

Update on UD Actions Under the Tenant Protection Act
June 16, 2023

Presented by: Ryan Mayberry and Marc S. Janowitz

I. Introduction.

II. Contra Costa County Update:

1. Unlawful Detainer Cases in Contra Costa County:

a. Taking Longer than ever before (2-3 months)

- i. Mandatory e-filing
- ii. Processing of Defaults
- iii. Sheriff Delays
- iv. Clerks practicing law
 1. Clerk was requiring an extra five day for notice period when served by posting and mailing
 2. Had to meet with the Commissioner to get this changed

b. 3 different Courts

- i. Richmond
 1. Richmond Rent Control and Just Cause Ordinance
 2. El Cerrito Rent Registry
- ii. Martinez
 1. Concord Relocation Ordinance
- iii. Pittsburg
 1. Antioch Rent Control Ordinance

c. Shortly there will be all New Commissioners in all three jurisdictions.

- i. Most senior Commissioner started in January 2023 (now in Pittsburg)
- ii. New Commissioner in Richmond started in May 2023
- iii. New Commissioner in Martinez has not started yet

2. Common Pitfalls from a Landlord's Perspective:

a. Including monies in a Notice to Pay Rent or Quit that are not rent

- i. Late Fees
- ii. Utilities

b. Seeking rent that accrued over 12 months ago in a 3-Day Notice to Pay Rent or Quit

c. Notice that do not meet all of the statutory requirements

- i. If Attorney signs notice, notice must comply with the Fair Debt Collection Practices Act
- ii. Richmond Notice Requirements
 1. Required language
 2. Filing with Rent Board

- d. AB 1482
 - i. Exemptions
 - 1. Tenancies less than one year
 - 2. Affordable Housing
 - 3. Single Family Homes
 - a. Requires notice to the tenant
 - b. Must be included in the lease after July 2020
 - ii. Requirements for Good Cause
 - 1. Includes SFH if exemption not done properly
 - iii. Relocation required in No Fault cause situations
 - 1. Specific amount must be stated in the notice

III. Alameda County Update:

- 1. Current state of Alameda County Superior Court procedure for processing unlawful detainers.
 - See Attachment 1
- 2. Local eviction moratoriums and ordinances
 - a. Alameda County COVID-19 Emergency Moratorium.
 - See Attachment 2
 - b. San Leandro Eviction Moratorium.
 - See Attachment 3
 - c. City of Berkeley COVID-19 Emergency Response Ordinance.
 - See Attachment 4
 - d. City of Oakland Ordinance for Establishing a Timeline for Termination of the Moratorium.
 - See Attachment 5

Attachment 1



PRESS RELEASE

Court Updates Unlawful Detainer Filing Procedures

Jun 05, 2023

Eviction Complaints Follow New Processing Rules

Increase in unlawful detainer case filings prompts roll back of pandemic processing procedures.

Hayward, Calif. – June 5, 2023 - The ongoing expiration of eviction moratoriums in jurisdictions throughout Alameda County has triggered changes in how the Superior Court of Alameda County will process unlawful detainer cases.

Beginning today, all unlawful detainer cases will be handled as they were prior to the pandemic, eliminating a multi-step filing process that required litigants to file a sworn declaration and a proposed order along with their complaints.

The new process also eliminates a Court review of documents before a summons is issued and a mandatory case management conference once a complaint is filed. Instead, summons will be issued as soon as a complaint is filed, and settlement conferences and trial dates will be scheduled after a case is ready to go to trial.

“These changes are being made to prevent the Court from having an unmanageable backlog of cases,” said Presiding Judge Charles Smiley. “With eviction moratoriums sunseting throughout Alameda County, it’s time for the court to reinstate our pre-pandemic practices and make sure our hardworking clerks and judges can do their jobs efficiently and effectively.”

The Court expects a large increase in the number of unlawful detainers filed as moratoriums in San Leandro, Oakland and Berkeley expire this summer. In just one month after Alameda County ended its moratorium, more than 500 unlawful detainers were filed, a more than 600% increase from the month before.

The processing change being made today reflects the need to begin handling unlawful detainer cases as the Court has in the past, allowing for quicker processing and resolution by settlement or trial. Procedures put in place at the height of the pandemic slowed the process to ensure only the cases allowed under city and county moratoriums proceeded.

Despite these changes, unlawful detainer cases filed for properties in San Leandro, Oakland and Berkeley must continue to abide by the moratorium restrictions enacted by those jurisdictions. Moratoriums in all three cities are currently scheduled to expire this summer.

For more information about unlawful detainers, please visit our website at:
<https://selfhelp.courts.ca.gov/eviction>

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Attachment 2

SECTION II

NOW, THEREFORE, the Board of Supervisors of the County of Alameda ordains as follows:

Chapter 6.120 of the Alameda County Ordinance Code is hereby amended to read in its entirety as follows:

Chapter 6.120 – Temporary Residential Eviction Moratorium for the Incorporated and Unincorporated Areas of the County Due to and During the COVID-19 Emergency.

6.120.010 - Purpose, Intent and Scope.

This ordinance is enacted to promote the public peace, health, welfare and safety. The purposes of this ordinance are to reduce the transmission of COVID-19, to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness. This ordinance is necessary to promote the public peace, health, welfare and safety because the COVID-19 pandemic has the potential for destabilizing the residential market for the reasons described in the findings made by the Board of Supervisors in enacting this ordinance. This ordinance is intended to enable tenants, homeowners, and mobilehome owners in the County to shelter-in-place and avoid displacement during the COVID-19 pandemic. This ordinance is also intended to enable tenants, homeowners, and mobilehome owners in the County whose income, medical expenses, or child care needs have been affected by the COVID-19 pandemic to be temporarily protected from eviction for non-payment of rent or mortgage payments. This ordinance is intended to reduce the risk that these events will lead to anxiety, stress and potential homelessness for the affected residents and their communities thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on evictions by this ordinance is created pursuant to the County's emergency authority pursuant to Government Code section 8634 and its general police powers to protect the health, safety, and welfare of its residents, in addition to any rights and obligations under state and federal law.

6.120.020 - Definitions.

- A. "Affected Resident" shall mean a Tenant, Homeowner or their Household, that has experienced a Qualifying Loss.
- B. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. Homeowner includes the owner of a Mobilehome.

- C. "Household" means all of the individuals residing in the Residential Unit with the Tenant(s) and/or Homeowner(s).
- D. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and/or occupancy of any Residential Unit by a Tenant and the agent, representative, or successor of any of the foregoing. Landlord includes a Mobilehome park owner leasing spaces to a Mobilehome owner.
- E. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more Residential Units, which person has the right to mortgage or similar payments from the Homeowner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.
- F. "Local Health Emergency" means the state of emergency declared by the County of Alameda or its authorized officers related to COVID-19 including but not limited to declarations by the Public Health Officer or the Board of Supervisors.
- G. "Mobilehome" means a structure transportable in one or more sections, designed and equipped to contain not more than one dwelling unit, to be used with or without a foundation system.
- H. "Notice of Termination" means the notice informing a Tenant or Homeowner of the termination of their right to occupy the Residential Unit in accordance with applicable California law, including but not limited to a 3- or 30-day notice to pay or quit.
- I. "Person" means an individual, firm, association, partnership, joint venture, corporation or any entity, public or private in nature.
- J. "Qualifying Loss" means substantial loss in income, substantial out-of-pocket medical expenses or extraordinary child care needs, resulting in a substantial hardship or inability to make rent or mortgage payments when due, as a result of the COVID-19 pandemic, including but not limited to any COVID-19 related declaration of the County Public Health Officer, or other local, state or federal authority.
- K. "Resident" shall mean a Tenant, Homeowner or their Household. This term includes but is not limited to Affected Residents.
- L. "Residential Unit" means a structure or Mobilehome or the portion thereof that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which person or household pays rent to a Landlord or mortgage payments to a Lender for the use and/or occupancy of the structure or Mobilehome, or the space where a Mobilehome is located, for periods of thirty (30) days or more whether or not the residential use is a conforming use permitted under the Alameda County Ordinance Code, applicable city's municipal code, or other applicable regulations.

