

From: [Jonah Strauss](#)
To: [Leon, Ray T.](#)
Cc: [Kaplan, Rebecca](#); [Kalb, Dan](#); [Guillen, Abel](#); [McElhaney, Lynette](#); [Campbell Washington, Annie](#); [Gallo, Noel](#); [Brooks, Desley](#); [Reid, Larry](#); [Office of the Mayor](#); [Cappio, Claudia](#); [Illgen, Richard](#); [DL - Agenda Team](#); [Holtan, Laura E.](#); [Marqusee, Alexander G.](#); [Simons, Adam J.](#); [Kahn, Kelley](#); [Karchmer, Joanne](#)
Subject: Re: Emergency Tenant Protection Ordinance v12 & Legal Memo
Date: Friday, January 20, 2017 6:24:59 PM

Certainly, Mr. Leon — I do recall your intent, and I should have thought that through better.

My apologies for the misunderstanding.

– Jonah

Jonah Strauss

Oakland Warehouse Coalition

jonah@oaklandwarehousecoalition.org

[Signup](#) // [Facebook](#) // [Twitter](#)

On Fri, Jan 20, 2017 at 6:02 PM, Leon, Ray T. <RLeon@oaklandnet.com> wrote:

Mr Strauss,

In your email, you mentioned several items, as "agreed by Mr. Leon". Please do not misrepresent what was discussed by you and I with our phone call. If you recall, clearly, I repeatedly said to you that I don't make those decisions, but I would mention your comments to the Council President, which I did. I do take offense with your email insinuating that these items were "agreed to by Mr. Leon". I said no such thing. Agsin, I told you that I would simply raise your suggestions to the Council President. Please do not misrepresent my words.

Sent via the Samsung Galaxy S7 edge, an AT&T 4G LTE smartphone

----- Original message -----

From: Jonah Strauss <jonah@oaklandwarehousecoalition.org>

Date: 1/20/17 5:35 PM (GMT-08:00)

To: "Kaplan, Rebecca" <RKaplan@oaklandnet.com>, "Kalb, Dan" <DKalb@oaklandnet.com>, "Guillen, Abel" <AGuillen@oaklandnet.com>, "McElhaney, Lynette" <Imcelhaney@oaklandnet.com>, "Campbell Washington, Annie" <ACampbellWashington@oaklandnet.com>, "Gallo, Noel" <NGallo@oaklandnet.com>, "Brooks, Desley" <DBrooks@oaklandnet.com>, "Reid, Larry" <LReid@oaklandnet.com>, Office of the Mayor <OfficeoftheMayor@oaklandnet.com>

Cc: "Cappio, Claudia" <CCappio@oaklandnet.com>, "Illgen, Richard" <RIllgen@oaklandcityattorney.org>, DL - Agenda Team <agendateam@oaklandnet.com>, "Leon, Ray T." <RLeon@oaklandnet.com>, "Holtan, Laura E." <LHoltan@oaklandnet.com>, "Marqusee, Alexander G." <AMarqusee@oaklandnet.com>, "Simons, Adam J." <ASimons@oaklandnet.com>, "Kahn, Kelley" <KKahn@oaklandnet.com>, "Karchmer, Joanne" <JKarchmer@oaklandnet.com>

Subject: Emergency Tenant Protection Ordinance v12 & Legal Memo

Councilmembers & Mayor Schaaf –

It has been a pleasure working with Councilmembers Kaplan and Gallo the past few weeks, and we appreciate President Reid's guidance through this process. As I mentioned to Mr. Leon the other day, we fully recognize that it is unusual for Council to consider an Ordinance brought by the public, and we appreciate the opportunity to discuss the Emergency Tenant Protection Ordinance (ETPO) with you at the special Session on Monday at 5:30pm.

While we understand that the document distribution deadline was yesterday, please accept into record our Version 12 update to the ETPO, as well as a supporting legal Memorandum regarding the use of eminent domain in ETPO Section 11. Both are attached to this email. We ask that you review Version 12 and the Memorandum prior to Council on Monday, and please note that we will be coming to Session with printouts for all Councilmembers, the Mayor, the Administrator, the Attorney, and the Clerk. Everyone listed is CC'd.

The only major change from ETPO Version 11 to Version 12 is the addition of Sections 14 and 15. Section 14 guides the rehabilitation process after a Notice to Vacate is issued by the Building Department, giving both the Building Department and the Rent Board greater power to set and enforce timelines, while increasing communication with tenants. Section 15 defines the content of the notice that the Building Department is obligated to deliver to owner and tenants in conjunction with a Notice to Vacate. The only other change to the ETPO in Version 12 is a document-wide prefix of the term "imminent" to the phrase "life-threatening condition."

I can not personally attend Council on Monday. It pains me to say it, but I have a week of work in Orlando that I agreed to months ago. Thus I will be watching on KTOP. Please refer any day-of questions regarding OWC to my core team of Matt Hummel, Katherine Quinn, and Carolyn Valentine.

Steven DeCaprio, who is the primary writer of the ETPO, will be at the podium for discussion of this, Agenda Item 4. He will present the ETPO prior to Public Comment, as agreed to by Mr. Leon, and may answer any questions Councilmembers have on its intent and content. Matt Hummel will stand with him from OWC and can comment on the origins and implications of the policy.

I also submitted the Ghost Ship Remembrance Day Resolution on behalf of Dominic Vikram Babu's ASAP Spaces. Vikram will be on hand to present the Resolution as Agenda Item 1, in advance of Public Comment, as agreed to by Mr. Leon.

Thank you very much for your time.

– Jonah

Jonah Strauss

Oakland Warehouse Coalition

jonah@oaklandwarehousecoalition.org

[Signup](#) // [Facebook](#) // [Twitter](#)

From: [Jonah Strauss](#)
To: [Illgen, Richard](#)
Cc: [Bee, Maria](#)
Subject: Ordinance - submitted
Date: Saturday, December 24, 2016 12:44:34 AM

Hi Richard -

We submitted version 9 of our Emergency Tenant Protection Ordinance to the City Administrator today. It is here:

<https://goo.gl/uH8V8s>

There will be an addendum and minor corrections to follow.

- Jonah

jonahstrauss@gmail.com



From: [Illgen, Richard](#)
To: jonahstrauss@gmail.com
Cc: [Early, Shavonda](#); [Bee, Maria](#)
Subject: RE: Haber & Ordinance
Date: Wednesday, December 21, 2016 10:59:00 AM

Jonah,

Thank you for your emails. I am sorry I could not get back to you sooner. I include Maria Bee in this email as she has taken over many of my responsibilities because of my impending departure. We will get back to you soon to discuss.

My best,
Richard

Richard F. Illgen, Supervising Deputy City Attorney
Office of Oakland City Attorney Barbara J. Parker
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
rillgen@oaklandcityattorney.org
Phone: 510-238-6517
Fax: 510-238-6500

From: Jonah Strauss [<mailto:jonahstrauss@gmail.com>]
Sent: Wednesday, December 21, 2016 9:45 AM
To: Illgen, Richard
Cc: Early, Shavonda
Subject: Re: Haber & Ordinance

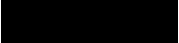
Hi Richard,

Attached you will find Draft 6 of the Ordinance; please disregard Draft 5.


Also please note that in my second paragraph below, I misspelled "discreetly."

Thank you for your time and I look forward to hearing from you or Shavonda today. Please let me know when we can meet or speak on the phone.

- Jonah

Jonah Strauss


On Tue, Dec 20, 2016 at 5:14 PM, Jonah Strauss <jonahstrauss@gmail.com> wrote:
Hi Richard,

I wrote to you a few days ago about our buddy Danny Haber - who happened to be in Zoning today asking about development guidelines for a property he's working on at 24th and Filbert, while I was in Permits looking at the plans for my building at  that Kim Marienthal intends to convert to the wrong number of units according to Just Cause. And

sell to Haber at some point along the way. Tim Low in the building department says his hands are tied (literally, he put his hands behind his back).

Anyways, despite the holiday and your upcoming retirement, I'd like to meet with you this week for two reasons. A) If you're working on something re:Haber and I'm working on a class action suit, we will want to coordinate efforts, discretely. B) Oakland Warehouse Coalition is very close to having an emergency tenant protection ordinance submitted to Council, and we would of course appreciate your input.

The ordinance is pretty close to done; we're on Draft 5, attached to this email. Laura Holtan (Kaplan) and Alex Marquess (Gibson-McElhany) had some valuable input for us today, and support the measure. We've gone about getting input from all (yes, all) of the tenants' rights organizations in Oakland, and once Draft 6 is done I will be in charge of getting these organizations' support. That is happening tomorrow. Next steps are submitting to the Clerk on Thursday (which we would like Kaplan to do), and getting the Mayor on the ball with how to represent this publicly. I am already in contact with Michael Hunt from Libby's office about this. We feel this is an opportunity for Oakland to stand up and be a model city for tenant protections in the eyes of the international media, which are very much upon us at this time.

Please let me know what you think of the ordinance and I will forward your comments to its writer.

Please give me a moment of your time this week, even if only by phone. I am fully available. Your input would be of great value.

By Shavonda's request, I am CCing her in order to facilitate scheduling. She was very welcoming to me on my unannounced visit today - thank you Shavonda.

- Jonah

Jonah Strauss



From: Jonah Strauss <jonahstrauss@gmail.com>
Sent: Tuesday, December 20, 2016 5:15 PM
To: Illgen, Richard
Cc: Early, Shavonda
Subject: Haber & Ordinance
Attachments: Draft Eviction Moratorium, Amnesty, and Eminent Domain version 5 (2).docx

Hi Richard,

I wrote to you a few days ago about our buddy Danny Haber - who happened to be in Zoning today asking about development guidelines for a property he's working on at 24th and Filbert, while I was in Permits looking at the plans for my building at [REDACTED] that Kim Marienthal intends to convert to the wrong number of units according to Just Cause. And sell to Haber at some point along the way. Tim Low in the building department says his hands are tied (literally, he put his hands behind his back).

Anyways, despite the holiday and your upcoming retirement, I'd like to meet with you this week for two reasons. A) If you're working on something re:Haber and I'm working on a class action suit, we will want to coordinate efforts, discretely. B) Oakland Warehouse Coalition is very close to having an emergency tenant protection ordinance submitted to Council, and we would of course appreciate your input.

The ordinance is pretty close to done; we're on Draft 5, attached to this email. Laura Holtan (Kaplan) and Alex Marquese (Gibson-McElhany) had some valuable input for us today, and support the measure. We've gone about getting input from all (yes, all) of the tenants' rights organizations in Oakland, and once Draft 6 is done I will be in charge of getting these organizations' support. That is happening tomorrow. Next steps are submitting to the Clerk on Thursday (which we would like Kaplan to do), and getting the Mayor on the ball with how to represent this publicly. I am already in contact with Michael Hunt from Libby's office about this. We feel this is an opportunity for Oakland to stand up and be a model city for tenant protections in the eyes of the international media, which are very much upon us at this time.

Please let me know what you think of the ordinance and I will forward your comments to its writer.

Please give me a moment of your time this week, even if only by phone. I am fully available. Your input would be of great value.

By Shavonda's request, I am CCing her in order to facilitate scheduling. She was very welcoming to me on my unannounced visit today - thank you Shavonda.

- Jonah

Jonah Strauss
[REDACTED]

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

SECTION 1. Emergency Finding. The City Council finds the foregoing recitals to be true and correct and hereby incorporates such findings into this ordinance. The City Council further finds that there is a necessity to pass an emergency ordinance by the powers given to the City Council under Section 213 of the City Charter due to the fire at the warehouse known as the Ghost Ship on December 2, 2016.

SECTION 2. Duration of Interim Ordinance. This emergency ordinance shall remain in effect as follows: Sections 3, 4, 5, 6, 7, 8, and 9 for ninety (90) days from the date of its adoption. Section 10 and 11 for one (1) year from the date of its adoption.

SECTION 3. Discontinuance of Good Cause Exemption for Habitation as a Violation of a Material Term The good cause exemption from the Rent Adjustment Program for violations of a material term of the tenancy (Oakland Municipal Code section 8.22.360A.2) is discontinued as it pertains to individuals residing on a property in violation of a lease agreement;

SECTION 4. Discontinuance of Displacement of Residential Tenants due to Code Violation

The city's Building Official or other authorized official may not issue any notice to vacate unless the notice is to abate a life-threatening condition and a declaration of substandard to a property owner covering a rental unit or room used for residential purposes; notwithstanding the zoning, lease terms, or lack of Certificate of Occupancy of said unit; shall inform the property owner that any tenant household who vacates said rental unit or room may be eligible for relocation payments from the property owner, that failure to make required payments to eligible tenant households before vacation shall result in the city making payments on behalf of the owner, and that failure to reimburse the city for all payments made and other costs incurred shall result in a lien being placed on the property. Following issuance of any such notice or declaration and expiration of the period to abate the noncomplying condition (if an abatement period is specified in any such notice or declaration), the city shall also use reasonable efforts to deliver information to each affected tenant household in the building regarding the relocation benefits and assistance to which the tenant household is entitled. If a tenant must leave a rental unit due to a life-threatening condition, notwithstanding any lease agreement to the contrary, said tenant shall be entitled to relocation benefits under Oakland's Code Enforcement Relocation Program, and shall have the right to return to said unit in accordance with the regulations of O.M.C. 08.22.360(A)10

SECTION 5. Discontinuance of Displacement of Residential Tenants due to Zoning Violation or Lack of a Certificate of Occupancy

The city's Building Official or other authorized official may not issue any notice to vacate based on residential use of a property that is not zoned for such purpose or lacks a Certificate of Occupancy.

