

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

CITY ATTORNEY'S OFFICE

**REVISED ORDINANCE
SUBMITTED BY COUNCILMEMBERS
BAS AND KALB ON MARCH 27, 2020**
(revisions are highlighted)

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, sue 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. This does not relieve you of the obligation to pay back rent in the future. 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~~ **any** 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~~ **void and unenforceable if the notice is served or has an effective date** 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 **during the local emergency** 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 does not relieve you of the obligation to pay back rent in the future”** 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. This does not relieve you of the obligation to pay back rent in the future. 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, 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.
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. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party as long as either the landlord or the tenant provide written notice that no new tenancy is intended.

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 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, including but not limited to guidelines for repayment of back rent.

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: _____

2916782v5

