, or that the complaint was filed or served, during the Local Emergency. Any notice served pursuant to Oakland Municipal Code 8.22.360A (1) - (10) on a tenant during the Local Emergency shall include the following statement in bold underlined 12-point font: **“Except to protect the health and safety of other occupants of the property, you may not be evicted during the Local Emergency declared by the City of Oakland in response to the COVID-19 pandemic. You may contact the Rent Adjustment Program at (510) 238–3721 for additional information and referrals.”** This section shall remain in effect until May 31, 2020, unless extended.

SECTION 4. Rent Increase Moratorium. For rental units regulated by Oakland Municipal Code 8.22.010 et seq, no notice of rent increase in excess of the CPI Rent Adjustment, as defined in Oakland Municipal Code Section 8.22.020, shall be effective if the notice is served or expires during the Local Emergency, unless required to provide a fair return. Any notice of rent increase served during the Local Emergency shall include the following statement in bold underlined 12-point font: **“During the Local Emergency declared by the City of Oakland in response to the COVID-19 pandemic, your rent may not be increased in excess of the CPI Rent Adjustment (3.5% until June 30, 2020), unless required for the landlord to obtain a fair return. You may contact the Rent Adjustment Program at (510) 238–3721 for additional information and referrals.”**

SECTION 5. Late Fee Moratorium. Notwithstanding any lease provision to the contrary, for residential tenancies, no late fees may be imposed for rent that became due during the Local Emergency if the rent was late for reasons resulting from the COVID-19 pandemic. This includes, but is not limited to (1) the tenant was sick or incapacitated due to COVID-19, or was complying with a recommendation from a governmental agency to self-quarantine, (2) the tenant suffered a substantial reduction in household income because of a loss of employment or a reduction in hours, or because they were unable to work because they were caring for their child(ren) who were out of school or a household or family member who was sick with COVID-19, or because they were complying with a recommendation from a government agency to self-quarantine, and (3) the tenant incurred substantial out-of-pocket medical expenses caused by COVID-19. Any notice demanding late fees for rent that became due during the Local Emergency shall include the following statement in bold underlined 12-point font: **“You are not required to pay late fees for rent that became due during the Local Emergency declared by the City of Oakland in response to the COVID-19 pandemic if the rent was late for reasons related to the pandemic. You may contact the Rent Adjustment Program at (510) 238–3721 for additional information and referrals.”**

SECTION 6. Commercial Eviction Moratorium. In any action for unlawful detainer of a commercial unit based on non-payment of rent, it shall be an absolute defense if the failure to pay rent was the result of a substantial decrease in income (including but not limited to a decrease caused by a reduction in hours or consumer demand) and the decrease in income was caused by the COVID-19 pandemic or by any local, state, or federal government response to COVID-19, and is documented. This section shall only apply to small businesses as defined by Government Code Section 14837(d)(1)(A) and to nonprofit organizations. Any notice to a commercial tenant demanding rent shall include the following statement in bold underlined 12-point font: “**if you are a small business as defined by Government Code 14837(d)(1)(a) or a non-profit organization, you may not be evicted for failure to pay rent during the if the failure was due to a substantial decrease in income caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented.**” This section shall remain in effect until May 31, 2020, unless extended. Nothing in this section shall relieve the tenant of liability for the unpaid rent.

SECTION 7. No Residential Eviction for Nonpayment of Rent that Became Due During the Local Emergency. In any action for unlawful detainer filed under Oakland Municipal Code 8.22.360.A.1, it shall be a defense that the unpaid rent became due during the Local Emergency and was unpaid because of a substantial reduction in household income or substantial increase in expenses resulting from the Coronavirus pandemic. This includes, but is not limited to, where, as a result of the Coronavirus pandemic, the tenant suffered a loss of employment or a reduction in hours, or was unable to work because their children were out of school, or was unable to work because they were sick with COVID-19 or caring for a household or family member who was sick with COVID-19, or they were complying with a recommendation from a government agency to self-quarantine, or they incurred substantial out of pocket medical expenses due to COVID-19. Any notice served on a residential tenant demanding rent that became due during the Local Emergency shall include the following statement in bold underlined 12-point type: “**You may not be evicted for rent that became due during the Local Emergency if the rent was unpaid because of a substantial reduction in household income or a substantial increase in expenses related to the Coronavirus pandemic. You may contact the Rent Adjustment Program at (510) 238–3721 for additional information and referrals.**” Nothing in this subsection shall relieve the tenant of liability for the unpaid rent.

SECTION 8. No Eviction if Landlord Impeded Payment of Rent. Subsection D of Section 8.22.360 of the Oakland Municipal Code (Just Cause for Eviction Ordinance) is hereby repealed and reenacted with amendments, as set forth below (additions are shown as double underline).

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 through 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, onest 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.
4. In any action to recover possession of a rental unit filed under 8.22.360A1, it shall be a defense if the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party.