SECTION 6. Just Cause Protections for Residential Tenants of Properties Regardless of Zoning Status

The City of Oakland shall affirm that anyone paying rent for a property used for residential purposes prior to December 2, 2016 is a tenant as defined by OMC 8.22.300 regardless of the zoning status of that property or lack of a Certificate of Occupancy. OMC 08.22.360(A)2 shall be amended as follows:

2. The tenant has continued, after written notice to cease, to substantially violate a material term of the tenancy other than the obligation to surrender possession on proper notice as required by law, provided further that notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit as a result of subletting of the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet following a written request by the tenant, so long as the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord. [AMENDMENT:] *Furthermore, notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a commercial or industrial rental unit as a result of violating a prohibition on living in said unit, so long as the residential usage commenced prior to December 2, 2016.*

SECTION 7. Discontinuance of Flash Inspections on All Properties in the City of Oakland

The city's Building Official or other authorized official shall be required to provide fourteen (14) days' notice to both tenant and landlord of any building slated for inspection unless there is probable cause to believe there is a life-threatening condition on the property. In such case that there is probable cause to believe there is a life-threatening condition on the property and no such condition is found then the city's Building Official or other authorized official may take no action other than to provide fourteen (14) days' notice to both tenant and landlord that another inspection will occur to inspect the non-life-threatening conditions and provide the opportunity to abate said conditions. Ambush-style inspections shall be explicitly prohibited.

SECTION 8. Amnesty for Zoning and Permitting Violations for Live-Work Properties

The city's Building Official or other authorized official may not impose a penalty or fine for violations of Title 8, Title 15, or Title 17 of the Oakland Municipal Code including zoning violations, permitting violations, or lack of Certificate of Occupancy for Live-Work spaces; notwithstanding the zoning designation or existence of a Certificate of Occupancy of said properties; for violations existing prior to December 2, 2016 providing that the property owner complies with Section 3 and Section 6 of this ordinance as well as all provisions of OMC 8.22.300 et seq.

SECTION 9. Prohibition of Abuse of Code Violation Complaint Process

The city's Building Official or other authorized official will require that anyone notifying the city's Building Official or other authorized official of a violation of codes on a property must provide their name and contact information. The city's Building Official or other authorized official will inform the complaining party that their name will remain confidential and will accordingly not disclose the name of the complaining party to the public. If the complaining party refuses to provide their name then the city's Building Official or other authorized official will not act on the complaint unless the complaint is of a life-threatening situation and, in such circumstances, only if the life-threatening situation can be viewed without an inspection. If a complaining party is found to make a false complaint or if it is determined that the complaints are made for the purposes of

harassment or for financial gain then the city's Building Official or other authorized official will no longer act on complaints from that individual or anyone acting on their behalf. In all public disclosures of documents related to a complaint as described in this Section; including, but not limited to, Government Code section 6250 et seq.; the identifying information of the complaining party will be redacted or otherwise removed from documents available to the public or third-parties.

SECTION 10. Rezoning and Eminent Domain of Properties to Create Low-Income Live-Work Cooperatives

The City of Oakland will initiate an Eminent Domain proceeding to acquire a property at the request of a residential tenant of a Live-Work space or former residential tenant of a vacant Live-Work space, notwithstanding the zoning designation or existence of a Certificate of Occupancy of said property, if the tenant can meet the following requirements: (1) prove that they were residing on the property prior to December 2, 2016, (2) prove that (a) either the tenant or one or more of the cotenants have a household income of 45% or less of the Area Median Income, (b) neither the tenant or any cotenants have a household income above 90% of the Area Median Income, or (c) that the average household income of the tenant and all cotenants is 60% of the Area Median Income, and (3) that a tenant, tenants, or a non-profit corporation designated by at least 60% of group comprised of the tenant and their cotenants provides funds equivalent to the purchase price paid by the City of Oakland. The City of Oakland will transfer title of such a property to a non-profit corporation designated by at least 60% of the tenants, and the title will be conveyed with an affordability covenant on the property as follows: (1) no future resident shall earn an income above 60% of the Area Median Income and (2) if the average median income of the tenants is above 45% of the Area Median Income then there will be no new tenants earning over 30% of the Area Median until such time as the average median income of the tenants is at or below 45% of the Area Median Income. Upon transfer of the title from the City of Oakland the City of Oakland Planning and Zoning Division will designate the property as mixed use live-work. If more than one former tenant of a vacant Live-Work space makes a request under this Section then the City of Oakland will grant the most recent tenant's request providing that payment of the purchase price is tendered to the City of Oakland, but if payment is not tendered then the request made by the next most recent tenant will be granted providing they meet all the requirements in this Section. All requests under this section shall be made to and implemented by the Project Implementation Division of the City of Oakland.

SECTION 11. Rezoning of Properties to Create Low-Income Live-Work Spaces

The city's Building Official or other authorized official shall rezone a property designation to become Live-Work at the request of the owner(s) if the owner(s) can meet the following terms: (1) prove that they or their tenants were using the property as their primary residence prior to December 2, 2016, (2) prove that (a) one or more of the tenants have a household income of 45% or less of the Area Median Income, (b) no resident has a household income above 90% of the Area Median Income, or (c) that the average household income is 60% of the Area Median Income, and (3) the owner agrees to an affordability covenant as follows: (a) no future resident shall earn an income above 60% of the Area Median Income and (b) if the average median income of the tenants is above 45% of the Area Median Income then there will be no new tenants

earning over 30% of the Area Median until such time as the average median income of the tenants is at or below 45% of the Area Median Income. All requests under this section shall be made to and implemented by the Project Implementation Division of the City of Oakland.

[This draft ordinance was written by Steven DeCaprio of Land Action with input from social justice organizers, artists, allies, and some of the community members affected by the Ghost Ship fire.]

Signed: December 18, 2016



Steven DeCaprio

Land Action

Board President and Founder

land-action.org

Facilitating access to land for environmental and social justice organizing

From: [Jonah Strauss](#)
To: [Martinelli, Gene](#)
Cc: [Illgen, Richard](#); [Steven Rood](#); [Steven Schectman](#); [REDACTED]
Subject: Fwd: Vacating [REDACTED]
Date: Tuesday, November 10, 2015 3:04:38 PM

Hi Geno,

Does our friend Kim Marienthal have the permits required to sweep the building? While we would all love to see the building worked on, it sounded like Marienthal was very much not in compliance when last we spoke.

Thanks,
Jonah

Jonah Strauss
[REDACTED]
[shipwreckoakland.com](#)
[safewordoakland.com](#)

Begin forwarded message:

From: Kim Marienthal <kim@marienthal.com>
Date: November 10, 2015 at 2:51:17 PM PST
To: [REDACTED]
Cc: rood1@mindspring.com, bill segesta <wsegesta@lmi.net>
Subject: Vacating [REDACTED]

Dear Tenants,
I am under the assumption you have all complied with the notice from my attorney, William Segesta, and the Red Tag from the City of Oakland requiring you to remove all personal belongings that were still at the property on 24th St. If any of you still have personal belongings or furniture that is still there, please let me know ASAP, before I have everything removed from the property to begin the next phase of the reconstruction. Your cooperation is greatly appreciated.
Kim

--
Kim Marienthal
Coldwell Banker, Top 1% Northern California
(510) 981-3036 Work
(510) 410-7083 Cell
(510) 524-2253 Home
DRE #00863747

--
You received this message because you are subscribed to the Google Groups [REDACTED] group.
To unsubscribe from this group and stop receiving emails from it, send an email to [REDACTED]
To post to this group, send email to [REDACTED]
To view this discussion on the web visit [REDACTED]

For more options, visit <https://groups.google.com/d/optout>.

From: [Jonah Strauss](#)
To: [Illgen, Richard](#)
Cc: [Steven Rood](#); [Steven Schectman](#); [REDACTED]
Subject: 24th Street Violations
Date: Saturday, November 07, 2015 9:50:58 AM

Hi Richard,

I recognize that we have not spoken previously, so hopefully you'll have the time to respond to this email, or call me at your convenience on Monday. I will be busy 1:30-3:30pm. I am free to meet in person any day this week aside from Tuesday.

I am the lead tenant at [REDACTED], one of two buildings damaged by fire on March 21st of this year. Two of our neighbors died, and the story has rightfully been making the rounds in City circles, the art and music communities, and in the media as well.

We have an exceedingly difficult landlord, Kim Marienthal, of Coldwell-Banker in Berkeley. It sounds like you and Geno have been in touch about him and my building's status. We the tenants have tried our best with Mr. Marienthal over the past seven months to convince him to comply with Geno's very simple initial requests that he follow standard City procedure to bring the building up to standards of habitability. It is a long road, to be sure, but Marienthal refuses to take even the first steps in the order that Geno wants them. He doesn't place priority on return of utilities, structural reinforcement of the burned unit, or routine inspections. Rather, his focus has been solely on clearing the building of debris and our personal possessions, and he clearly feels he does not need permits to do either of these things. As you may have seen in Marienthal's emails, he would love to evict us to have us out of his hair. As is the story with too many buildings in Oakland these days, the owner is going to use this opportunity to do capital improvements and hike up rents.

We have told Marienthal that we are happy to remove our possessions from the building pending an about-face in tactics, meaning: his immediate and continued compliance with Geno's requests, a guarantee of our right to return to the building at our current rents once completed and permitted for occupancy, a complete stop to his seven-month-long unlawful eviction crusade, and potentially funding to enable the movement of six live/work apartments' worth of personal and business assets - none of us have major personal savings here. The immediate concern, of course, is simply that Marienthal play ball with Geno, which is where I hope you can be of assistance.

Our attorney Steven Rood (who is working with Steven Schectman on this) has spoken with Marienthal's attorney Bill Segesta several times regarding the matter, and it appears that despite Steven and Bill's good terms and long professional history together, Bill is unable to reign in his client and get him to agree to some basics regarding City rebuilding guidelines.

It is my understanding from speaking with Geno that Marienthal's ongoing passive noncompliance and recent unpermitted demolition attempt have led the Planning and Building Department to seek steps towards putting the building into Receivership, or H7 status.

We the tenants would love to see some documentation or a simple summary of what Receivership means for our landlord and for us, as we have every intention of complying with your needs, but in truth we do not know how it works.

We are very interested in the timeline of this matter as well, as it has become clear in Steven and Bill's most recent conversation that Marienthal will not hesitate to send a demolition crew in to sweep the building - despite its red-tagged status. We fear this will happen in the coming days, in blatant violation of both Planning Department guidelines and our ongoing active leases.

I am CCing Steven Rood, Steven Schectman, Geno, and the thirteen surviving tenants, as I strive for transparency with all parties. However, it is just fine if you'd like to have a dialogue directly with Mr. Rood or Mr. Schectman. We'd just like to get some movement on this ASAP so we can get a game plan together.

Thanks for your time.

Jonah

Jonah Strauss



shipwreckoakland.com

safewordoakland.com

From: [Jonah Strauss](#)
To: [Kaplan, Rebecca](#); [Kalb, Dan](#); [Guillen, Abel](#); [McElhane, Lynette](#); [Campbell Washington, Annie](#); [Gallo, Noel](#); [Brooks, Desley](#); [Reid, Larry](#); [Office of the Mayor](#)
Cc: [Cappio, Claudia](#); [Ilgen, Richard](#); [DL - Agenda Team](#); [Leon, Ray T.](#); [Holtan, Laura E.](#); [Marqusee, Alexander G.](#); [Simons, Adam J.](#); [Kahn, Kelley](#); [Karchmer, Joanne](#)
Subject: Emergency Tenant Protection Ordinance v12 & Legal Memo
Date: Friday, January 20, 2017 5:35:39 PM
Attachments: [ETPO Memo on Eminent Domain in California.pdf](#)
[ETPO v12.docx](#)
[ETPO v12.pdf](#)

Councilmembers & Mayor Schaaf –

It has been a pleasure working with Councilmembers Kaplan and Gallo the past few weeks, and we appreciate President Reid's guidance through this process. As I mentioned to Mr. Leon the other day, we fully recognize that it is unusual for Council to consider an Ordinance brought by the public, and we appreciate the opportunity to discuss the Emergency Tenant Protection Ordinance (ETPO) with you at the special Session on Monday at 5:30pm.

While we understand that the document distribution deadline was yesterday, please accept into record our Version 12 update to the ETPO, as well as a supporting legal Memorandum regarding the use of eminent domain in ETPO Section 11. Both are attached to this email. We ask that you review Version 12 and the Memorandum prior to Council on Monday, and please note that we will be coming to Session with printouts for all Councilmembers, the Mayor, the Administrator, the Attorney, and the Clerk. Everyone listed is CC'd.

The only major change from ETPO Version 11 to Version 12 is the addition of Sections 14 and 15. Section 14 guides the rehabilitation process after a Notice to Vacate is issued by the Building Department, giving both the Building Department and the Rent Board greater power to set and enforce timelines, while increasing communication with tenants. Section 15 defines the content of the notice that the Building Department is obligated to deliver to owner and tenants in conjunction with a Notice to Vacate. The only other change to the ETPO in Version 12 is a document-wide prefix of the term "imminent" to the phrase "life-threatening condition."

I can not personally attend Council on Monday. It pains me to say it, but I have a week of work in Orlando that I agreed to months ago. Thus I will be watching on KTOP. Please refer any day-of questions regarding OWC to my core team of Matt Hummel, Katherine Quinn, and Carolyn Valentine.

Steven DeCaprio, who is the primary writer of the ETPO, will be at the podium for discussion of this, Agenda Item 4. He will present the ETPO prior to Public Comment, as agreed to by Mr. Leon, and may answer any questions Councilmembers have on its intent and content. Matt Hummel will stand with him from OWC and can comment on the origins and implications of the policy.