- M. "Tenant" means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Residential Unit.

6.120.030 - Moratorium on Evictions During Local Health Emergency.

- A. Beginning on the effective date of this ordinance and continuing until July 28, 2020, the County hereby places a moratorium on all evictions from Residential Units in the unincorporated and incorporated areas of the County, subject to the exceptions stated below.
- B. No Landlord or Lender may evict a Resident, or otherwise require a Resident to vacate a Residential Unit, or retaliate against a Resident, while this section is in effect.
- C. Violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of a Residential Unit.
- D. It shall be an absolute defense to any unlawful detainer action against a Resident that the Notice of Termination was served or expired, or that the complaint was filed or served, on or after April 21, 2020 and on or before July 28, 2020, subject to the exceptions stated below. This defense may be raised at any time, including after the end of the Local Health Emergency and after the expiration of this ordinance stated in Section III, provided the notice or complaint at issue in the unlawful detainer action was filed or served during the period stated in this subsection.
- E. Notwithstanding any lease provision to the contrary, no late fees, fines or interest may be imposed for rent that became due during the effective period for this section.
- F. Exceptions. The Landlord or Lender claiming that their proposed eviction is not prohibited by this ordinance shall have the burden of proving that one or more of the exceptions applies. The provisions of this section shall not apply in the following circumstances, which must be stated by in the Notice of Termination and the complaint as the grounds for the eviction:
- 1) A Landlord is taking the Residential Unit off of the residential rental market in accordance with Government Code sections 7060, *et seq.* (Ellis Act) and in compliance with any applicable local ordinances.
 - 2) The Residential Unit must be vacated to comply with an order issued by a government agency or court.
 - 3) Continued occupancy by the Resident poses an imminent threat to health or safety. For the purposes of this ordinance, the basis for this exception cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

6.120.040 - Moratorium on Evictions Based on Nonpayment Caused by COVID-19.

- A. Beginning on the effective date of this ordinance and continuing until May 31, 2020, the County hereby places a moratorium on evictions from Residential Units in the unincorporated and incorporated areas of the County resulting from a substantial loss of income, substantial out-of-pocket medical expenses, or extraordinary child care needs, any of which are caused by COVID-19.
- B. No Landlord or Lender may evict an Affected Resident, or otherwise require an Affected Resident to vacate a Residential Unit or retaliate against an Affected Resident for nonpayment of rent or mortgage payments or for nonpayment of late fees, fines or interest based on nonpayment, while this ordinance is in effect.
- C. Violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of a Residential Unit.
- D. It shall be an absolute defense to any unlawful detainer action against an Affected Resident based on a failure to timely make rent or mortgage payments that the Notice of Termination was served or expired, or that the complaint was filed or served, on or after March 24, 2020 and on or before May 31, 2020. This defense may be raised at any time, including after the end of the Local Health Emergency and after the expiration of this ordinance stated in Section III, provided the notice or complaint at issue in the unlawful detainer action was filed or served during the period stated in this subsection.
- E. Notwithstanding any lease provision to the contrary, no late fees, fines or interest may be imposed for rent that became due during the effective period for this section, if the rent was late due to a Qualifying Loss.
- F. If the Governor of the State of California extends the protections of Executive Order N-2820, Paragraph 2, beyond May 31, 2020, the May 31, 2020 dates in subsections A and D of this section shall be automatically extended to the expiration date of said Paragraph 2.

6.120.050 - Procedures.

- A. A Landlord or Lender must provide a copy of this ordinance and the following notice in at least 12-point font to Residents when serving Residents with a Notice of Termination:

"NOTICE: THE COUNTY OF ALAMEDA HAS ADOPTED A TEMPORARY MORATORIUM ON EVICTIONS DURING THE COVID-19 LOCAL HEALTH EMERGENCY INCLUDING EVICTIONS FOR NONPAYMENT OF RENT OR MORTGAGE PAYMENTS DUE TO COVID-19. A COPY OF THE COUNTY ORDINANCE IS ATTACHED. UPDATED INFORMATION MAY BE AVAILABLE FROM THE COUNTY'S HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT AT jennifer.pearce@acgov.org or 510670-6474."

- B. If the Residential Unit is located within the jurisdictional limits of a city which also has an ordinance protecting residents from evictions due to COVID-19 or during the COVID-19 emergency, the Landlord or Lender must also provide a copy of the city's ordinance with the Notice of Termination.
- C. To the extent feasible, Affected Residents should make a reasonable effort to notify their Landlord or Lender on or before the day rent or mortgage payment is due, or as soon as possible thereafter, of their potential inability to make a timely rent or mortgage payment due to a Qualifying Loss.

6.120.060 - Documentation – Required Only for COVID-19 Based Eviction Protections.

- A. The provisions of this section apply only when an Affected Resident is seeking protection from eviction pursuant to Section 6.120.040 of this ordinance due to a substantial loss in income, substantial out-of-pocket medical expenses or extraordinary child care needs, resulting in a substantial hardship or inability to make rent or mortgage payments when due, as a result of the COVID-19 pandemic, including but not limited to any COVID-19 related declaration of the County Public Health Officer, or other local, state or federal authority. Documentation is not required when a resident is seeking protection from eviction pursuant to Section 6.120.030 of this ordinance.
- B. An Affected Resident's Qualifying Loss must be documented.
- C. An Affected Resident shall retain such documentation until such time as any back rent owed due to the Qualifying Loss is repaid or forgiven.
- D. An Affected Resident is not required to provide such documentation to the Landlord or Lender in advance to qualify for the protections of this ordinance. However, upon the request of a Landlord or Lender, an Affected Resident shall provide such documentation to the Landlord or Lender within forty-five (45) days after the request or within thirty (30) days after the County's shelter in place order is lifted, whichever is later.
- E. The following documents shall create a rebuttable presumption that the Affected Resident has a Qualifying Loss:
 - 1) Letter from employer or other source of income citing COVID-19 as a reason for reduced work hours, termination, or other substantial reduction in pay;
 - 2) Employer paycheck stubs showing a reduction in pay following the COVID-19 outbreak;
 - 3) Bank statements showing a reduction in income following the COVID-19 outbreak;
 - 4) Documentation showing payment of substantial out-of-pocket medical expenses caused by COVID-19; or

- 5) Documentation showing the closure of a school or child care facility where a child in the Affected Resident's care would otherwise be present during the Affected Resident's working hours; or
 - 6) A sworn statement by the Affected Resident attesting to the existence of their Qualifying Loss, including facts sufficient to demonstrate the Qualifying Loss, and attesting to their inability to gather the documentation described in (1)-(5) above.
- F. An Affected Resident may provide other documentation to demonstrate a substantial hardship or inability to make timely rent or mortgage payments caused by COVID-19.
- G. Any confidential medical information or other information protected by the Affected Resident's rights to privacy shall be held confidential by the Landlord or Lender and shall not be reproduced or distributed unless otherwise authorized or required by law.