SECTION 9. No Relief from Liability for Rent. Nothing in this Ordinance shall relieve any tenant of liability for unpaid rent that became due during the Local Emergency. The rent shall become a consumer debt and may be collected as any other debt owed but not through the unlawful detainer process. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

SECTION 10. Notice Requirements. Obligatory notice statements required by this ordinance shall be written in the language that the landlord and/or the landlord's agents normally use for verbal communications with the tenant.

SECTION 11. Good Samaritan Temporary Rent Decreases – A landlord and tenant may agree in writing to a temporary rent reduction without reducing the base rent used for calculating rent increases under the Rent Adjustment Ordinance. For Good Samaritan Status to exist, the written agreement must include a statement that the

reduction is temporary and is unrelated to market conditions, habitability, or a reduction in housing services.

SECTION 12. No Waiver of Rights. Any agreement by a tenant to waive any rights under this ordinance shall be void as contrary to public policy.

SECTION 13. City Council Request for Additional State and Federal Action. The Oakland City Council hereby requests and urges Governor Newsom, California State legislators and U.S. Senators and Representatives to enact comprehensive legislation to further protect residents, tenants, homeowners and small businesses from the adverse health, safety and economic impacts of this crisis. This includes, but is not limited to, the following:

- A moratorium on mortgage foreclosures;
- A moratorium on commercial rent increases;
- Creation of emergency direct assistance programs for rent and mortgage payments, and other housing-related expenses such as utilities, property taxes, and insurance;
- Urging banks and financial institutions to suspend rents and mortgages;
- Creation of emergency grant programs to small businesses and nonprofits; and
- Creation of emergency programs that provide homes and expanded services for people experiencing homelessness.

SECTION 14. City Council Requests Action by Financial Institutions. The Oakland City Council hereby requests and urges banks and financial institutions to suspend mortgage payments, foreclosures, and late fees for low-income homeowners and landlords, with immediate forgiveness, and encourages financial institutions to provide zero-interest emergency unsecured loans and grants to small businesses and non-profits within Oakland that are unable to meet rent, mortgage, or other fixed operating costs.

SECTION 15. This ordinance is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Sections 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (no environmental impact), 15269(c) (specific actions necessary to mitigate an emergency), and 15378 (regulatory actions). In response to the COVID-19 crisis, which has been declared a national, state, and local emergency, this ordinance implements rent stabilization measures and an eviction moratorium for existing residential units in the City with tenants who have been negatively impacted by the emergency.

The ordinance is necessary to mitigate an emergency and contains no provisions modifying the physical design, development, or construction of residential or nonresidential structures. Accordingly, it can be seen with certainty that there is no

possibility that the ordinance may have a significant effect on the environment and result in no physical changes to the environment.

SECTION 16. 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 17. Direction to City Administrator. The City Council hereby directs the City Administrator to transmit a copy of this Ordinance to all banks, financial institutions, and public utilities operating in Oakland, Governor Gavin Newsom, State Senator Nancy Skinner, Assembly Member Buffy Wicks, Assembly Member Rob Bonta, U.S. Senator Kamala Harris, U.S. Senator Diane Feinstein, and U.S. Representative Barbara Lee.

SECTION 18. Regulations. The City Administrator may issue regulations, guidance, and forms as needed to implement this Ordinance.

SECTION 19. 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: _____

NOTICE AND DIGEST

EMERGENCY ORDINANCE (1) IMPOSING A MORATORIUM ON RESIDENTIAL EVICTIONS, RENT INCREASES, AND LATE FEES DURING THE LOCAL EMERGENCY PROCLAIMED IN RESPONSE TO THE NOVEL CORONAVIRUS (COVID-19) PANDEMIC; (2) PROHIBITING RESIDENTIAL AND COMMERCIAL EVICTIONS BASED ON NONPAYMENT OF RENT THAT BECAME DUE DURING THE LOCAL EMERGENCY WHEN TENANT SUFFERED A SUBSTANTIAL LOSS OF INCOME DUE TO COVID-19; (3) PROHIBITING RESIDENTIAL EVICTIONS FOR NON-PAYMENT OF RENT WHERE THE LANDLORD IMPEDED THE PAYMENT OF RENT; AND (4) CALLING ON STATE AND FEDERAL LEGISLATORS AND ON FINANCIAL INSTITUTIONS TO PROVIDE RELIEF TO LOW-INCOME HOMEOWNERS AND LANDLORDS.

This ordinance imposes a temporary moratorium on residential evictions and rent increases in excess of CPI during the Local Emergency. It also prohibits residential evictions and the imposition of late fees for rent that became due during the Local Emergency if the tenant's failure to pay rent was a result of a substantial decrease in income or a substantial increase in expenses related to COVID-19; and prohibits evictions when the landlord has impeded the tenant's efforts to pay rent. The ordinance imposes a temporary moratorium on evictions of small businesses for non-payment of rent when the tenant suffered a substantial loss of business income related to COVID-19.