I also submitted the Ghost Ship Remembrance Day Resolution on behalf of Dominic Vikram Babu's ASAP Spaces. Vikram will be on hand to present the Resolution as Agenda Item 1, in advance of Public Comment, as agreed to by Mr. Leon.

Thank you very much for your time.

– Jonah

Jonah Strauss

Oakland Warehouse Coalition

jonah@oaklandwarehousecoalition.org

[Signup](#) // [Facebook](#) // [Twitter](#)

**ANALYSIS OF EMINENT DOMAIN AS USED IN SECTION 11 OF THE EMERGENCY
TENANT PROTECTION ORDINANCE****I. *Kelo v. New London* Allows Local Governments to Use Eminent Domain for
a “Public Purpose”**

Historically, the use of eminent domain has been confined to proceedings in which federal, state, or local governments force the sale of privately owned real property for public use such as a road, highway, park, or other use in which the title to the property is transferred to the government entity which initiated the proceeding.

However, the use of eminent domain was expanded beyond this historic use by the case *Kelo v. New London* (545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439).

In *Kelo* the U.S. Supreme Court stated:

“Without exception, the Court has defined that concept broadly, reflecting its longstanding policy of deference to legislative judgments as to what public needs justify the use of the takings power. *Berman*, 348 U.S. 26, 75 S.Ct. 98; *Midkiff*, 467 U.S. 229, 104 S.Ct. 2321; *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 104 S.Ct. 2862, 81 L.Ed.2d 815. Pp. 2661–2664.” [*Kelo v. City of New London*, Conn., 545 U.S. 469, 469, 125 S. Ct. 2655, 2657, 162 L. Ed. 2d 439 (2005)]

In *Kelo* the court determined that the powers under the takings power are broad. Accordingly, it would appear from *Kelo* that the courts lack the authority to unless it finds that the taking has no public purpose. The Court in *Kelo* cited *Hawaii Hous. Auth. v. Midkiff* which states:

“The mere fact that property taken outright by eminent domain is transferred in the first instance to private beneficiaries does not condemn that taking as having only a private purpose. Government does not itself have to use property to legitimate the taking; it is only the taking's purpose, and not its mechanics, that must pass scrutiny under the Public Use Clause.” [*Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 230–31, 104 S. Ct. 2321, 2324, 81 L. Ed. 2d 186 (1984)]

In *Hawaii Hous. Auth.* as in the proposed ordinance there is a transfer of property from one private party to another private party, and like *Hawaii Hous. Auth.* the proposed ordinance does this for a public purpose which is (1) to ensure public safety

by rezoning unpermitted housing so that they can safely cooperate with inspectors and (2) increase the available housing for low-income residents.

Thus, the proposed ordinance fulfills two public purposes; to address the housing emergency and to address the emergency in the wake of the Ghost Ship fire. This public purpose is much more urgent than the desire to implement a general plan as was the case in *Kelo*.

II. California Law Does Not Diverge Significantly with the Kelo Decision

There has not been any state law passed limiting the scope of eminent domain in California except for proposition 99 which was passed in 2008. Proposition 99 amended Section 19 of Article I of the California Constitution to include, in relevant part, the following:

“(b) The State and local governments are prohibited from acquiring by eminent domain an *owner-occupied residence* for the purpose of conveying it to a private person.

(c) Subdivision (b) of *this section does not apply when State or local government exercises the power of eminent domain for the purpose of protecting public health and safety*; preventing serious, repeated criminal activity; responding to an emergency; or remedying environmental contamination that poses a threat to public health and safety.” (italics added)

The proposed ordinance does not violate Section 19 of Article I.

First, the limitations described in Section 19 do not apply when the local government is acting to protect public safety. As the Ghost Ship fire illustrates maintaining underground and unpermitted housing is dangerous to public safety.

Second, the proposed ordinance explicitly precludes an “owner-occupied residence” from being eligible for eminent domain.

Accordingly, there is no legal basis to challenge Section 11 of the proposed ordinance once it is passed by the City Council. In fact, Section 19 of Article I of the California Constitution indicates that a local government may transfer real property to a private person as long as it is either (1) not a owner-occupied residence or (2) transferred to remedy a threat to public health or safety. Because both of these requirements are met by Section 11 of the proposed ordinance the section is more than compliant with the state constitutions limitations on eminent domain.

Further, Section 11 of the proposed ordinance is in keeping with state policy pursuant to Health & Safety Code § 33037 which states in relevant part as follows:

“(b) That whenever the redevelopment of blighted areas cannot be accomplished by private enterprise alone, without public participation and assistance in the acquisition of land, in planning and in the financing of land assembly, in the work of clearance, and in the making of improvements necessary therefor, it is in the public interest to employ the power of eminent domain, to advance or expend public funds for these purposes, and to provide a means by which blighted areas may be redeveloped or rehabilitated.”

Accordingly, Section 11 of the proposed ordinance not only conforms with state law, but also furthers public policies enumerated by state law.

III. Eminent Domain Can Be Used to Redistribute Land

In *Kelo* the Court cites *Hawaii Housing Authority v. Midkiff* (467 US 229 - Supreme Court 1984) which was a case in which the State of Hawaii forced the sale of properties as part of a scheme to break up large estates and redistribute the land to create opportunities for property ownership. This large scale redistribution of land is much more far-reaching than what is proposed in Section 11 of the proposed ordinance.

IV. Policies in California Cities Are Analogous to the Eminent Domain Section of the Emergency Tenant Protection Ordinance

A) City of San Jose Inclusionary Housing Program

In 2010 San Jose the city imposed a requirement that “all new residential development projects of 20 or more units to sell at least 15 percent of the for-sale units at a price that is affordable to low-or moderate-income households.” (California Building Industry Assn. v. City of San Jose, 351 P. 3d 974 - Cal: Supreme Court 2015)

The ordinance was challenged by claiming that it was an unlawful “taking”. However, the law survived legal challenges and is still in place. (<https://www.sanjoseca.gov/DocumentCenter/View/57914>)

B) City of West Hollywood Inclusionary Housing Requirement

The City of West Hollywood has a mandate that requires developers to create below-market housing or pay an “in-lieu” fee. (WHMC, §§ 19.22.030–19.22.040) This law survived legal challenges. (616 CROFT AVE., LLC v. City of West Hollywood, 3 Cal. App. 5th 621 - Cal: Court of Appeal, 2nd Appellate Dist., 1st Div. 2016)

C) City of Richmond Eminent Domain to Stop Foreclosures

In the City of Richmond, eminent domain was used to purchase mortgages in order to prevent displacement of residents struggling with excessive debt burdens.

(<http://www.counterpunch.org/2014/03/05/richmond-and-eminent-domaine/>)

V. Conclusion

Local governments have broad discretion to enact laws ensuring access to affordable housing, including the use of eminent domain. Many, including the author of this memo, believe that the decision in *Kelo* was overreach allowing for developers to abuse political influence to acquire land for personal profit.

However, that very same over-reach in *Kelo*, which is the current legal standard, guarantees that using eminent domain broadly to address the needs of the community is well within law. To conclude otherwise would embrace the cynical notion that local governments do not work for its citizenry, but only for corporate land grabs that displace residents.

Section 11 of the Emergency Tenant Protection Ordinance is tailored to apply only to a narrow section of properties where the residents are at risk and have no other recourse to stabilize their housing and where the owner is (1) uncooperative with either City-mandated or tenant-sponsored efforts to bring units into code and safety compliance, (2) displacing tenants in violation of relocation requirements, or (3) “land-banking” which allows the property to fall into blight and public nuisance.

The low-income requirements of Section 11 are narrowly tailored to protect truly low-income residents, while also expanding the availability of such housing moving forward.

By enacting the Emergency Tenant Protection Ordinance with the provisions included in Section 11, the City of Oakland can challenge the underlying implication in *Kelo*; that eminent domain is exclusively used to enrich private interests at the detriment of the community. The City of Oakland has the opportunity to reclaim those eminent domain powers for true community good.

Signed: January 20, 2017

A handwritten signature in blue ink that reads "Steven DeCaprio". The signature is written in a cursive style and is contained within a light green rectangular box.

Steven DeCaprio

Land Action

Board President and Founder

land-action.org

Facilitating access to land for environmental and social justice organizing

INTERIM EMERGENCY ORDINANCE TO TEMPORARILY: 1) PLACE A MORATORIUM ON EVICTIONS OF RESIDENTS OF COMMERCIAL ZONED PROPERTIES, 2) PLACE A MORATORIUM ON RED-TAGGING FOR NON-IMMINENT LIFE-THREATENING VIOLATIONS, 3) REINFORCE EXISTING TENANT PROTECTIONS TO ELIMINATE LOOPHOLES, 4) PROVIDE REASONABLE NOTICE TO TENANTS OF UPCOMING INSPECTIONS, 5) PROVIDE AMNESTY FOR LANDLORDS LEASING COMMERCIAL ZONED PROPERTIES AS RESIDENTIAL, 6) OPEN AVENUES TO LONG-TERM SOLUTIONS FOR OAKLAND'S HOUSING CRISIS, AND 6) STRENGTHEN THE CODE REINFORCEMENT RELOCATION PROGRAM.

WHEREAS, in the midst of a housing crisis in the City of Oakland, it is of the utmost importance to prevent predatory real estate practices; and

WHEREAS, there is an influx of new residents in Oakland, the divide between low-, very low-, or extremely low-income residents and those with more capital continues to grow, exacerbating socio-political issues, including access to safe and affordable housing; and

WHEREAS, the City of Oakland's most at-risk and marginalized residential tenants are low-, very low-, or extremely low-income people of color, immigrants, working class folks, queer people, transgender people, artists, and musicians; and

WHEREAS, the City of Oakland's most at-risk residential tenants are crucial to maintaining our civic, cultural, and racial balance; and

WHEREAS, the most important step that the City of Oakland can take to retain its diverse population is to guarantee housing for low-, very low-, or extremely low-income residents; and

WHEREAS, there is a dearth of rent-controlled low-income mixed-use property in the City of Oakland, and affordable mixed-use housing is key to maintaining the City's diversity; and

WHEREAS, the City of Oakland's most at-risk residential tenants have been steadily forced since the subprime-mortgage-driven market crash of 2007 into increasingly precarious residential conditions; and

WHEREAS, low- to median-income Oakland residents who are key to our City's baseline functionality, such as City Hall administrative employees, PG&E and EBMUD workers, OUSD teachers, OFD firefighters, union members, and other core infrastructural employees, are unable to find affordable housing in the City and have been displaced in great numbers; and

WHEREAS, core infrastructural employees who have not been displaced have had their rents raised by landlords or by multiple residential moves, so that significantly more than 30% of their incomes are dedicated to paying rent; and

WHEREAS, the City of Oakland, property owners, and tenants have shared a tacit agreement of residential use of commercially zoned property for decades; and

WHEREAS, this agreement has been mutually beneficial to all involved until recently; providing low-income residents of Oakland housing, property owners residential rental rates, and the city fewer abandoned buildings; and

WHEREAS, this agreement is no longer working, and long-term, low-, very low-, or extremely low-income residents of the city find themselves displaced, it is crucial that the city, property owners, and tenants work together to maintain the diversity of Oakland; and

WHEREAS, property owners have been allowed plausible deniability of residential use, tenants now find themselves in a precarious situation as market rates for property continue to skyrocket and the incentive for owners to sell or convert their property increases; and

WHEREAS, the perceived market value of property continues to increase due to the efforts of real estate agents and speculators; and

WHEREAS, real estate investors have access to resources that are unattainable to most residents of the city, such as cash purchases of property; and

WHEREAS, these purchases and conversions happen so quickly as to not allow residents the ability to find adequate replacement housing or to pursue legal redress; and

WHEREAS, the Building Department's Notice to Vacate, commonly known as a "red tag," has become an open invitation for both live-work and residential developers to gain access to occupied properties; and

WHEREAS, flash inspections and subsequent red-tags are being used at the request of owners and potential buyers rather than accountability-oriented eviction processes to clear properties for development; and

WHEREAS, once a building has been cleared of its tenants by order of the Building Department, the owner is freed of obligation to rebuild in a timely manner, with the building department's only recourse a series of minor fees and fines for delay and blight; and

WHEREAS, there is currently no City- or privately-sponsored mechanism in place to allow tenants to make a claim to their former residence and move to purchase a cleared property for purposes of rehabilitation and reoccupation; and

WHEREAS, the threat of eviction from unpermitted residences discourages tenants from working with property owners or city officials to improve the safety of their residence; and

WHEREAS, residents allow safety issues to go unresolved because alternative housing is unaffordable or unsuitable for their household size or at-home business; and

WHEREAS, defense against eviction currently requires extensive knowledge of disparate city codes and ordinances and is extremely difficult to navigate without the assistance of an attorney; and

WHEREAS, tenants' rights attorneys in the City of Oakland are burdened with heavy caseloads due to widespread unlawful eviction practices, forcing them to choose their cases based on increasingly narrow criteria; and

WHEREAS, loopholes in the Just Cause ordinance, such as lack of coverage of commercially-zoned properties and capital improvement waivers, make it possible to sidestep what is intended as tenant protection; and

WHEREAS, in cases of eviction, the burden of proof falls upon the tenant rather than the landowner, and there is significant imbalance in access to legal support between a given landowner and a given low-, very low-, or extremely low-income tenant; and

WHEREAS, it is in the city's best interest to strengthen existing tenants' rights and to extend Just Cause protections to tenants living in buildings and units not zoned for residential use; and

WHEREAS, the City of Oakland has the unique opportunity, while the eyes of the world are upon us, to become a model city for tenant protections; and

WHEREAS, this is an historic opportunity to reinforce the city's commitment to its marginalized residents; and

WHEREAS, the City Administration and Council have expressed interest in working to increase safety and to prevent another tragedy like that which occurred at Ghost Ship on December 2nd, 2016; and

WHEREAS, the City Administration, Code Enforcement, Oakland Fire Department, landlords, and tenants alike require a cooling-off period within which they may calmly negotiate better long-term tenant protections and inspection practices; and

WHEREAS, this ordinance provides precise short-term restrictions so that the City of Oakland, owners, and tenants can have uninterrupted time to work together to make properties safer and to prevent displacement; and

WHEREAS, despite the emergency short-term nature of this ordinance, it can and will provide a model for our legislation moving forward; and

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

SECTION 1. Emergency Finding. The City Council finds the foregoing recitals to be true and correct and hereby incorporates such findings into this ordinance. The City Council further finds that there is a necessity to pass an emergency ordinance by the powers given to the City Council under Section 213 of the City Charter due to the fire at the warehouse known as the Ghost Ship on December 2, 2016.