6.120.070 - Retaliation Prohibited.

A Landlord or Lender shall not retaliate against a Resident for exercising their rights under this ordinance, including but not limited to shutting off any utilities or reducing services or amenities to which the Residents would otherwise be entitled.

6.120.080 - No Waiver.

The protections provided by this ordinance shall be available to all Residents, regardless of any agreement wherein a Resident waives or purports to waive their rights under this ordinance.

6.120.090 - Repayment of Back Rent.

- A. Nothing in this ordinance relieves an Affected Resident of liability for unpaid rent or mortgage payments that became due during the effective periods of Sections 6.120.030.A. or D. or 6.120.040.A. or D. of this ordinance.
- B. In any action to recover possession of a Residential Unit from a Tenant based on nonpayment of rent, it shall be an affirmative defense that the rent became due during the effective periods of Sections 6.120.030.A. or D. or 6.120.040.A. or D. of this ordinance. This defense may be raised at any time, including after the end of the Local Health Emergency and after the expiration of this ordinance stated in Section III.
- C. A Landlord and Tenant may mutually agree to a repayment plan for unpaid back rent that came due during the effective periods of Sections 6.120.030.A. or D. or 6.120.040.A. or D. of this ordinance. Such plans remain subject to the limitation on evictions based on back rent owed pursuant to Subsection B, above. At a minimum, a payment plan:

- 1) May waive portions of the Tenant's rental obligation and may grant the Tenant additional time to pay beyond the minimum requirements of this ordinance.
 - 2) Should not require the Tenant's agreement to change lease terms as a condition of the payment plan.
 - 3) May allow partial rent payments or temporarily discounted rent, without affecting the maximum allowable base rent that the Landlord may charge at the close of the payment plan period.
 - 4) May not declare a Tenant's failure to comply with a payment plan a basis for eviction prior to the end of the repayment deferral period.
- D. If a Tenant does not repay the rent that became due during the applicable effective periods of Sections 6.120.030.A. or D. or 6.120.040.A. or D. within twelve (12) months from the date the rent became due, a Landlord may collect the back rent as any other consumer debt. Such back rent may not be collected through the unlawful detainer process.
- E. In any action to recover possession of a Residential Unit, it shall be an affirmative defense if the Landlord or Lender impeded the Affected Resident's effort to pay by refusing to accept payments on behalf of Affected Resident from a third party, or refusing to provide a W-9 form or other necessary documentation for the Affected Resident to receive financial assistance from a government agency, non-profit organization, or other third party. This defense may be raised at any time, including after the end of the Local Health Emergency and after the expiration of this ordinance stated in Section III.

6.120.100 - Violation and Remedies.

- A. Affirmative Defense. Each Landlord or Lender that seeks to recover possession of a Residential Unit must comply with this ordinance. Non-compliance with any applicable provision of this ordinance shall constitute an affirmative defense for a Resident against any unlawful detainer action under California Code of Civil Procedure section 1161, termination of tenancy in a Mobilehome park under the Mobilehome Residency Law (see Civil Code sections 798.55, et. seq.), petition for writ of possession, or any other action to recover possession of the Residential Unit or to otherwise cause Residents to vacate the Residential Unit.
- B. Misdemeanor. Any person violating any of the provisions of this ordinance is guilty of a misdemeanor. Each person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of this ordinance is committed, continued or allowed in conjunction with the Landlord's or Lender's activities with respect to the Residential Unit, Residents and Households and is punishable accordingly. For purposes of this section, each and every day of violation includes each day on which a failure to comply with this ordinance continues. No proof of knowledge, intent, or other mental state is required to establish a violation.
- C. Civil Remedies.

1. Any Landlord or Lender that willfully fails to comply with this ordinance is subject to a fine of \$1000 per violation. Each person is liable for separate violation for each and every day during any portion of which any violation of any provision of this ordinance is committed, continued or allowed in conjunction with the Landlord's or Lender's activities with respect to the Residential Unit, Residents, and Resident Households. For purposes of this section, each and every day of the violation includes each day on which a failure to comply with this ordinance continues. No proof of knowledge, intent, or other mental state is required to establish a violation.
2. Any Landlord or Lender that willfully fails to comply with this ordinance may be subject to civil proceedings for displacement of Residents initiated by the County or the Affected Residents.
3. Any person found to have willfully violated this ordinance shall be subject to appropriate injunctive relief and shall be liable to the Resident for damages, costs, and reasonable attorneys' fees.
4. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Resident or non-Resident third party for damage done to said Residential Unit. Nothing herein is intended to limit the damages recoverable by any party through a private action.

D. Cumulative Remedies. The remedies provided by this ordinance are cumulative and in addition to any other remedies available at law or in equity.

6.120.110 - Application to Cities.

- A. The regulations in this ordinance shall apply to cities within the County of Alameda and to the unincorporated area of the County, subject to subsections B, C and D below.
- B. If the governing body of a city has enacted an ordinance that has stronger protections for Tenants during the COVID-19 emergency, the city may apply its ordinance in lieu of the County ordinance, to the extent its ordinance is stronger, subject to the requirements of this section. The city must duly affirm or declare in writing its intent to opt out of the County ordinance. The writing must enumerate the specific provisions of the County's ordinance from which the city intends to opt out and must include a finding that the city ordinance is stronger.
- C. To the extent the city ordinance is not stronger, the County ordinance protecting Tenants shall apply despite contrary provisions or silence on the subject in the city ordinance.
- D. To the extent the city's ordinance is stronger for Tenants but not for Homeowners, the provisions of the County ordinance protecting Homeowners shall apply despite contrary provisions or silence on the subject in a city's ordinance.

6.120.120 - Severability.

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

SECTION III

This ordinance shall be in force thirty (30) days after its passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for an against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the 23rd day of June, 2020, by the following called vote:

AYES: Supervisors Carson, Chan, & President Valle - 3

NOES: None

ABSTAINED: Supervisors Miley & Haggerty

EXCUSED: None

RICHARD VALLE
President of the Board of Supervisors

ATTEST: ANIKA CAMPBELL-BELTON
Clerk of the Board of Supervisors,

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL
By: Heather Littlejohn, Deputy County Counsel

Attachment 3

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2023-XXX

AN ORDINANCE OF THE CITY OF SAN LEANDRO CITY COUNCIL AMENDING ORDINANCE NO. 2023-001 TO
TERMINATE THE CITY'S EVICTION MORATORIUM EFFECTIVE JULY 31, 2023

The City Council of the City of San Leandro does **FIND** as follows:

WHEREAS, a severe outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19 ("COVID-19"); and

WHEREAS, on March 1, 2020, the Health Officer of Alameda County declared a public health emergency throughout the County of Alameda due to COVID-19; and

WHEREAS, on March 4, 2020, the Governor of California proclaimed a state of emergency throughout California related to COVID-19; and

WHEREAS, on March 16, 2020, due to an escalating increase in the number of cases in Alameda County, under San Leandro Municipal Code section 3-4-124, the Director of Emergency Services proclaimed a local emergency and a state of emergency related to COVID-19; and

WHEREAS, on March 16, 2020, at its regular meeting the San Leandro City Council ratified the Director of Emergency Services' proclamation of a local emergency and a state of emergency related to COVID-19; and

WHEREAS, on March 16, 2020, California Governor Gavin Newsom issued Executive Order N- 28-20 suspending any provision of state law that would preempt or otherwise restrict a local government's exercise of its police powers to impose substantive limitations on residential or commercial evictions related to COVID-19; and

WHEREAS, the City Council adopted Ordinance No. 2020-003 as an urgency ordinance on March 23, 2020 to establish a moratorium on residential and commercial evictions due to nonpayment of rent for tenants where the failure to pay rent is from income loss resulting from COVID-19; and

WHEREAS, the eviction moratorium enacted by Ordinance No. 2020-003 was set to expire upon the expiration of the later of the Governor's proclamation of a state of emergency or the City Council's termination of the local emergency, both of which occurred on February 28, 2023; and

WHEREAS, on February 21, 2023, the City Council adopted Ordinance No. 2023-001 extending the moratorium on residential evictions due to nonpayment of rent for tenants where the failure to pay rent is from income resulting from COVID-19 until February 28, 2024 based on findings contained in Ordinance No. 2023-001; and

WHEREAS, at the time the City Council adopted Ordinance No. 2023-001 it directed staff to provide an

update to the City Council every 90 days thereafter on the impacts of the moratorium and related relevant data; and

WHEREAS, the purpose of these reports was for the Council to evaluate whether the eviction moratorium should continue; and

WHEREAS, on May 15, 2023, staff presented the City Council with information regarding the impacts of the eviction moratorium on tenants and landlords within San Leandro, actions taken by other cities with eviction moratoria, the City's outreach efforts, and related relevant data; and

WHEREAS, after considering the presentation by staff and comments from the public, the City Council directed staff to prepare an ordinance terminating the eviction moratorium; and

WHEREAS, the City Council desires to terminate the eviction moratorium effective July 31, 2023; and

WHEREAS, nothing in this ordinance or Ordinance No. 2023-001 relieves a tenant or mobile home owner of liability for the unpaid accumulated rent; and

WHEREAS, landlords may seek repayment of unpaid rent that accumulated during the eviction moratorium one hundred eighty (180) days after the end of the eviction moratorium, subject to any restrictions contained in state or otherwise applicable law; and

WHEREAS, the City Council desires to establish a date for terminating the moratorium on residential evictions first adopted in March 2020 in response to the COVID-19 pandemic, and provide notice to residential tenants and landlords of the planned termination of the moratorium.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN LEANDRO, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. **Findings**

The City Council of the City of San Leandro finds that all Recitals are true and correct and incorporated herein by reference.

SECTION 2. **Ordinance**

The City Council hereby makes the findings contained herein and hereby amends uncodified Ordinance No 2023-001 to read as follows (with additions underlined):

Section 1. **Moratorium on Eviction for Nonpayment of Rent to Address the Effects of COVID-19 after the Lifting of the Local State of Emergency**

A. During the term of this Ordinance, no landlord shall endeavor to evict a residential tenant and mobile homeowner for nonpayment of rent, including but not limited to any such provision under Civil Code sections 798.56 et seq., 1940 et. seq., or 1954.25 et. seq., if the tenant, or mobile homeowner demonstrates that the inability to pay rent is:

1. Due to, or arising out of a substantial decrease in household or business income (including but not limited to the circumstances described in subsections B and C) or substantial out-of-pocket medical expenses; and
2. The decrease in household or business income, or the substantial out-of-pocket medical expenses, was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented in writing.

For the purposes of this Ordinance, mobile homeowner also means recreational vehicle (RV) owner.

B. "Substantial decrease in household income" includes but is not limited to income loss caused by COVID-19 illness or caring for a household or family member with COVID-19 illness, work closures, layoffs, job loss, a reduction in the number of compensable hours or other economic or employer impacts of COVID-19, missing work due to a minor child's school or day care closure, compliance with government health authority orders, or other similarly-caused reason resulting in loss of household income due to COVID-19, substantiated with written documentation or other objectively verifiable proof of same.

C. "Substantial decrease in business income" includes, but is not limited to, income loss caused by work closures, reduction in staff reporting to work, reduction in opening hours, or reduction in consumer demand, compliance with government health authority orders, or other similarly-caused reason resulting in loss of business income due to COVID-19, substantiated with written documentation or other objectively verifiable proof of same.

D. A landlord who knows that a tenant or mobile homeowner cannot pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice pursuant to Code of Civil Procedure sections 1161 or 1162, as applicable, file or prosecute an unlawful detainer action based on a three-day pay or quit notice, or otherwise seek to evict for nonpayment of rent.

E. A landlord knows of a tenant's or mobile homeowner's inability to pay rent within the meaning of this Ordinance if the tenant or mobile homeowner, within 30 days after the date that rent is due, notifies the landlord in writing of tenant's or mobile homeowner's inability to pay full rent because of a substantial decrease in household or business income or out-of-pocket medical expenses was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and provides documentation to support the claim. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's or mobile homeowner's claim.

F. Nothing in this Ordinance relieves the tenant or mobile homeowner of liability for the unpaid rent, which the landlord may seek after the expiration of this Ordinance, and the tenant or mobile homeowner must pay within one hundred eighty (180) days of the date of expiration of this Ordinance, unless a state or otherwise applicable law or order is amended or adopted providing for a longer period, in which case this subsection shall be so superseded.

G. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in

this Ordinance, nor may a landlord seek rent that is delayed for the reasons stated in this Ordinance through the eviction process.

H. This Ordinance may be asserted as an affirmative defense in any unlawful detainer action or other action brought by an owner or landlord to recover possession. A tenant or mobile homeowner may bring a civil suit seeking owner or landlord compliance with any provisions of this Ordinance.

Section 2. Moratorium on Judicial Foreclosures To Address the Effects of the COVID-19 Emergency after the Lifting of the Local State of Emergency

Consistent with the other provisions in this ordinance, the statutory cause of action for judicial foreclosure, Code of Civil Procedure section 725a et seq.; the statutory cause of action for unlawful detainer, Code of Civil Procedure section 1161 et seq.; and any other statutory cause of action that could be used to evict or otherwise eject a residential, or mobile homeowner, or occupant of residential real property after foreclosure is hereby suspended as applied to any tenancy, or residential real property and any occupation thereof, to which a limitation on eviction is imposed pursuant to this Ordinance.

Section 3. Landlord Submittal of Documentation to City

Within five calendar days of receipt from a tenant of the notice and documentation required by Section 1.E., the landlord shall report to the City, on a form provided by the City, the fact that the tenant submitted to the landlord the notice and documentation required by Section 1.E. The failure of a landlord to provide the report to the City shall be grounds for enforcement under San Leandro Municipal Code Chapter 1-12.

Section 4. Term of Moratorium

The moratorium on evictions established by Section 1(A) and the moratorium on judicial foreclosures established by Section 2 herein shall terminate at 11:59 PST on July 31, 2023. The one hundred eighty (180) day period established by Section 1(F) shall commence on August 1, 2023.

SECTION 3. ENVIRONMENTAL REVIEW Adoption of this Ordinance is exempt from further review under the California Environmental Quality Act ("CEQA") pursuant to CEQA guidelines Section 15061(b)(3). As an amendment allowing tenants and mobile home owners more time to make past due rent payments, it can be seen with certainty that this Ordinance will have no impact on the environment.

SECTION 4. SEVERABILITY If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

SECTION 5. EFFECTIVE DATE This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.