SECTION 2. Duration of Interim Ordinance. This emergency ordinance shall remain in effect as follows: Sections 3, 4, 5, 6, 7, 8, 9, and 10 for one hundred eighty (180) days from the date of its adoption. Section 11, 12, and 13 for one (1) year from the date of its adoption.

SECTION 3. Habitation is Not a Violation of a Material Term. Good cause for violations of a material term of the tenancy as described in the Just Cause Ordinance (Oakland Municipal Code section 8.22.360A.2) shall not include individuals residing on a property in violation of a lease agreement

SECTION 4. Discontinuance of Displacement of Residential Tenants due to Code Violation. The city's Building Official or other authorized official may not issue any notice to vacate unless the notice is to abate an imminent life-threatening condition and a declaration of substandard to a property owner covering a rental unit or room used for residential purposes; notwithstanding the zoning, lease terms, or lack of Certificate of Occupancy of said unit; shall inform the property owner that any tenant household who vacates said rental unit or room may be eligible for relocation payments from the property owner, that failure to make required payments to eligible tenant households before vacation shall result in the city making payments on behalf of the owner, and that failure to reimburse the city for all payments made and other costs incurred shall result in a lien being placed on the property. Following issuance of any such notice or declaration and expiration of the period to abate the noncomplying condition (if an abatement period is specified in any such notice or declaration), the city shall also use reasonable efforts to deliver information to each affected tenant household in the building regarding the relocation benefits and assistance to which the tenant household is entitled. If a tenant must leave a rental unit due to an imminent life-threatening condition, notwithstanding any lease agreement to the contrary, said tenant shall be entitled to relocation benefits as defined by Oakland's Code Enforcement Relocation Program, and shall have the right to return to said unit in accordance with the regulations of O.M.C. 08.22.360(A)10, except that no improvements made to abate an imminent life-threatening condition shall interfere with the tenants right to return, and the owner shall not make any improvements that will significantly alter the unit in a manner that will alter or interfere with the tenant's continued use of the unit based upon the tenants use prior to December 2, 2016.

SECTION 5. Discontinuance of Displacement of Residential Tenants due to Zoning Violation or Lack of a Certificate of Occupancy. The city's Building Official or other authorized official may not issue any notice to vacate based on residential use of a property that is not zoned for such purpose or lacks a Certificate of Occupancy.

SECTION 6. Just Cause Protections for Residential Tenants of Properties Regardless of Zoning Status. The City of Oakland shall affirm that anyone paying rent for a property used for residential purposes prior to December 2, 2016 is a tenant as defined by OMC 8.22.300 regardless of the zoning status of that property or lack of a Certificate of Occupancy. OMC 08.22.360(A)2 shall be amended as follows:

2. The tenant has continued, after written notice to cease, to substantially violate a material term of the tenancy other than the obligation to surrender possession on proper notice as required by law, provided further that notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit as a result of subletting of the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet following a written request by the tenant, so long as the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord. [AMENDMENT:] *Furthermore, notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a commercial or industrial rental unit as a result of violating a prohibition on living in said unit, so long as the residential usage commenced prior to December 2, 2016.*

SECTION 7. Prohibition of Eviction of Residents of Commercial Properties Without Just Cause. No landlord shall be entitled to recover possession of a rental unit in the City of Oakland on the following grounds: (1) that an individual is residing in the rental unit in violation of a lease agreement which prohibits residential use of the rental unit, notwithstanding the zoning, lease terms, or lack of Certificate of Occupancy of said unit or (2) the lease term of an individual residing in the rental unit in violation of a lease agreement which prohibits residential use of the rental unit, notwithstanding the zoning, lease terms, or lack of Certificate of Occupancy of said unit has expired, or (3) to make improvements or rehabilitate the unit except to abate an imminent life-threatening condition. If a landlord seeks to recover a rental unit to abate an imminent life-threatening condition then the landlord shall be required to fulfill all relocation requirements set forth in Section 4 of this ordinance. For all rental units used for residential purposes; notwithstanding the zoning, lease terms, or lack of Certificate of Occupancy of said unit; not otherwise regulated by the City of Oakland Rent Control Ordinance section 8.22.010 et seq.; a landlord may not increase the rent more than 2% upon the expiration of a lease term and all terms of such lease except prohibitions of residential use shall continue on a month-to-month basis. A landlord seeking to recover possession of a rental unit that is not used for residential purposes must state in the notice of termination or the notice to quit as follows:

“The owner of this property claims that this property is not used for residential purposes. However, an emergency ordinance protecting residents from eviction in commercial and industrial properties is currently in effect. A landlord must have just cause for eviction of any residential tenant regardless of any agreement made prohibiting residential use. If you reside on this property and there is no cause for eviction, such as failure to pay rent, then the owner of this property is required by law to stop all eviction proceedings once notified. If you reside on this property and your lease term has expired then you are entitled to remain on this property on a month-to-month basis, and your rent payments may not be increased by more than 2%. If you reside on this property and there is no just cause for eviction then the owner of this property must stop eviction proceedings. If the owner of this property proceeds with an eviction in violation of this law then contact the Rent Adjustment Program; 250 Frank H Ogawa Plaza, 5th floor; Oakland, CA 94612; Phone: 510-238-6181”

A landlord seeking to recover possession of a rental unit that is not used for residential use without Good Cause as defined by Oakland Municipal Code section 8.22.360 must state in the complaint for possession that the rental unit is not used for residential use. In any proceeding seeking an order for possession of a rental unit that is not used for residential use without Good Cause as defined by Oakland Municipal Code section 8.22.360 the landlord seeking to recover possession must declare under penalty of perjury and prove by a preponderance of the evidence that the unit is not used for residential purposes. Any landlord that violates this Section is guilty of a misdemeanor and may be punished as set forth in Chapter 1.28 of the Oakland Municipal Code.

SECTION 8. Discontinuance of Flash Inspections on All Properties in the City of Oakland. The city's Building Official or other authorized official shall be required to provide fourteen (14) days' notice to both tenant and landlord of any building slated for inspection unless there is probable cause to believe there is an imminent life-threatening condition on the property. In such case that there is probable cause to believe there is an imminent life-threatening condition on the property and no such condition is found then the city's Building Official or other authorized official may take no action other than to provide fourteen (14) days' notice to both tenant and landlord that another inspection will occur to inspect the non-imminent life-threatening conditions and provide the opportunity to abate said conditions. Ambush-style inspections shall be explicitly prohibited.

SECTION 9. Amnesty for Zoning and Permitting Violations. The city's Building Official or other authorized official may not impose a penalty or fine for violations of Title 8, Title 15, or Title 17 of the Oakland Municipal Code including zoning violations, permitting violations, or lack of Certificate of Occupancy; notwithstanding the zoning designation or existence of a Certificate of Occupancy of said properties; for violations existing prior to December 2, 2016 providing that the property owner complies with Section 3 and Section 6 of this ordinance as well as all provisions of OMC 8.22.300 et seq.

SECTION 10. Prohibition of Abuse of Code Violation Complaint Process.

The city's Building Official or other authorized official will require that anyone notifying the city's Building Official or other authorized official of a violation of codes on a property must provide their name and contact information. The city's Building Official or other authorized official will inform the complaining party that their name will remain confidential and will accordingly not disclose the name of the complaining party to the public. If the complaining party refuses to provide their name then the city's Building Official or other authorized official will not act on the complaint unless the complaint is of an imminent life-threatening situation and, in such circumstances, only if the imminent life-threatening situation can be viewed without an inspection. If a complaining party is found to make a false complaint or if it is determined that the complaints are made for the purposes of harassment or for financial gain then the city's Building Official or other authorized official will no longer act on complaints from that individual or anyone acting on their behalf. In all public disclosures of documents related to a complaint as described in this Section; including, but not limited to, Government Code section 6250 et seq.; the identifying information of the complaining party will be redacted or otherwise removed from documents available to the public or third-parties.

SECTION 11. Rezoning and Eminent Domain of Properties to Create Low-Income Live-Work Cooperatives. The City of Oakland will initiate an Eminent Domain proceeding to acquire a real property at the request of a residential tenant of a Live-Work space or former residential tenant of a vacant Live-Work space, notwithstanding the zoning designation or existence of a Certificate of Occupancy of said property, if the tenant can meet the following requirements: (1) prove that they were residing on the property prior to December 2, 2016, (2) prove that (a) either the tenant or one or more of the cotenants have a household income of 45% or less of the Area Median Income, (b) neither the tenant or any cotenants have a household income above 90% of the Area Median Income, or (c) that the average household income of the tenant and all cotenants is 60% of the Area Median Income, and (3) that a tenant, tenants, or a non-profit corporation designated by at least 60% of group comprised of the tenant and their cotenants provides funds equivalent to the purchase price paid by the City of Oakland. The City of Oakland will transfer title of such a property to a non-profit corporation designated by at least 60% of the tenants, and the title will be conveyed with an affordability covenant on the property as follows: (1) no future resident shall earn an income above 60% of the Area Median Income and (2) if the average median income of the tenants is above 45% of the Area Median Income then there will be no new tenants earning over 30% of the Area Median until such time as the average median income of the tenants is at or below 45% of the Area Median Income, and (3) affordability covenants shall be recorded as a prior lien on the property with a duration of not less than 99 years. Upon transfer of the title from the City of Oakland the City of Oakland Planning and Zoning Division will designate the property as mixed use live-work. If more than one former tenant of a vacant Live-Work space makes a request under this Section then the City of Oakland will grant the most recent tenant's request providing that payment of the purchase price is tendered to the City of Oakland, but if payment is not tendered then the request made by the next most recent tenant will be granted providing they meet all the requirements in this Section. All requests under this section

shall be made to and implemented by the Project Implementation Division of the City of Oakland. This Section shall not apply to real properties that are owner occupied as follows; (1) properties where an owner resided on the property prior to December 2, 2016 and after December 2, 2011, (2) properties where an owner worked on the property prior to December 2, 2016 and after December 2, 2011, or (3) properties where an owner operated a business, other than providing rental units, that required more than one employee to be on the property for a period exceeding one-year prior to December 2, 2016 and after December 2, 2011.

SECTION 12. Rezoning of Properties to Create Low-Income Live-Work Spaces. The city's Building Official or other authorized official shall rezone a real property designation to become Live-Work at the request of the owner(s) if the owner(s) can meet the following terms: (1) prove that they or their tenants were using the property as their primary residence prior to December 2, 2016, (2) prove that (a) one or more of the tenants have a household income of 45% or less of the Area Median Income, (b) no resident has a household income above 90% of the Area Median Income, or (c) that the average household income is 60% of the Area Median Income, and (3) the owner agrees to an affordability covenant as follows: (a) no future resident shall earn an income above 60% of the Area Median Income, (b) if the average median income of the tenants is above 45% of the Area Median Income then there will be no new tenants earning over 30% of the Area Median until such time as the average median income of the tenants is at or below 45% of the Area Median Income, and (c) affordability covenants shall be recorded as a prior lien on the property with a duration of not less than 99 years. All requests under this section shall be made to and implemented by the Project Implementation Division of the City of Oakland.

SECTION 13. Issuance of Cabaret Permits to Underground Venues. Past violations of Oakland Municipal Code sections 5.02.010 et seq., sections 5.12.010 et seq., sections 5.22.010 et. seq., sections 17.103.030 et. seq., sections 17.134.010 et. seq. or a disqualifying offense as defined by section 5.12.010(B) shall not be grounds for denial of Cabaret permits, Extended Hours permits, or Condition Use permits for property owners or tenants who have hosted events open to the public prior to December 2, 2016 on the real property for which the permit is applied for. Any of the aforementioned applicants for a Cabaret permit, Extended Hours permit, or Conditional Use permit currently in violation of any Oakland Municipal Code sections shall be allowed a reasonable time to bring the property into compliance. A Cabaret permit, Extended Hours permit, or Conditional Use permit shall not be denied based on an investigation pursuant to Oakland Municipal Code section 5.12.050(B).

SECTION 14. Strengthening Oakland's Code Enforcement Relocation Program. The property owner (or Rent Board, where applicable) shall disburse relocation funds in accordance with the Code Enforcement Relocation Program [O.M.C. 08.22.360(A)10] to the tenant within three (3) working days from the date of issuance of a Notice to Vacate. The Building Department shall issue to owner and tenants a complete list of code compliance measures required to remove the Notice to Vacate, within three (3) working days of its issuance.

In the event that the Rent Board issues payment of relocation funds, failure of owner to repay the Rent Board within fourteen (14) days from the date of issuance of Notice to Vacate shall result in a lien being placed on the property in accordance with the Code Reinforcement Relocation program. The Rent Board shall schedule an initial meeting with the owner, Building Official, and tenants for a date within thirty (30) days of issuance of the Notice to Vacate. Failure of the owner to appear before the Rent board at this initial meeting shall result in initiation of the receivership process *[refer to OMC receivership section]*.