Introduced at a first reading by Councilmember _____ and passed to print on the 5th day of June 2023 by the following called vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Kelly B. Clancy, CMC
City Clerk

Attachment 4

ORDINANCE NO. 7,855-N.S.

ORDINANCE AMENDING CHAPTER 13.110 OF THE BERKELEY MUNICIPAL CODE,
THE COVID-19 EMERGENCY RESPONSE ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.110 is hereby amended to read as follows:

**Chapter 13.110
COVID-19 EMERGENCY RESPONSE ORDINANCE**

Sections:

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13.110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**
- 13.110.100 Liberal Construction**

13.110.010 Findings and Purposes

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the Local Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, September 20, 2022, November 3, 2022, December 13, 2022, and January 31, 2023, the council ratified an extension of the local emergency. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. On March 31, 2020 this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss 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 rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have at least the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency and during the transition period thereafter, 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. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

While COVID-19 remains prevalent in the community, the City has made significant progress in addressing the impacts of COVID-19, including a reduction in the rates of hospitalization and death, as well as a citywide vaccination rate of at least ninety-four percent (94%).

Governor Gavin Newsom has also announced that the statewide COVID-19 State of Emergency will end on February 28, 2023. President Joe Biden has announced that the nationwide COVID-19 State of Emergency will end on May 11, 2023.

Based on the current conditions in the City of Berkeley related to COVID-19, and to stay consistent with state actions, the City Manager has recommended that the City Council terminate the local emergency.

The effect of this chapter suspending the statutory basis for eviction due to non-payment of rent remains in effect throughout the Covered Period, which concludes on the expiration of the local emergency. BMC Section 13.110.030.A allows the City Council to extend the duration of the Covered Period by resolution.

This ordinance makes further amendments to Chapter 13.110 to permit lawful owner-move in evictions pursuant to BMC Section 13.76.130.A.9 and to establish a Transition Period until August 31, 2023, during which time specified evictions would be allowed to take place.

13.110.020 Prohibited Conduct

A. During the Covered Period, no Landlord or Lender shall evict or attempt to evict a Resident of residential real property, or otherwise require a residential Tenant to vacate, unless necessary to stop an imminent threat to the health and safety of other occupants. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the Covered Period, except that a Landlord may serve a lawful notice pursuant to Section 13.76.130.A.9. after March 1, 2023, and such notice may form the basis of an unlawful detainer complaint beginning May 1, 2023

C. During the Transition Period, no Landlord or Lender shall evict or attempt to evict a Resident of residential real property, or otherwise require a residential Tenant to vacate unless at least one of the following conditions is met:

1. Recovery of possession of real property is necessary to stop an imminent threat to the health and safety of other occupants; or

2. *Owner Move-in Eviction.* The Landlord seeks to recover possession of a residential unit for their own use and occupancy as their principal residence and the Landlord fully complies with all "Owner Move-in Eviction" requirements set forth in Berkeley Municipal Code section 13.76.130.A.9. However, a Landlord may not recover possession of any residential unit in this manner unless the Landlord owns only one residential property in the City of Berkeley. Notice for this exclusive reason may be served beginning March 1, 2023 and may be the basis for an unlawful detainer complaint beginning May 1, 2023.; or

3. The Landlord or Lender seeks to recover possession of real property following the tenant's default in payment of rent that came due after the expiration of the Covered Period and for which tenant did not provide to the Landlord or Lender documentation establishing a Covered Reason for Delayed Payment as set forth in Berkeley Municipal Code section 13.110.040.C. Any notice to terminate tenancy served pursuant to this

section must inform the tenant of their rights to submit documentation establishing a Covered Reason for Delayed Payment as set forth in Berkeley Municipal Code section 13.110.040.C. Notwithstanding any other notice requirements identified in Berkeley Municipal Code section 13.110.040.C, a tenant who asserts a Covered Reason for Delayed Payment during the Transition Period shall provide landlord all required documentation prior to the expiration of the notice to terminate tenancy.

D. For the duration of the Covered Period, if a residential tenant has a Covered Reason for Delayed Payment, the tenant may terminate a lease or rental agreement with 30 day notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic.

13.110.030 Definitions

A. "Covered Period" means the period of time beginning with March 17, 2020 and concluding at the end of April 30, 2023.

B. "Transition Period" means the period of time beginning with May 1, 2023 and ending on August 31, 2023.

C. "Covered Reason for Delayed Payment" means:

(1) The basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) which reduces the ability of the remaining tenants to pay rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and

(2) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

D. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

E. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. "Homeowner" is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.

F. "Landlord" includes owners, lessors, or sublessors of either residential rental property, and the agent, representative, or successor of any of the foregoing.

G. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

H. "Resident" means a Tenant, Homeowner, or their household.

I. "Tenant" includes a tenant, subtenant, lessee, sublessee, lodger or any other person entitled by written or oral rental agreement to use or occupancy of residential property. "Tenant" includes a former trustor or homeowner who has lost title the real property in which they reside after a Trustee's sale.

13.110.040 Collection of Back Rent and Late Fees

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the Covered Period, or after the Transition Period if the tenant establishes a Covered Reason for Delayed Payment. . Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

B.

1. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022, or the date adopted by state law, as applicable, to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

2. For rent accrued beginning February 1, 2021, Tenants shall have until July 31, 2023, to pay rent that was delayed by a Covered Reason for Delayed Payment, or the period of time adopted by state law, as applicable, unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

3. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or prior to the expiration of a lawfully drafted and served notice of termination of tenancy, whichever is sooner. A declaration sworn under penalty of perjury shall constitute documentation for the purpose of this requirement.

D. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant explicitly authorizes the disclosure of the information in writing.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

13.110.050 Application

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire during the Covered Period and Transition Period. It does not apply to commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

B. Except where expressly required by state law (such as Assembly Bill 3088 or any subsequent statewide COVID-19 relief legislation), a landlord may seek rent accrued during the Covered Period as set forth in Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) *et seq.* or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued during the Covered Period. In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time during the Covered Period, or if the action otherwise demands any fees or amounts contrary to the provisions of this Chapter. A landlord shall not apply any rent payment towards rent that is delayed by a Covered Reason for Delayed Payment before applying it towards any other Rent owed without the explicit written permission of the Tenant.

C. A Landlord or Lender shall not retaliate against a Resident for exercising their rights under this Ordinance, including but not limited to shutting off any utilities reducing services or amenities, refusing to make or delaying repairs to which the Resident would otherwise be entitled, or taking actions which hurt the Resident's credit rating based on non-payment of rent during the Covered Period as allowed under this ordinance.

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that 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.

13.110.060 Implementing Regulations

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to Residents informing them of this Chapter and the right to seek the benefits of this Chapter.

13.110.070 Waiver.

A. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy.

13.110.080 Remedies

A. In the event of a violation of this Ordinance, any person or entity aggrieved by the violation may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate.

1. An award of actual damages may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard for, the provisions of this Chapter.

2. A defendant shall be liable for additional civil penalties of up to five thousand dollars for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926, et seq., or aged sixty-five or over.

3. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees. A prevailing defendant in a civil action under this Chapter shall only be entitled to an award of attorney's fees if it is determined by the Court the action was wholly without merit or frivolous.

4. In addition, this Chapter grants a complete defense to eviction in the event that an eviction notice or unlawful detainer action is commenced, filed, or served in violation of this Chapter.

B. The protections provided by this ordinance shall be available to all Residents, regardless of any agreement wherein a Resident waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.