The owner shall secure permits and initiate remedial repairs within ninety (90) calendar days of issuance of the Notice to Vacate. The owner shall complete remedial repairs sufficient to comply with the aforementioned list of code compliance measures within one hundred eighty (180) days of Notice to Vacate. Owner and Building Official shall appear before the Rent Board in a public extension hearing if greater than ninety (90) days is required to gain permits, or in the event that greater than one hundred eighty (180) days is required to complete repairs. Extension hearing appearances shall be scheduled by the Rent Board to accommodate tenant participation, with fourteen (14) days' notice. Tenants shall be notified of progress by both owner and Building Official every thirty (30) days.

Failure to initiate repairs within ninety (90) days of issuance of the Notice to Vacate, or failure to complete repairs within one hundred eighty (180) days of issuance of the Notice to Vacate, will result in initiation of the receivership process. If a public extension hearing is held and an extension is granted, the maximum allowable time to initiate repairs from issuance of Notice to Vacate shall be one hundred eighty (180) days, and the maximum allowable time to complete repairs shall be three hundred sixty-five (365) days. If repairs are not initiated within maximum allowable extension timeframe, the receivership process shall be initiated; if repairs are not completed within three hundred sixty-five (365) days, the receivership process shall be initiated.

The Building Department shall streamline the permit application process for these cases, to allow compliance within the aforementioned timeframe. The Building Department shall mandate that the owner prioritize the prevention of further damage to the property after issuance of the Notice to Vacate. The Building Department shall prohibit the division of units required to be offered back to the tenants under Just Cause [OMC 8.22.300].

All notice requirements within this section shall satisfy the following: Notice shall be deemed secured where notice by the owner and/or Building Official and/or Rent Board is 1) affixed to the property; 2) delivered to tenants and owner via USPS first class mail; and 3) delivered via email.

SECTION 15. Notice Requirements for Inspections. *[Insert language here where prior to any inspection of property, the Building Department shall provide notice, in the time frame set forth in Section 8, to both the owner and the occupants of the property by (1) posting notice on the property; (2) mailing notice to residents; and whenever possible (3) providing notice via email, all with information about the right to continue residing on the property unless an imminent life-threatening condition is found, and a summary of relocation rights as provided by Oakland's Code Relocation Enforcement Program. Further, the notice shall provide phone and email contact information for departments within the City of Oakland, as well as organizations providing support to tenants, so that owners and occupants can make further inquiries and seek assistance if necessary.]*

[This ordinance was written by Steven DeCaprio of Land Action with input from social justice organizers, tenants' rights organizations, and some of the community members affected by the Ghost Ship fire. Whereas was written by Oakland Warehouse Coalition.]

Signed: January 20, 2017



Steven DeCaprio

Land Action

Board President and Founder

land-action.org

Facilitating access to land for environmental and social justice organizing

Common-Language Summary

Prepared by Oakland Warehouse Coalition

Section 1 - Emergency Finding

1. The council finds need to pass an emergency ordinance due to the Ghost Ship fire of 12/2/16

Section 2 - Duration of Interim Ordinance

1. Sections 3-10 remain in effect for 180 days from date of adoption
2. Sections 11-13 remain in effect for one year from date of adoption

Section 3 - Habitation is Not a Violation of a Material Term

1. Residential use of a property shall not constitute a breach of lease

Section 4 - Discontinuance of Displacement of Residential Tenants due to Code Violation

- 1) Building department may not red tag or otherwise clear a building of residential tenants as a result of a code violation, except in case of an imminent life-threatening condition – regardless of zoning, lease terms, or lack of Certificate of Occupancy
- 2) Displaced tenants are eligible for relocation payments and right-of-return from property owner, in accordance with the Just Cause Ordinance, except the following:
 - a) No improvements made to abate an imminent life-threatening condition shall interfere with the tenant's right to return
 - b) The Owner shall not make any improvements to the unit that will change the tenant's continued use of the unit in the same manner
- 3) The City may make relocation payments on behalf of the owner and recoup after the fact. Failure to repay the City will result in a lien being placed on the property. The City is required to inform tenants of this.

Section 5 - Discontinuance of Displacement of Residential Tenants due to Zoning Violation or Lack of a Certificate of Occupancy

1. Building department may not red tag or otherwise clear a building of residential tenants as a result of a zoning violation (i.e., residential use of a commercial space) or lack of a Certificate of Occupancy

Section 6 - Just Cause Protections for Residential Tenants of Properties Regardless of Zoning Status

1. Residential Just Cause protections to apply to anyone paying rent on any property for residential purposes
2. Just Cause amendment: Owner may not evict a tenant for living in a commercial or industrial rental unit

Section 7 - Prohibition of Eviction of Residents of Commercial Properties Without Just Cause

- 1) Eviction is prohibited for residential use of a commercial property:
 - a) Including use that is in violation of a lease agreement
 - b) Including said use after expiration of the lease
 - c) In order to make improvements, except to abate an imminent life-threatening condition
 - d) If the Owner seeks to evict and make improvements to abate an imminent life-threatening condition, the Owner must fulfill all right-to-return and relocation requirements as specified in Section 4
- 2) Owner may not raise rent on any property used as residential more than 2% at end of lease. Rent-controlled properties are exempt.
- 3) All lease terms (except for prohibitions on residential use) will continue on a month-to-month basis at end of lease
- 4) In order to prevent an owner from bypassing this ordinance by claiming that a property is non-residential, the owner attempting eviction is required to post a notice to residents that informs them of their protections under this ordinance. Notice included in full text.
- 5) Burden of proof is on the owner seeking eviction to demonstrate that a property is not being used for residential purpose. Any owner found to have falsified evidence to this end will be charged with a misdemeanor.

Section 8 - Discontinuance of Flash Inspections on All Properties in the City of Oakland

1. City building inspectors are required to provide 14 days' notice to both tenant and owner in advance of any inspection, unless there is probable cause to believe that there is an imminent life-threatening condition on the property.
2. If no imminent life-threatening condition is found, no action may be taken other than providing 14 days' notice of second inspection. This provides owner and tenant alike opportunity to abate any non-imminent life-threatening condition.

Section 9 - Amnesty for Zoning and Permitting Violations for Live-Work Properties

1. Penalties may not be imposed by the City upon an owner for zoning or permitting violations, provided that they do not violate Just Cause, or evict for residential use (Sections 3 and 6 of this ordinance)

Section 10 - Prohibition of Abuse of Code Violation Complaint Process

1. Building department may not act on any complaint unaccompanied by name and contact information, unless complaint is of an imminent life-threatening situation, and if that situation may be viewed without an inspection.
2. Name and contact information of complainant will remain confidential in all publicly available documents
3. If a false complaint is filed for the purposes of harassment or financial gain, the building department will no longer act on complaints from the complainant or their agents

Section 11 - Rezoning and Eminent Domain of Properties to Create Low-Income Live-Work Cooperatives

- 1) Requirements for the City to begin Eminent Domain proceedings on a property at the request of a current residential tenant or a former residential tenant of a now-vacant property, regardless of zoning designation or status of Certificate of Occupancy:
 - a) Proof of residence on the property prior to 12/2/16
 - b) Proof that any of the following income requirements are met:
 - i) One or more tenants have an income of less than 45% of Area Median Income (AMI)
 - ii) No tenant has an income of more than 90% of AMI
 - iii) The average income of all tenants is 60% or less of AMI
 - c) The tenants or a non-profit corporation designated by at least 60% of the tenants buy(s) the property at the same price paid by the City
- 2) Property title will be transferred upon payment with an affordability covenant:
 - a) No future resident may earn more than 60% of AMI
 - b) The average AMI of all tenants must remain at or below 45%
 - c) Affordability covenant shall be regarded as a 99-year property lien
- 3) On transfer of title, the property will be designated as mixed-use live-work
- 4) If more than one former tenant of the property makes a request, priority will go to the most recent tenant
- 5) City of Oakland Project Implementation Division will handle all requests

- 6) This section does not apply to owner-occupied properties under the following conditions:
 - a) The owner lived or worked on the property between 12/2/11 and 12/2/16
 - b) The owner ran a business other than rental on the property between 12/2/11 and 12/2/16, which required more than one employee to be on the property for at least one year

Section 12 - Rezoning of Properties to Create Low-Income Live-Work Spaces

- 1) Requirements for an owner to request conversion of their property to live-work zoning:
 - a) Proof of owner or tenant use of the property as primary residence prior to 12/2/16
 - b) Proof that any of the following income requirements are met:
 - i) One or more tenants have an income of less than 45% of AMI
 - ii) No tenant has an income of more than 90% of AMI
 - iii) The average income of all tenants is 60% or less of AMI
 - c) Owner agrees to an affordability covenant:
 - i) No future resident may earn more than 60% of AMI
 - ii) The average AMI of all tenants must remain at or below 45%
 - iii) Affordability covenant shall be regarded as a 99-year property lien
- 2) City of Oakland Project Implementation Division will handle all requests

Section 13 - Issuance of Cabaret Permits to Event Spaces

- 1) Violations of the codes listed in full prior to 12/2/16 are not grounds for future denial of Cabaret, Extended Hours, or Conditional Use permits. This applies to both owner and tenant.
- 2) Any of the aforementioned applicants who are currently in violation shall be allowed a reasonable time to bring the property into compliance.
- 3) Any aforementioned permit may not be denied based on a criminal background investigation

Section 14 - Strengthening Oakland's Code Enforcement Relocation Program

[Please refer to full text of ordinance for details. Brief summary as follows.]

- 1) Relocation payments shall be made immediately
- 2) Relocations shall be minimal and finite
- 3) If the property owner fails to comply with these provisions, the property is taken into receivership by the City of Oakland to ensure that the residents are relocated responsibly and given right-of-return efficiently upon completion of repairs

Section 15 - Notice Requirements for Inspections

- 1) In its 14-day advance notice of any inspection, the Building Department must provide information about the right to continue residing on the property unless prevented by an imminent life-threatening condition, and relocation rights as provided by the Code Enforcement Relocation Program, by all of the following:
 - a) Posting notice on the property
 - b) Mailing notice to residents and ownership
 - c) Email to residents and ownership
- 2) The notice shall provide contact information for departments within the City of Oakland, as well as organizations providing support to tenants, so that owners and occupants can make further inquiries and seek assistance if necessary

References From the Full Text of the Ordinance

- Rent Adjustment Program - [OMC Chapter 8.22.360\(A\)2, 08.22.360\(A\)10](#) (Sec.3,4)
- Code Enforcement Relocation Program - [OMC Chapter 15.60](#) (Sec.4)
- Just Cause Ordinance - [OMC Chapter 8.22.300](#) (Sec.6)
- Certificate of Occupancy - [OMC 15.08.150](#)
- Misdemeanor Punishment - [OMC Chapter 1.28](#) (Sec. 7)
- OMC [Title 8](#), [Title 15](#), [Title 17](#) (Sec.9)
- State of California [Gov't code section 6250](#) (Sec.10)
- Area Median Income (AMI) for 2016 [according to City of Oakland](#) is \$65,500 (Sec. 11/12)
 - 90% of AMI = \$58,950 (Median Income)
 - 60% of AMI = \$39,300 (Low Income)
 - 45% of AMI = \$29,475 (Very Low Income)
 - 30% of AMI = \$19,650 (Extremely Low Income)
- Primary Eminent Domain case, [Kelo v. City of New London](#)
- OMC 5.02.010, 5.12.010, 5.22.010, 17.103.030, 17.134.010, 5.12.010(B), 5.12.050(B) (Sec. 13)

**ANALYSIS OF EMINENT DOMAIN AS USED IN SECTION 11 OF THE EMERGENCY
TENANT PROTECTION ORDINANCE****I. *Kelo v. New London* Allows Local Governments to Use Eminent Domain for
a “Public Purpose”**

Historically, the use of eminent domain has been confined to proceedings in which federal, state, or local governments force the sale of privately owned real property for public use such as a road, highway, park, or other use in which the title to the property is transferred to the government entity which initiated the proceeding.

However, the use of eminent domain was expanded beyond this historic use by the case *Kelo v. New London* (545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439).

In *Kelo* the U.S. Supreme Court stated:

“Without exception, the Court has defined that concept broadly, reflecting its longstanding policy of deference to legislative judgments as to what public needs justify the use of the takings power. *Berman*, 348 U.S. 26, 75 S.Ct. 98; *Midkiff*, 467 U.S. 229, 104 S.Ct. 2321; *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 104 S.Ct. 2862, 81 L.Ed.2d 815. Pp. 2661–2664.” [*Kelo v. City of New London*, Conn., 545 U.S. 469, 469, 125 S. Ct. 2655, 2657, 162 L. Ed. 2d 439 (2005)]

In *Kelo* the court determined that the powers under the takings power are broad. Accordingly, it would appear from *Kelo* that the courts lack the authority to unless it finds that the taking has no public purpose. The Court in *Kelo* cited *Hawaii Hous. Auth. v. Midkiff* which states:

“The mere fact that property taken outright by eminent domain is transferred in the first instance to private beneficiaries does not condemn that taking as having only a private purpose. Government does not itself have to use property to legitimate the taking; it is only the taking's purpose, and not its mechanics, that must pass scrutiny under the Public Use Clause.” [*Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 230–31, 104 S. Ct. 2321, 2324, 81 L. Ed. 2d 186 (1984)]

In *Hawaii Hous. Auth.* as in the proposed ordinance there is a transfer of property from one private party to another private party, and like *Hawaii Hous. Auth.* the proposed ordinance does this for a public purpose which is (1) to ensure public safety

by rezoning unpermitted housing so that they can safely cooperate with inspectors and (2) increase the available housing for low-income residents.

Thus, the proposed ordinance fulfills two public purposes; to address the housing emergency and to address the emergency in the wake of the Ghost Ship fire. This public purpose is much more urgent than the desire to implement a general plan as was the case in *Kelo*.

II. California Law Does Not Diverge Significantly with the Kelo Decision

There has not been any state law passed limiting the scope of eminent domain in California except for proposition 99 which was passed in 2008. Proposition 99 amended Section 19 of Article I of the California Constitution to include, in relevant part, the following:

“(b) The State and local governments are prohibited from acquiring by eminent domain an *owner-occupied residence* for the purpose of conveying it to a private person.

(c) Subdivision (b) of *this section does not apply when State or local government exercises the power of eminent domain for the purpose of protecting public health and safety*; preventing serious, repeated criminal activity; responding to an emergency; or remedying environmental contamination that poses a threat to public health and safety.” (italics added)

The proposed ordinance does not violate Section 19 of Article I.

First, the limitations described in Section 19 do not apply when the local government is acting to protect public safety. As the Ghost Ship fire illustrates maintaining underground and unpermitted housing is dangerous to public safety.

Second, the proposed ordinance explicitly precludes an “owner-occupied residence” from being eligible for eminent domain.

Accordingly, there is no legal basis to challenge Section 11 of the proposed ordinance once it is passed by the City Council. In fact, Section 19 of Article I of the California Constitution indicates that a local government may transfer real property to a private person as long as it is either (1) not a owner-occupied residence or (2) transferred to remedy a threat to public health or safety. Because both of these requirements are met by Section 11 of the proposed ordinance the section is more than compliant with the state constitutions limitations on eminent domain.

Further, Section 11 of the proposed ordinance is in keeping with state policy pursuant to Health & Safety Code § 33037 which states in relevant part as follows:

“(b) That whenever the redevelopment of blighted areas cannot be accomplished by private enterprise alone, without public participation and assistance in the acquisition of land, in planning and in the financing of land assembly, in the work of clearance, and in the making of improvements necessary therefor, it is in the public interest to employ the power of eminent domain, to advance or expend public funds for these purposes, and to provide a means by which blighted areas may be redeveloped or rehabilitated.”

Accordingly, Section 11 of the proposed ordinance not only conforms with state law, but also furthers public policies enumerated by state law.

III. Eminent Domain Can Be Used to Redistribute Land

In *Kelo* the Court cites *Hawaii Housing Authority v. Midkiff* (467 US 229 - Supreme Court 1984) which was a case in which the State of Hawaii forced the sale of properties as part of a scheme to break up large estates and redistribute the land to create opportunities for property ownership. This large scale redistribution of land is much more far-reaching than what is proposed in Section 11 of the proposed ordinance.

IV. Policies in California Cities Are Analogous to the Eminent Domain Section of the Emergency Tenant Protection Ordinance

A) City of San Jose Inclusionary Housing Program

In 2010 San Jose the city imposed a requirement that “all new residential development projects of 20 or more units to sell at least 15 percent of the for-sale units at a price that is affordable to low-or moderate-income households.” (California Building Industry Assn. v. City of San Jose, 351 P. 3d 974 - Cal: Supreme Court 2015)

The ordinance was challenged by claiming that it was an unlawful “taking”. However, the law survived legal challenges and is still in place. (<https://www.sanjoseca.gov/DocumentCenter/View/57914>)

B) City of West Hollywood Inclusionary Housing Requirement

The City of West Hollywood has a mandate that requires developers to create below-market housing or pay an “in-lieu” fee. (WHMC, §§ 19.22.030–19.22.040) This law survived legal challenges. (616 CROFT AVE., LLC v. City of West Hollywood, 3 Cal. App. 5th 621 - Cal: Court of Appeal, 2nd Appellate Dist., 1st Div. 2016)

C) City of Richmond Eminent Domain to Stop Foreclosures

In the City of Richmond, eminent domain was used to purchase mortgages in order to prevent displacement of residents struggling with excessive debt burdens.

(<http://www.counterpunch.org/2014/03/05/richmond-and-eminent-domaine/>)

V. Conclusion

Local governments have broad discretion to enact laws ensuring access to affordable housing, including the use of eminent domain. Many, including the author of this memo, believe that the decision in *Kelo* was overreach allowing for developers to abuse political influence to acquire land for personal profit.

However, that very same over-reach in *Kelo*, which is the current legal standard, guarantees that using eminent domain broadly to address the needs of the community is well within law. To conclude otherwise would embrace the cynical notion that local governments do not work for its citizenry, but only for corporate land grabs that displace residents.

Section 11 of the Emergency Tenant Protection Ordinance is tailored to apply only to a narrow section of properties where the residents are at risk and have no other recourse to stabilize their housing and where the owner is (1) uncooperative with either City-mandated or tenant-sponsored efforts to bring units into code and safety compliance, (2) displacing tenants in violation of relocation requirements, or (3) “land-banking” which allows the property to fall into blight and public nuisance.

The low-income requirements of Section 11 are narrowly tailored to protect truly low-income residents, while also expanding the availability of such housing moving forward.

By enacting the Emergency Tenant Protection Ordinance with the provisions included in Section 11, the City of Oakland can challenge the underlying implication in *Kelo*; that eminent domain is exclusively used to enrich private interests at the detriment of the community. The City of Oakland has the opportunity to reclaim those eminent domain powers for true community good.

Signed: January 20, 2017

A handwritten signature in blue ink that reads "Steven DeCaprio". The signature is written in a cursive style and is contained within a light green rectangular box.

Steven DeCaprio

Land Action

Board President and Founder

land-action.org

Facilitating access to land for environmental and social justice organizing

INTERIM EMERGENCY ORDINANCE TO TEMPORARILY: 1) PLACE A MORATORIUM ON EVICTIONS OF RESIDENTS OF COMMERCIAL ZONED PROPERTIES, 2) PLACE A MORATORIUM ON RED-TAGGING FOR NON-IMMINENT LIFE-THREATENING VIOLATIONS, 3) REINFORCE EXISTING TENANT PROTECTIONS TO ELIMINATE LOOPHOLES, 4) PROVIDE REASONABLE NOTICE TO TENANTS OF UPCOMING INSPECTIONS, 5) PROVIDE AMNESTY FOR LANDLORDS LEASING COMMERCIAL ZONED PROPERTIES AS RESIDENTIAL, 6) OPEN AVENUES TO LONG-TERM SOLUTIONS FOR OAKLAND'S HOUSING CRISIS, AND 6) STRENGTHEN THE CODE REINFORCEMENT RELOCATION PROGRAM.

WHEREAS, in the midst of a housing crisis in the City of Oakland, it is of the utmost importance to prevent predatory real estate practices; and

WHEREAS, there is an influx of new residents in Oakland, the divide between low-, very low-, or extremely low-income residents and those with more capital continues to grow, exacerbating socio-political issues, including access to safe and affordable housing; and

WHEREAS, the City of Oakland's most at-risk and marginalized residential tenants are low-, very low-, or extremely low-income people of color, immigrants, working class folks, queer people, transgender people, artists, and musicians; and

WHEREAS, the City of Oakland's most at-risk residential tenants are crucial to maintaining our civic, cultural, and racial balance; and

WHEREAS, the most important step that the City of Oakland can take to retain its diverse population is to guarantee housing for low-, very low-, or extremely low-income residents; and

WHEREAS, there is a dearth of rent-controlled low-income mixed-use property in the City of Oakland, and affordable mixed-use housing is key to maintaining the City's diversity; and

WHEREAS, the City of Oakland's most at-risk residential tenants have been steadily forced since the subprime-mortgage-driven market crash of 2007 into increasingly precarious residential conditions; and

WHEREAS, low- to median-income Oakland residents who are key to our City's baseline functionality, such as City Hall administrative employees, PG&E and EBMUD workers, OUSD teachers, OFD firefighters, union members, and other core infrastructural employees, are unable to find affordable housing in the City and have been displaced in great numbers; and

WHEREAS, core infrastructural employees who have not been displaced have had their rents raised by landlords or by multiple residential moves, so that significantly more than 30% of their incomes are dedicated to paying rent; and

WHEREAS, the City of Oakland, property owners, and tenants have shared a tacit agreement of residential use of commercially zoned property for decades; and

WHEREAS, this agreement has been mutually beneficial to all involved until recently; providing low-income residents of Oakland housing, property owners residential rental rates, and the city fewer abandoned buildings; and

WHEREAS, this agreement is no longer working, and long-term, low-, very low-, or extremely low-income residents of the city find themselves displaced, it is crucial that the city, property owners, and tenants work together to maintain the diversity of Oakland; and

WHEREAS, property owners have been allowed plausible deniability of residential use, tenants now find themselves in a precarious situation as market rates for property continue to skyrocket and the incentive for owners to sell or convert their property increases; and

WHEREAS, the perceived market value of property continues to increase due to the efforts of real estate agents and speculators; and

WHEREAS, real estate investors have access to resources that are unattainable to most residents of the city, such as cash purchases of property; and

WHEREAS, these purchases and conversions happen so quickly as to not allow residents the ability to find adequate replacement housing or to pursue legal redress; and

WHEREAS, the Building Department's Notice to Vacate, commonly known as a "red tag," has become an open invitation for both live-work and residential developers to gain access to occupied properties; and

WHEREAS, flash inspections and subsequent red-tags are being used at the request of owners and potential buyers rather than accountability-oriented eviction processes to clear properties for development; and

WHEREAS, once a building has been cleared of its tenants by order of the Building Department, the owner is freed of obligation to rebuild in a timely manner, with the building department's only recourse a series of minor fees and fines for delay and blight; and

WHEREAS, there is currently no City- or privately-sponsored mechanism in place to allow tenants to make a claim to their former residence and move to purchase a cleared property for purposes of rehabilitation and reoccupation; and

WHEREAS, the threat of eviction from unpermitted residences discourages tenants from working with property owners or city officials to improve the safety of their residence; and

WHEREAS, residents allow safety issues to go unresolved because alternative housing is unaffordable or unsuitable for their household size or at-home business; and

WHEREAS, defense against eviction currently requires extensive knowledge of disparate city codes and ordinances and is extremely difficult to navigate without the assistance of an attorney; and

WHEREAS, tenants' rights attorneys in the City of Oakland are burdened with heavy caseloads due to widespread unlawful eviction practices, forcing them to choose their cases based on increasingly narrow criteria; and

WHEREAS, loopholes in the Just Cause ordinance, such as lack of coverage of commercially-zoned properties and capital improvement waivers, make it possible to sidestep what is intended as tenant protection; and

WHEREAS, in cases of eviction, the burden of proof falls upon the tenant rather than the landowner, and there is significant imbalance in access to legal support between a given landowner and a given low-, very low-, or extremely low-income tenant; and

WHEREAS, it is in the city's best interest to strengthen existing tenants' rights and to extend Just Cause protections to tenants living in buildings and units not zoned for residential use; and

WHEREAS, the City of Oakland has the unique opportunity, while the eyes of the world are upon us, to become a model city for tenant protections; and

WHEREAS, this is an historic opportunity to reinforce the city's commitment to its marginalized residents; and

WHEREAS, the City Administration and Council have expressed interest in working to increase safety and to prevent another tragedy like that which occurred at Ghost Ship on December 2nd, 2016; and

WHEREAS, the City Administration, Code Enforcement, Oakland Fire Department, landlords, and tenants alike require a cooling-off period within which they may calmly negotiate better long-term tenant protections and inspection practices; and

WHEREAS, this ordinance provides precise short-term restrictions so that the City of Oakland, owners, and tenants can have uninterrupted time to work together to make properties safer and to prevent displacement; and

WHEREAS, despite the emergency short-term nature of this ordinance, it can and will provide a model for our legislation moving forward; and

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

SECTION 1. Emergency Finding. The City Council finds the foregoing recitals to be true and correct and hereby incorporates such findings into this ordinance. The City Council further finds that there is a necessity to pass an emergency ordinance by the powers given to the City Council under Section 213 of the City Charter due to the fire at the warehouse known as the Ghost Ship on December 2, 2016.

SECTION 2. Duration of Interim Ordinance. This emergency ordinance shall remain in effect as follows: Sections 3, 4, 5, 6, 7, 8, 9, and 10 for one hundred eighty (180) days from the date of its adoption. Section 11, 12, and 13 for one (1) year from the date of its adoption.

SECTION 3. Habitation is Not a Violation of a Material Term. Good cause for violations of a material term of the tenancy as described in the Just Cause Ordinance (Oakland Municipal Code section 8.22.360A.2) shall not include individuals residing on a property in violation of a lease agreement

SECTION 4. Discontinuance of Displacement of Residential Tenants due to Code Violation. The city's Building Official or other authorized official may not issue any notice to vacate unless the notice is to abate an imminent life-threatening condition and a declaration of substandard to a property owner covering a rental unit or room used for residential purposes; notwithstanding the zoning, lease terms, or lack of Certificate of Occupancy of said unit; shall inform the property owner that any tenant household who vacates said rental unit or room may be eligible for relocation payments from the property owner, that failure to make required payments to eligible tenant households before vacation shall result in the city making payments on behalf of the owner, and that failure to reimburse the city for all payments made and other costs incurred shall result in a lien being placed on the property. Following issuance of any such notice or declaration and expiration of the period to abate the noncomplying condition (if an abatement period is specified in any such notice or declaration), the city shall also use reasonable efforts to deliver information to each affected tenant household in the building regarding the relocation benefits and assistance to which the tenant household is entitled. If a tenant must leave a rental unit due to an imminent life-threatening condition, notwithstanding any lease agreement to the contrary, said tenant shall be entitled to relocation benefits as defined by Oakland's Code Enforcement Relocation Program, and shall have the right to return to said unit in accordance with the regulations of O.M.C. 08.22.360(A)10, except that no improvements made to abate an imminent life-threatening condition shall interfere with the tenants right to return, and the owner shall not make any improvements that will significantly alter the unit in a manner that will alter or interfere with the tenant's continued use of the unit based upon the tenants use prior to December 2, 2016.