C. A. Violations of Section 13.110.020(C) - (Commercial rent restrictions).

1. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent

in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

2. The City Attorney may refer those violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq.

D. Nonexclusive Remedies and Penalties. The remedies provided in this subdivision are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

13.110.090 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

13.110.100 Liberal Construction

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on March 14, 2023, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Harrison, Humbert, Kesarwani, Robinson, Taplin, Wengraf and Arreguin.

Noes: None.

Absent: None.

Attachment 5

INTRODUCED BY COUNCIL PRESIDENT NIKKI FORTUNATO BAS
AND COUNCILMEMBER DAN KALB

As revised by the City Council at the April 18, 2023 City Council meeting

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE ESTABLISHING A TIMELINE FOR TERMINATION OF THE MORATORIUM ON RESIDENTIAL EVICTIONS, RENT INCREASES, AND LATE FEES ENACTED IN RESPONSE TO THE COVID-19 PANDEMIC (ORDINANCE NOS. 13589 C.M.S., 13594 C.M.S., 13606 C.M.S.); AND AMENDING THE JUST CAUSE FOR EVICTION ORDINANCE TO: (1) PERMANENTLY CODIFY CERTAIN PROTECTIONS ESTABLISHED BY THE MORATORIUM; (2) PROHIBIT EVICTIONS BASED ON NON-PAYMENT OF RENT WHERE THE AMOUNT DEMANDED IS LESS THAN ONE MONTH OF HUD FAIR MARKET RENT; (3) CONFORM OCCUPANCY LIMITATIONS TO STATE LAW; AND (4) MAKE OTHER NON-SUBSTANTIVE CLARIFYING AMENDMENTS

WHEREAS, on March 27, 2020, the City Council approved Ordinance No. 13589 C.M.S., which imposed a moratorium on most residential evictions and on rent increases above CPI in response to the COVID-19 pandemic; and

WHEREAS, on May 19, 2020, the City Council approved Ordinance No. 13594 C.M.S., which extended the residential eviction moratorium until August 31, 2020; and

WHEREAS, on July 21, 2020, the City Council approved Ordinance No. 13606 C.M.S., which extended the residential eviction moratorium until the end of the Local COVID-19 Emergency declared by City Council on March 9, 2020; and

WHEREAS, on February 21, 2023, the City Council approved Resolution No. 89600 C.M.S., which renewed and continued the City Council's Declaration of a Local Emergency due to COVID-19; and

WHEREAS, on March 21, 2023, the City Council approved Ordinance No. 13729 C.M.S., which amended Oakland Municipal Code Chapter 8.50 (Emergency Services

Organization and Disaster Council) to require Council to review the need for continuing a local emergency at least once every 60 days, in conformance with state law; and

WHEREAS, the residential eviction moratorium and rent increase moratorium were enacted in response to the COVID-19 pandemic to, among other things, promote housing stability, encourage compliance with shelter-in-place orders, prevent transmission of COVID-19, account for significant financial losses incurred as a result of closures and lost wages, avoid unnecessary displacement and increased homelessness, and otherwise promote public health and safety during a time of unprecedented economic hardship and uncertainty; and

WHEREAS, although the COVID-19 pandemic is not over, significant progress has been made since the moratoriums were first enacted to ameliorate negative impacts of the pandemic, such as through the development of vaccines, the lifting of shelter-in-place orders, and businesses and schools re-opening; and

WHEREAS, the City seeks to establish a timeline for ending the moratoriums, rather than leaving their expiration dates tied to the end of the Local Emergency, the date for which remains uncertain; and

WHEREAS, establishing a set timeline for the termination of the moratoriums will benefit both tenants and landlords by providing advanced notice and predictability as to the future of evictions and rent increases in Oakland; and

WHEREAS, on November 5, 2002, Oakland voters passed the Just Cause for Eviction Ordinance (Measure EE), codified in Chapter 8.22, Article II of the Oakland Municipal Code, establishing various tenant protections and procedures pertaining to residential evictions in Oakland; and

WHEREAS, the Just Cause for Eviction Ordinance plays a crucial role in the City's ongoing efforts to slow, reduce, and prevent displacement and homelessness within the City of Oakland; and

WHEREAS, the Just Cause for Eviction Ordinance applies to most residential rental units in Oakland, with the main exceptions being units constructed within the past 10 years and owner-occupied properties where the owner shares use of kitchen or bath facilities with tenants; and

WHEREAS, the Just Cause for Eviction Ordinance authorizes City Council to modify the Ordinance for the purpose of adding limitations on a landlord's right to evict (O.M.C. 8.22.360F); and

WHEREAS, since the Just Cause for Eviction Ordinance was passed in 2002, voters and City Council have on numerous occasions recognized the need to expand coverage of the Ordinance by adding additional protections and removing exemptions, and that doing so is in the best interest of the City; and

WHEREAS, Oakland continues to experience a severe housing shortage and an unprecedented number of unhoused or marginally housed residents; 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 the health, safety, and general welfare of the public; and

WHEREAS, forfeiture of a rental agreement is a drastic legal remedy that should be pursued only in drastic circumstances; and

WHEREAS, by limiting evictions for nonpayment of less than one month of rent, City Council seeks to deter actions seeking forfeiture based on a relatively small amount of money to allow tenants an opportunity to become current and maintain their housing; and

WHEREAS, the rental market in the Bay Area is one of the most expensive in the country, and lower income residents frequently need to live together with roommates or family members in order to stay housed and afford rent; to the extent that state law occupancy limits are not exceeded, tenants should be able to live together with others without facing eviction for doing so; and

WHEREAS, a study by Princeton University's Eviction Lab found that the two years after local, state and federal eviction moratoriums were enacted saw the largest drop, nationally, in eviction filings on record, and Oakland's Rent Adjustment Program shows similar data — 6,714 eviction notices were received in FY 2018-19, 4,696 in FY 2019-20, 881 in FY 2020-21, and 807 in FY 2021-22; and

WHEREAS, nearly \$220 million in emergency rental assistance has been committed in Alameda County, including nearly \$60 million in Oakland (Alameda County Housing and Community Development, All City Call presentation, March 17, 2023); and

WHEREAS, the California Housing Finance Agency of the U.S. Department of the Treasury provides assistance for homeowners facing COVID-19 related financial hardships including, mortgage relief up to \$80,000 and property tax assistance up to \$20,000 (<https://camortgagerelief.org/>); and

WHEREAS, robust outreach, education, and support to tenants and property owners about the provisions of this legislation is necessary which requires that the Administration prioritize filling budgeted, vacant positions in the Housing and Community Development Department's Rental Adjustment Program to provide services to promote housing stability; and

WHEREAS, continued advocacy of County, State, and Federal government partners is necessary to secure additional resources to address the economic and housing impacts of COVID-19 on tenants and property owners; and

WHEREAS, the City Council finds that the Just Cause for Eviction Ordinance is consistent with Civil Code Section 1946.2 (as enacted by the Tenant Protection Act of 2019), 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 amounts; and

WHEREAS, the City Council finds that the Just Cause for Eviction Ordinance as amended herein is more protective than the provisions of Civil Code Section 1946.2; and

WHEREAS, this action is exempt from the California Environmental Quality Act (“CEQA”) pursuant to sections of the CEQA Guidelines, taken together and each as a separate and independent basis, including but not limited to: Section 15378 (regulatory actions), Section 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), Section 15061(b)(3) (no significant environmental impact), and Section 15183 (consistent with the general plan or zoning); 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 establish a phasing out of the moratorium on residential evictions, rent increases, and late fees that was enacted in March of 2020 in response to the COVID-19 pandemic. By setting forth a timeline and incremental revocation of the moratorium, the City seeks to provide adequate notice to residential tenants and landlords of the impending termination of the moratorium and to revoke the moratorium in phases to avoid a surge of evictions. The Ordinance also permanently codifies certain protections from the moratorium within the Just Cause For Eviction Ordinance, along with other eviction protections.