SECTION 5. Discontinuance of Displacement of Residential Tenants due to Zoning Violation or Lack of a Certificate of Occupancy. The city's Building Official or other authorized official may not issue any notice to vacate based on residential use of a property that is not zoned for such purpose or lacks a Certificate of Occupancy.

SECTION 6. Just Cause Protections for Residential Tenants of Properties Regardless of Zoning Status. The City of Oakland shall affirm that anyone paying rent for a property used for residential purposes prior to December 2, 2016 is a tenant as defined by OMC 8.22.300 regardless of the zoning status of that property or lack of a Certificate of Occupancy. OMC 08.22.360(A)2 shall be amended as follows:

2. The tenant has continued, after written notice to cease, to substantially violate a material term of the tenancy other than the obligation to surrender possession on proper notice as required by law, provided further that notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit as a result of subletting of the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet following a written request by the tenant, so long as the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord. [AMENDMENT:] *Furthermore, notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a commercial or industrial rental unit as a result of violating a prohibition on living in said unit, so long as the residential usage commenced prior to December 2, 2016.*

SECTION 7. Prohibition of Eviction of Residents of Commercial Properties Without Just Cause. No landlord shall be entitled to recover possession of a rental unit in the City of Oakland on the following grounds: (1) that an individual is residing in the rental unit in violation of a lease agreement which prohibits residential use of the rental unit, notwithstanding the zoning, lease terms, or lack of Certificate of Occupancy of said unit or (2) the lease term of an individual residing in the rental unit in violation of a lease agreement which prohibits residential use of the rental unit, notwithstanding the zoning, lease terms, or lack of Certificate of Occupancy of said unit has expired, or (3) to make improvements or rehabilitate the unit except to abate an imminent life-threatening condition. If a landlord seeks to recover a rental unit to abate an imminent life-threatening condition then the landlord shall be required to fulfill all relocation requirements set forth in Section 4 of this ordinance. For all rental units used for residential purposes; notwithstanding the zoning, lease terms, or lack of Certificate of Occupancy of said unit; not otherwise regulated by the City of Oakland Rent Control Ordinance section 8.22.010 et seq.; a landlord may not increase the rent more than 2% upon the expiration of a lease term and all terms of such lease except prohibitions of residential use shall continue on a month-to-month basis. A landlord seeking to recover possession of a rental unit that is not used for residential purposes must state in the notice of termination or the notice to quit as follows:

“The owner of this property claims that this property is not used for residential purposes. However, an emergency ordinance protecting residents from eviction in commercial and industrial properties is currently in effect. A landlord must have just cause for eviction of any residential tenant regardless of any agreement made prohibiting residential use. If you reside on this property and there is no cause for eviction, such as failure to pay rent, then the owner of this property is required by law to stop all eviction proceedings once notified. If you reside on this property and your lease term has expired then you are entitled to remain on this property on a month-to-month basis, and your rent payments may not be increased by more than 2%. If you reside on this property and there is no just cause for eviction then the owner of this property must stop eviction proceedings. If the owner of this property proceeds with an eviction in violation of this law then contact the Rent Adjustment Program; 250 Frank H Ogawa Plaza, 5th floor; Oakland, CA 94612; Phone: 510-238-6181”

A landlord seeking to recover possession of a rental unit that is not used for residential use without Good Cause as defined by Oakland Municipal Code section 8.22.360 must state in the complaint for possession that the rental unit is not used for residential use. In any proceeding seeking an order for possession of a rental unit that is not used for residential use without Good Cause as defined by Oakland Municipal Code section 8.22.360 the landlord seeking to recover possession must declare under penalty of perjury and prove by a preponderance of the evidence that the unit is not used for residential purposes. Any landlord that violates this Section is guilty of a misdemeanor and may be punished as set forth in Chapter 1.28 of the Oakland Municipal Code.

SECTION 8. Discontinuance of Flash Inspections on All Properties in the City of Oakland. The city's Building Official or other authorized official shall be required to provide fourteen (14) days' notice to both tenant and landlord of any building slated for inspection unless there is probable cause to believe there is an imminent life-threatening condition on the property. In such case that there is probable cause to believe there is an imminent life-threatening condition on the property and no such condition is found then the city's Building Official or other authorized official may take no action other than to provide fourteen (14) days' notice to both tenant and landlord that another inspection will occur to inspect the non-imminent life-threatening conditions and provide the opportunity to abate said conditions. Ambush-style inspections shall be explicitly prohibited.

SECTION 9. Amnesty for Zoning and Permitting Violations. The city's Building Official or other authorized official may not impose a penalty or fine for violations of Title 8, Title 15, or Title 17 of the Oakland Municipal Code including zoning violations, permitting violations, or lack of Certificate of Occupancy; notwithstanding the zoning designation or existence of a Certificate of Occupancy of said properties; for violations existing prior to December 2, 2016 providing that the property owner complies with Section 3 and Section 6 of this ordinance as well as all provisions of OMC 8.22.300 et seq.

SECTION 10. Prohibition of Abuse of Code Violation Complaint Process.

The city's Building Official or other authorized official will require that anyone notifying the city's Building Official or other authorized official of a violation of codes on a property must provide their name and contact information. The city's Building Official or other authorized official will inform the complaining party that their name will remain confidential and will accordingly not disclose the name of the complaining party to the public. If the complaining party refuses to provide their name then the city's Building Official or other authorized official will not act on the complaint unless the complaint is of an imminent life-threatening situation and, in such circumstances, only if the imminent life-threatening situation can be viewed without an inspection. If a complaining party is found to make a false complaint or if it is determined that the complaints are made for the purposes of harassment or for financial gain then the city's Building Official or other authorized official will no longer act on complaints from that individual or anyone acting on their behalf. In all public disclosures of documents related to a complaint as described in this Section; including, but not limited to, Government Code section 6250 et seq.; the identifying information of the complaining party will be redacted or otherwise removed from documents available to the public or third-parties.

SECTION 11. Rezoning and Eminent Domain of Properties to Create Low-Income Live-Work Cooperatives. The City of Oakland will initiate an Eminent Domain proceeding to acquire a real property at the request of a residential tenant of a Live-Work space or former residential tenant of a vacant Live-Work space, notwithstanding the zoning designation or existence of a Certificate of Occupancy of said property, if the tenant can meet the following requirements: (1) prove that they were residing on the property prior to December 2, 2016, (2) prove that (a) either the tenant or one or more of the cotenants have a household income of 45% or less of the Area Median Income, (b) neither the tenant or any cotenants have a household income above 90% of the Area Median Income, or (c) that the average household income of the tenant and all cotenants is 60% of the Area Median Income, and (3) that a tenant, tenants, or a non-profit corporation designated by at least 60% of group comprised of the tenant and their cotenants provides funds equivalent to the purchase price paid by the City of Oakland. The City of Oakland will transfer title of such a property to a non-profit corporation designated by at least 60% of the tenants, and the title will be conveyed with an affordability covenant on the property as follows: (1) no future resident shall earn an income above 60% of the Area Median Income and (2) if the average median income of the tenants is above 45% of the Area Median Income then there will be no new tenants earning over 30% of the Area Median until such time as the average median income of the tenants is at or below 45% of the Area Median Income, and (3) affordability covenants shall be recorded as a prior lien on the property with a duration of not less than 99 years. Upon transfer of the title from the City of Oakland the City of Oakland Planning and Zoning Division will designate the property as mixed use live-work. If more than one former tenant of a vacant Live-Work space makes a request under this Section then the City of Oakland will grant the most recent tenant's request providing that payment of the purchase price is tendered to the City of Oakland, but if payment is not tendered then the request made by the next most recent tenant will be granted providing they meet all the requirements in this Section. All requests under this section

shall be made to and implemented by the Project Implementation Division of the City of Oakland. This Section shall not apply to real properties that are owner occupied as follows; (1) properties where an owner resided on the property prior to December 2, 2016 and after December 2, 2011, (2) properties where an owner worked on the property prior to December 2, 2016 and after December 2, 2011, or (3) properties where an owner operated a business, other than providing rental units, that required more than one employee to be on the property for a period exceeding one-year prior to December 2, 2016 and after December 2, 2011.

SECTION 12. Rezoning of Properties to Create Low-Income Live-Work Spaces. The city's Building Official or other authorized official shall rezone a real property designation to become Live-Work at the request of the owner(s) if the owner(s) can meet the following terms: (1) prove that they or their tenants were using the property as their primary residence prior to December 2, 2016, (2) prove that (a) one or more of the tenants have a household income of 45% or less of the Area Median Income, (b) no resident has a household income above 90% of the Area Median Income, or (c) that the average household income is 60% of the Area Median Income, and (3) the owner agrees to an affordability covenant as follows: (a) no future resident shall earn an income above 60% of the Area Median Income, (b) if the average median income of the tenants is above 45% of the Area Median Income then there will be no new tenants earning over 30% of the Area Median until such time as the average median income of the tenants is at or below 45% of the Area Median Income, and (c) affordability covenants shall be recorded as a prior lien on the property with a duration of not less than 99 years. All requests under this section shall be made to and implemented by the Project Implementation Division of the City of Oakland.

SECTION 13. Issuance of Cabaret Permits to Underground Venues. Past violations of Oakland Municipal Code sections 5.02.010 et seq., sections 5.12.010 et seq., sections 5.22.010 et. seq., sections 17.103.030 et. seq., sections 17.134.010 et. seq. or a disqualifying offense as defined by section 5.12.010(B) shall not be grounds for denial of Cabaret permits, Extended Hours permits, or Condition Use permits for property owners or tenants who have hosted events open to the public prior to December 2, 2016 on the real property for which the permit is applied for. Any of the aforementioned applicants for a Cabaret permit, Extended Hours permit, or Conditional Use permit currently in violation of any Oakland Municipal Code sections shall be allowed a reasonable time to bring the property into compliance. A Cabaret permit, Extended Hours permit, or Conditional Use permit shall not be denied based on an investigation pursuant to Oakland Municipal Code section 5.12.050(B).

SECTION 14. Strengthening Oakland's Code Enforcement Relocation Program. The property owner (or Rent Board, where applicable) shall disburse relocation funds in accordance with the Code Enforcement Relocation Program [O.M.C. 08.22.360(A)10] to the tenant within three (3) working days from the date of issuance of a Notice to Vacate. The Building Department shall issue to owner and tenants a complete list of code compliance measures required to remove the Notice to Vacate, within three (3) working days of its issuance.

In the event that the Rent Board issues payment of relocation funds, failure of owner to repay the Rent Board within fourteen (14) days from the date of issuance of Notice to Vacate shall result in a lien being placed on the property in accordance with the Code Reinforcement Relocation program. The Rent Board shall schedule an initial meeting with the owner, Building Official, and tenants for a date within thirty (30) days of issuance of the Notice to Vacate. Failure of the owner to appear before the Rent board at this initial meeting shall result in initiation of the receivership process *[refer to OMC receivership section]*.

The owner shall secure permits and initiate remedial repairs within ninety (90) calendar days of issuance of the Notice to Vacate. The owner shall complete remedial repairs sufficient to comply with the aforementioned list of code compliance measures within one hundred eighty (180) days of Notice to Vacate. Owner and Building Official shall appear before the Rent Board in a public extension hearing if greater than ninety (90) days is required to gain permits, or in the event that greater than one hundred eighty (180) days is required to complete repairs. Extension hearing appearances shall be scheduled by the Rent Board to accommodate tenant participation, with fourteen (14) days' notice. Tenants shall be notified of progress by both owner and Building Official every thirty (30) days.

Failure to initiate repairs within ninety (90) days of issuance of the Notice to Vacate, or failure to complete repairs within one hundred eighty (180) days of issuance of the Notice to Vacate, will result in initiation of the receivership process. If a public extension hearing is held and an extension is granted, the maximum allowable time to initiate repairs from issuance of Notice to Vacate shall be one hundred eighty (180) days, and the maximum allowable time to complete repairs shall be three hundred sixty-five (365) days. If repairs are not initiated within maximum allowable extension timeframe, the receivership process shall be initiated; if repairs are not completed within three hundred sixty-five (365) days, the receivership process shall be initiated.

The Building Department shall streamline the permit application process for these cases, to allow compliance within the aforementioned timeframe. The Building Department shall mandate that the owner prioritize the prevention of further damage to the property after issuance of the Notice to Vacate. The Building Department shall prohibit the division of units required to be offered back to the tenants under Just Cause [OMC 8.22.300].

All notice requirements within this section shall satisfy the following: Notice shall be deemed secured where notice by the owner and/or Building Official and/or Rent Board is 1) affixed to the property; 2) delivered to tenants and owner via USPS first class mail; and 3) delivered via email.

SECTION 15. Notice Requirements for Inspections. *[Insert language here where prior to any inspection of property, the Building Department shall provide notice, in the time frame set forth in Section 8, to both the owner and the occupants of the property by (1) posting notice on the property; (2) mailing notice to residents; and whenever possible (3) providing notice via email, all with information about the right to continue residing on the property unless an imminent life-threatening condition is found, and a summary of relocation rights as provided by Oakland's Code Relocation Enforcement Program. Further, the notice shall provide phone and email contact information for departments within the City of Oakland, as well as organizations providing support to tenants, so that owners and occupants can make further inquiries and seek assistance if necessary.]*

[This ordinance was written by Steven DeCaprio of Land Action with input from social justice organizers, tenants' rights organizations, and some of the community members affected by the Ghost Ship fire. Whereas was written by Oakland Warehouse Coalition.]