SECTION 3. Residential Eviction Moratorium. Section 3 of Ordinance No. 13589 C.M.S., as amended by Ordinance Nos. 13594 C.M.S. and 13606 C.M.S., is hereby repealed and reenacted with amendments, as set forth below (additions are shown as double underline and deletions are shown as ~~strike through~~).

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, between March 9, 2020, and July 14, 2023, 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 the Local Emergency declared on March 9, 2020, has been terminated by the City Council.

SECTION 4. Rent Increase Moratorium. Section 4 of Ordinance No. 13589 C.M.S., as amended by Ordinance Nos. 13594 C.M.S. and 13606 C.M.S., is hereby repealed and reenacted with amendments, as set forth below (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

Rent Increase Moratorium. For rental units regulated by Oakland Municipal Code 8.22.010 et seq, any notice of rent increase in excess of the CPI Rent Adjustment, as defined in Oakland Municipal Code Section 8.22.020, shall be void and unenforceable if the notice is served or has an effective date between March 9, 2020, and June 30, 2024 ~~during the Local Emergency~~, unless required to provide a fair return. Any notice of rent increase served during the Local Emergency 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. Section 5 of Ordinance No. 13589 C.M.S., as amended by Ordinance Nos. 13594 C.M.S. and 13606 C.M.S., is hereby repealed and reenacted with amendments, as set forth below (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

Late Fee Moratorium. Notwithstanding any lease provision to the contrary, for residential tenancies, no late fees may be imposed for rent that became due between March 9, 2020, and July 14, 2023 ~~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. Evictions for Nonpayment of Rent. Section 7 of Ordinance No. 13589 C.M.S., as amended by Ordinance Nos. 13594 C.M.S. and 13606 C.M.S., is hereby repealed and reenacted with amendments, as set forth below (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

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 between March 9, 2020, and July 14, 2023 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 7. Amendments to Section 6 of the Just Cause for Eviction Ordinance (Measure EE) (O.M.C. Section 8.22.360). Added text is shown as double underlined type; deleted text is shown as ~~strikethrough~~ type.

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 or where the amount of rent demanded is less than one month of fair market rent for a unit of equivalent size

in the Oakland metro area as determined by the U.S. Department of Housing and Urban Development.

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. To establish a substantial violation of a material term of the tenancy, the landlord must demonstrate that the term of tenancy is reasonable, legal, and was accepted in writing by the tenant.
 - a. 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.
 - b. Notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit based on the addition of occupants to the rental unit if the landlord has unreasonably refused a written request by the tenant to add such occupant(s) to the unit, so long as the maximum number of occupants does not exceed the lesser of the amounts allowed by Subsection (i) or (ii) of this Section 8.22.360A.2.b. If the landlord fails to respond in writing with a description of the reasons for the denial of the request within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord. However, for units restricted as affordable housing as defined by O.M.C. Section 15.72.030, a written resident request to add an occupant shall be deemed incomplete and inadequate until such resident has provided all documentation required for qualification of such additional occupant and the household after the addition of such occupant under the rules restricting the housing. A landlord's reasonable refusal of the tenant's written request may not be based on either of the following: (1) the proposed additional occupant's lack of creditworthiness, if that person will not be legally obligated to pay some or all of the rent to the landlord, or (2) the number of occupants allowed by the rental agreement or lease. With the exception of the restrictions stated in the preceding sentence, a landlord's reasonable refusal of the tenant's written request may be based on, but is not limited to, the ground that the landlord resides in the same unit as the tenant or the ground that the total number of occupants in a unit exceeds (or with the proposed additional occupant(s) would exceed) ~~the lesser of (i) or (ii):~~
 - ~~(i) Two persons in a studio unit, three persons in a one-bedroom unit, four persons in a two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four-bedroom unit;~~
 - ~~(ii) The the maximum number permitted in the unit under state law and/or other local codes such as the Building, Fire, Housing and Planning Codes.~~

This Subsection 8.22.360 A.2.b. is not intended by itself to establish a direct landlord-tenant relationship between the additional occupant and the landlord or to limit a landlord's rights under the Costa-Hawkins Rental Housing Act, California Civil Code Section 1954.50 et seq. (as it may be amended from time to time). Nothing in this subsection authorizes an occupancy that would result in either transient habitation commercial activity as defined by O.M.C. Section 17.10.440 or semi-transient commercial activity as defined by O.M.C. Section 17.10.120.

- c. Before endeavoring to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with a minimum of fourteen (14) days opportunity to cure the violation. The tenant may cure the violation by making a written request to add occupants referenced in Subsection a or b of Section 8.22.360 A.2. or by using other reasonable means to cure the violation, including, without limitation, the removal of any additional or unapproved occupant. Nothing in this Section 8.22.360 A.2.c. is intended to limit any other rights or remedies that the law otherwise provides to landlords or tenants.
3. Reserved.
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. Residing in a rental unit that lacks a certificate of occupancy, has not been approved by the city for residential use, or that has been cited for housing, building, or planning code violations does not constitute use of the premises for an illegal purpose.
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 their own occupancy as a principal residence where the owner has previously occupied the rental unit as their principal residence and has the right to recover possession for their 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 their own use and occupancy as their 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. Where 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. Such time period may be extended for good cause upon application to, and approval by, the Rent Adjustment Program.
- d. 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 their 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 the landlord 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)(6) [8.22.360B.6] ~~6(B)(5) [8.22.360 B.5]~~:
 - i. A listing of all property owned by the intended future occupant(s).
 - ii. The address of the real property, if any, on which the intended future occupant(s) claims a homeowner's property tax exemption.
 - j. If the owner or relative specified on the notice terminating tenancy fails to occupy the rental unit for at least a consecutive thirty-six month period, or fails to occupy the rental unit within ninety days after the tenant vacates, absent Subsection (c), the owner shall do the following:
 - i. Offer the unit to the tenant who vacated it at the same rent in effect at the time the tenant vacated; and
 - ii. Pay to said tenant all reasonable expenses incurred in returning to the unit, including lease termination fees, if any. This subsection does not limit any other remedies a tenant may have under this Chapter or other applicable law.
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 safely 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. As soon as the tenant vacates the rental unit, the owner of record shall proceed without unreasonable delay to complete 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 for good cause upon application to, and approval by, the Rent Adjustment Program.~~ The Rent Board shall adopt rules and regulations to implement the application procedure.
 - b. Upon completion of the needed repairs, the owner of record shall offer the tenant the first right to return to the premises at the same rent and pursuant to the same terms of the rental agreement in effect as of the date of the notice to vacate, subject to the owner of record's right to petition the Rent Adjustment Program for a rent increase as provided by the Residential Rent Adjustment Ordinance.
 - c. A notice to vacate 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 list of the code violations necessitating substantial repairs, a detailed description of the work to be performed, the permit numbers of any and all permits obtained to affect the required repairs, and a copy of the City-issued notice of code violations, if any.
 - iv. A good faith 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 to 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], the landlord must do so according to the process established in CCC § 1946 (or successor provisions providing for a 30 or 60 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], the landlord 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-Rent Adjustment Program (RAP), along with information about how the tenant may seek assistance, including the RAP phone number and email address.
 - 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] and a statement informing tenants of the limitations on evictions as set forth in Subsection 6(D)(8) [8.22.360D.8].
 - 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] and a statement informing tenants of the limitations on evictions as set forth in Subsection 6(D)(8) [8.22.360D.8].
 - 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.
- D. Substantive limitations on landlord's right to evict. This Subsection 8.22.360 D. is intended as both a substantive and procedural limitation on a 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; and
 - 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, and must specify on what grounds exemption is claimed. Failure to make such allegations in the notice shall be a defense to any unlawful detainer action.
 - 3. A landlord's failure to comply with the obligations described in Subsections (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 subsection 8.22.360 A.1, 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.
5. A landlord's failure to fully comply with any applicable law requiring payment of relocation benefits to the tenant, such as those provided by Articles III, VII, and VIII of this Chapter and Chapter 15.60 of the Oakland Municipal Code, including but not limited to required notice, amount, timing, and any other requirement necessary to withdraw or repair a unit shall be a defense to any action for possession of a rental unit.
6. Notwithstanding any change in the terms of a tenancy pursuant to Civil Code Section 827, a tenant may not be evicted for a violation of a covenant or obligation that was not included in the tenant's written or oral rental agreement at the inception of the tenancy unless: (1) the change in the terms of the tenancy is authorized by the Rent Ordinance or California Civil Code Sections 1947.5 or 1947.12, or required by federal, state, or local law, or regulatory agreement with a government agency; or (2) the change in the terms of the tenancy was accepted in writing by the tenant after receipt of written notice from the landlord that the tenant need not accept such new term as part of the rental agreement and in exchange for valid consideration.
7. In any action to recover possession of a rental unit filed under Subsections 8.22.360 A.1.—10., it shall be a defense if the landlord was not in compliance with ~~failed to substantially comply with~~ O.M.C. 8.22.510 at the time the notice terminating tenancy was served.
8. When a landlord seeks to evict a tenant under Subsection 6(A)(9) or (10) [8.22.360 A.9, 10], it shall be an affirmative defense if any child under the age of 18 enrolled in a school or any educator resides in the unit, the child or educator is a tenant in the unit or has a custodial or family relationship with a tenant in the unit, the tenant has resided in the unit for at least 90 days, and the effective date of the notice of termination of tenancy falls during the regular school year of the Oakland Unified School District.
 - a. For purposes of this Section, the following terms shall have the following meanings:
 - i. "Custodial relationship" means that the person is a legal guardian of the child, has a court-recognized caregiver authorization affidavit for the child, or has provided full-time custodial care of the child pursuant to an agreement with the child's legal guardian or court-recognized caregiver and has been providing that care for at least one year or half of the child's lifetime, whichever is less.

- ii. “Educator” means any person who works on-site at a school in Oakland as an employee of the school or of the Oakland Unified School District, including, without limitation, all teachers, classroom and student support providers, school administrators and administrative staff, counselors, social workers, school health services workers, speech pathologists, custodial or maintenance workers, nutrition and/or food services workers, library services workers, child welfare workers, and attendance liaisons.
- iii. “Family relationship” means that the person is the parent, grandparent, sibling, niece, nephew, aunt, or uncle of the child or educator, or the spouse or domestic partner of such relation.
- iv. “School” for purposes of this Section means any state-licensed child care center, state-licensed family child care home, accredited community or junior college, and/or any public, private, or parochial institution that provides educational instruction for students in any or all of the grades from kindergarten through twelfth grade.

9. Nonpayment of rent during COVID-19 pandemic. In an any unlawful detainer action based on nonpayment of rent or late fees that accrued between March 9, 2020, and July 14, 2023, it shall be a defense that the rent was late or unpaid because of a substantial reduction in household income or substantial increase in expenses resulting from the Coronavirus pandemic. Any notice demanding rent or late fees that accrued during this time period must:

- a. be served together with a form developed by the Rent Adjustment Program that, among other things, allows the tenant to indicate that the financial hardship defense applies; and
- b. include the following statement in bold underlined 12-point font: “If you were unable to pay the rent or other fees demanded in this notice due a substantial reduction in household income or substantial increase in expenses as a result of the COVID-19 pandemic, you may raise this as a defense to any eviction action based on this notice.”

- 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, but the City Council may not modify any exemption from the ordinance from which this section is derived contained in Section 8.22.350.

SECTION 8. Outreach. City Council directs the City Administrator to conduct robust outreach, education, and support to tenants and property owners about the provisions of this legislation.

SECTION 9. Direction to the City Administrator. City Council directs the City Administrator to prioritize the filling of vacant, budgeted positions in the Housing and Community Development Department that help ensure services to promote housing stability. These vacant, budgeted positions include: the following positions in the Rental Adjustment Program — one (1) Rental Adjustment Program Assistant Manager, two (2) Program Analysts II, one (1) Administrative Analyst I, and one (1) Administrative Assistant, as well as one (1) Monitoring Supervisory and Program Analyst II in the Community Development and Engagement unit. These positions are supported by dedicated funds, not the General Purpose Fund. City Council also directs the City Administrator to seek additional financial resources to address the economic and housing impacts of COVID-19 on tenants and property owners.

SECTION 10. 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 11. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

SECTION 12. Directions to Rent Board. The City Council directs the City Administrator to work with the Rent Board to revise the Just Cause for Eviction Ordinance Regulations to implement the newly-added Just Cause provisions.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE ESTABLISHING A TIMELINE FOR TERMINATION OF THE MORATORIUM ON RESIDENTIAL EVICTIONS, RENT INCREASES, AND LATE FEES ENACTED IN RESPONSE TO THE COVID-19 PANDEMIC (ORDINANCE NOS. 13589 C.M.S., 13594 C.M.S., 13606 C.M.S.); AND AMENDING THE JUST CAUSE FOR EVICTION ORDINANCE TO: (1) PERMANENTLY CODIFY CERTAIN PROTECTIONS ESTABLISHED BY THE MORATORIUM; (2) PROHIBIT EVICTIONS BASED ON NON-PAYMENT OF RENT WHERE THE AMOUNT DEMANDED IS LESS THAN ONE MONTH OF HUD FAIR MARKET RENT; (3) CONFORM OCCUPANCY LIMITATIONS TO STATE LAW; (4) MAKE OTHER NON-SUBSTANTIVE CLARIFYING AMENDMENTS

This Ordinance would establish a timeline for ending the moratorium on residential evictions, rent increases, and late fees that has been in effect since March 27, 2020, in response to the COVID-19 pandemic. The current eviction moratorium prohibits most forms of residential evictions and is scheduled to end when the Local Emergency is terminated by City Council—a date that remains uncertain. This Ordinance would terminate the eviction and late fee moratoriums as of July 15, 2023. The Ordinance would terminate the rent increase moratorium as of July 1, 2024. Permanent amendments to the Just Cause for Eviction Ordinance (O.M.C. 8.22.300 et seq.) include: codification of the defense for nonpayment of rent accrued during the moratorium that was unpaid due to pandemic-related reasons; limiting nonpayment evictions where the amount demanded is less than one month of HUD fair market rent; conformity of occupancy standards to state law; and other non-substantive clarifications.