Signed: January 20, 2017



Steven DeCaprio

Land Action

Board President and Founder

land-action.org

Facilitating access to land for environmental and social justice organizing

Common-Language Summary

Prepared by Oakland Warehouse Coalition

Section 1 - Emergency Finding

1. The council finds need to pass an emergency ordinance due to the Ghost Ship fire of 12/2/16

Section 2 - Duration of Interim Ordinance

1. Sections 3-10 remain in effect for 180 days from date of adoption
2. Sections 11-13 remain in effect for one year from date of adoption

Section 3 - Habitation is Not a Violation of a Material Term

1. Residential use of a property shall not constitute a breach of lease

Section 4 - Discontinuance of Displacement of Residential Tenants due to Code Violation

- 1) Building department may not red tag or otherwise clear a building of residential tenants as a result of a code violation, except in case of an imminent life-threatening condition – regardless of zoning, lease terms, or lack of Certificate of Occupancy
- 2) Displaced tenants are eligible for relocation payments and right-of-return from property owner, in accordance with the Just Cause Ordinance, except the following:
 - a) No improvements made to abate an imminent life-threatening condition shall interfere with the tenant's right to return
 - b) The Owner shall not make any improvements to the unit that will change the tenant's continued use of the unit in the same manner
- 3) The City may make relocation payments on behalf of the owner and recoup after the fact. Failure to repay the City will result in a lien being placed on the property. The City is required to inform tenants of this.

Section 5 - Discontinuance of Displacement of Residential Tenants due to Zoning Violation or Lack of a Certificate of Occupancy

1. Building department may not red tag or otherwise clear a building of residential tenants as a result of a zoning violation (i.e., residential use of a commercial space) or lack of a Certificate of Occupancy

Section 6 - Just Cause Protections for Residential Tenants of Properties Regardless of Zoning Status

1. Residential Just Cause protections to apply to anyone paying rent on any property for residential purposes
2. Just Cause amendment: Owner may not evict a tenant for living in a commercial or industrial rental unit

Section 7 - Prohibition of Eviction of Residents of Commercial Properties Without Just Cause

- 1) Eviction is prohibited for residential use of a commercial property:
 - a) Including use that is in violation of a lease agreement
 - b) Including said use after expiration of the lease
 - c) In order to make improvements, except to abate an imminent life-threatening condition
 - d) If the Owner seeks to evict and make improvements to abate an imminent life-threatening condition, the Owner must fulfill all right-to-return and relocation requirements as specified in Section 4
- 2) Owner may not raise rent on any property used as residential more than 2% at end of lease. Rent-controlled properties are exempt.
- 3) All lease terms (except for prohibitions on residential use) will continue on a month-to-month basis at end of lease
- 4) In order to prevent an owner from bypassing this ordinance by claiming that a property is non-residential, the owner attempting eviction is required to post a notice to residents that informs them of their protections under this ordinance. Notice included in full text.
- 5) Burden of proof is on the owner seeking eviction to demonstrate that a property is not being used for residential purpose. Any owner found to have falsified evidence to this end will be charged with a misdemeanor.

Section 8 - Discontinuance of Flash Inspections on All Properties in the City of Oakland

1. City building inspectors are required to provide 14 days' notice to both tenant and owner in advance of any inspection, unless there is probable cause to believe that there is an imminent life-threatening condition on the property.
2. If no imminent life-threatening condition is found, no action may be taken other than providing 14 days' notice of second inspection. This provides owner and tenant alike opportunity to abate any non-imminent life-threatening condition.

Section 9 - Amnesty for Zoning and Permitting Violations for Live-Work Properties

1. Penalties may not be imposed by the City upon an owner for zoning or permitting violations, provided that they do not violate Just Cause, or evict for residential use (Sections 3 and 6 of this ordinance)

Section 10 - Prohibition of Abuse of Code Violation Complaint Process

1. Building department may not act on any complaint unaccompanied by name and contact information, unless complaint is of an imminent life-threatening situation, and if that situation may be viewed without an inspection.
2. Name and contact information of complainant will remain confidential in all publicly available documents
3. If a false complaint is filed for the purposes of harassment or financial gain, the building department will no longer act on complaints from the complainant or their agents

Section 11 - Rezoning and Eminent Domain of Properties to Create Low-Income Live-Work Cooperatives

- 1) Requirements for the City to begin Eminent Domain proceedings on a property at the request of a current residential tenant or a former residential tenant of a now-vacant property, regardless of zoning designation or status of Certificate of Occupancy:
 - a) Proof of residence on the property prior to 12/2/16
 - b) Proof that any of the following income requirements are met:
 - i) One or more tenants have an income of less than 45% of Area Median Income (AMI)
 - ii) No tenant has an income of more than 90% of AMI
 - iii) The average income of all tenants is 60% or less of AMI
 - c) The tenants or a non-profit corporation designated by at least 60% of the tenants buy(s) the property at the same price paid by the City
- 2) Property title will be transferred upon payment with an affordability covenant:
 - a) No future resident may earn more than 60% of AMI
 - b) The average AMI of all tenants must remain at or below 45%
 - c) Affordability covenant shall be regarded as a 99-year property lien
- 3) On transfer of title, the property will be designated as mixed-use live-work
- 4) If more than one former tenant of the property makes a request, priority will go to the most recent tenant
- 5) City of Oakland Project Implementation Division will handle all requests

- 6) This section does not apply to owner-occupied properties under the following conditions:
 - a) The owner lived or worked on the property between 12/2/11 and 12/2/16
 - b) The owner ran a business other than rental on the property between 12/2/11 and 12/2/16, which required more than one employee to be on the property for at least one year

Section 12 - Rezoning of Properties to Create Low-Income Live-Work Spaces

- 1) Requirements for an owner to request conversion of their property to live-work zoning:
 - a) Proof of owner or tenant use of the property as primary residence prior to 12/2/16
 - b) Proof that any of the following income requirements are met:
 - i) One or more tenants have an income of less than 45% of AMI
 - ii) No tenant has an income of more than 90% of AMI
 - iii) The average income of all tenants is 60% or less of AMI
 - c) Owner agrees to an affordability covenant:
 - i) No future resident may earn more than 60% of AMI
 - ii) The average AMI of all tenants must remain at or below 45%
 - iii) Affordability covenant shall be regarded as a 99-year property lien
- 2) City of Oakland Project Implementation Division will handle all requests

Section 13 - Issuance of Cabaret Permits to Event Spaces

- 1) Violations of the codes listed in full prior to 12/2/16 are not grounds for future denial of Cabaret, Extended Hours, or Conditional Use permits. This applies to both owner and tenant.
- 2) Any of the aforementioned applicants who are currently in violation shall be allowed a reasonable time to bring the property into compliance.
- 3) Any aforementioned permit may not be denied based on a criminal background investigation

Section 14 - Strengthening Oakland's Code Enforcement Relocation Program

[Please refer to full text of ordinance for details. Brief summary as follows.]

- 1) Relocation payments shall be made immediately
- 2) Relocations shall be minimal and finite
- 3) If the property owner fails to comply with these provisions, the property is taken into receivership by the City of Oakland to ensure that the residents are relocated responsibly and given right-of-return efficiently upon completion of repairs

Section 15 - Notice Requirements for Inspections

- 1) In its 14-day advance notice of any inspection, the Building Department must provide information about the right to continue residing on the property unless prevented by an imminent life-threatening condition, and relocation rights as provided by the Code Enforcement Relocation Program, by all of the following:
 - a) Posting notice on the property
 - b) Mailing notice to residents and ownership
 - c) Email to residents and ownership
- 2) The notice shall provide contact information for departments within the City of Oakland, as well as organizations providing support to tenants, so that owners and occupants can make further inquiries and seek assistance if necessary

References From the Full Text of the Ordinance

- Rent Adjustment Program - [OMC Chapter 8.22.360\(A\)2, 08.22.360\(A\)10](#) (Sec.3,4)
- Code Enforcement Relocation Program - [OMC Chapter 15.60](#) (Sec.4)
- Just Cause Ordinance - [OMC Chapter 8.22.300](#) (Sec.6)
- Certificate of Occupancy - [OMC 15.08.150](#)
- Misdemeanor Punishment - [OMC Chapter 1.28](#) (Sec. 7)
- OMC [Title 8](#), [Title 15](#), [Title 17](#) (Sec.9)
- State of California [Gov't code section 6250](#) (Sec.10)
- Area Median Income (AMI) for 2016 [according to City of Oakland](#) is \$65,500 (Sec. 11/12)
 - 90% of AMI = \$58,950 (Median Income)
 - 60% of AMI = \$39,300 (Low Income)
 - 45% of AMI = \$29,475 (Very Low Income)
 - 30% of AMI = \$19,650 (Extremely Low Income)
- Primary Eminent Domain case, [Kelo v. City of New London](#)
- OMC 5.02.010, 5.12.010, 5.22.010, 17.103.030, 17.134.010, 5.12.010(B), 5.12.050(B) (Sec. 13)

From: [Jonah Strauss](#)
To: [Illgen, Richard](#)
Cc: [Early, Shavonda](#); [Bee, Maria](#)
Subject: Re: Haber & Ordinance
Date: Wednesday, December 21, 2016 11:21:27 AM

Thank you for your attention Richard!

Maria, I look forward to meeting with you. I am fully available this week.

- Jonah

jonahstrauss@gmail.com
[REDACTED]

On Dec 21, 2016, at 10:59 AM, Illgen, Richard <RIllgen@oaklandcityattorney.org> wrote:

Jonah,

Thank you for your emails. I am sorry I could not get back to you sooner. I include Maria Bee in this email as she has taken over many of my responsibilities because of my impending departure. We will get back to you soon to discuss.

My best,
Richard

Richard F. Illgen, Supervising Deputy City Attorney
Office of Oakland City Attorney Barbara J. Parker
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
rillgen@oaklandcityattorney.org
Phone: 510-238-6517
Fax: 510-238-6500

From: Jonah Strauss [<mailto:jonahstrauss@gmail.com>]
Sent: Wednesday, December 21, 2016 9:45 AM
To: Illgen, Richard
Cc: Early, Shavonda
Subject: Re: Haber & Ordinance

Hi Richard,

Attached you will find Draft 6 of the Ordinance; please disregard Draft 5.

Also please note that in my second paragraph below, I misspelled "discreetly."

Thank you for your time and I look forward to hearing from you or Shavonda today. Please let me know when we can meet or speak on the phone.

- Jonah

Jonah Strauss
[REDACTED]

On Tue, Dec 20, 2016 at 5:14 PM, Jonah Strauss <jonahstrauss@gmail.com> wrote:

Hi Richard,

I wrote to you a few days ago about our buddy Danny Haber - who happened to be in Zoning today asking about development guidelines for a property he's working on at 24th and Filbert, while I was in Permits looking at the plans for my building at 671 24th Street that Kim Marienthal intends to convert to the wrong number of units according to Just Cause. And sell to Haber at some point along the way. Tim Low in the building department says his hands are tied (literally, he put his hands behind his back).

Anyways, despite the holiday and your upcoming retirement, I'd like to meet with you this week for two reasons. A) If you're working on something re:Haber and I'm working on a class action suit, we will want to coordinate efforts, discretely. B) Oakland Warehouse Coalition is very close to having an emergency tenant protection ordinance submitted to Council, and we would of course appreciate your input.

The ordinance is pretty close to done; we're on Draft 5, attached to this email. Laura Holtan (Kaplan) and Alex Marquese (Gibson-McElhany) had some valuable input for us today, and support the measure. We've gone about getting input from all (yes, all) of the tenants' rights organizations in Oakland, and once Draft 6 is done I will be in charge of getting these organizations' support. That is happening tomorrow. Next steps are submitting to the Clerk on Thursday (which we would like Kaplan to do), and getting the Mayor on the ball with how to represent this publicly. I am already in contact with Michael Hunt from Libby's office about this. We feel this is an opportunity for Oakland to stand up and be a model city for tenant protections in the eyes of the international media, which are very much upon us at this time.

Please let me know what you think of the ordinance and I will forward your comments to its writer.

Please give me a moment of your time this week, even if only by phone. I am fully available. Your input would be of great value.

By Shavonda's request, I am CCing her in order to facilitate scheduling. She was very welcoming to me on my unannounced visit today - thank you Shavonda.

- Jonah

Jonah Strauss
[REDACTED]

This is a confidential attorney-client communication. This email contains confidential attorney-client privileged information and is for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message and any attachments. [v1.3]

From: [Jonah Strauss](#)
To: [Illgen, Richard](#)
Cc: [Early, Shavonda](#)
Subject: Re: Haber & Ordinance
Date: Wednesday, December 21, 2016 9:44:45 AM
Attachments: [Draft v6 - Eviction Moratorium, Amnesty, and Eminent Domain.pdf](#)

Hi Richard,

Attached you will find Draft 6 of the Ordinance; please disregard Draft 5.

Also please note that in my second paragraph below, I misspelled "discreetly."

Thank you for your time and I look forward to hearing from you or Shavonda today. Please let me know when we can meet or speak on the phone.

- Jonah

Jonah Strauss
[REDACTED]

On Tue, Dec 20, 2016 at 5:14 PM, Jonah Strauss <jonahstrauss@gmail.com> wrote:
Hi Richard,

I wrote to you a few days ago about our buddy Danny Haber - who happened to be in Zoning today asking about development guidelines for a property he's working on at 24th and Filbert, while I was in Permits looking at the plans for my building at [REDACTED] that Kim Marienthal intends to convert to the wrong number of units according to Just Cause. And sell to Haber at some point along the way. Tim Low in the building department says his hands are tied (literally, he put his hands behind his back).

Anyways, despite the holiday and your upcoming retirement, I'd like to meet with you this week for two reasons. A) If you're working on something re:Haber and I'm working on a class action suit, we will want to coordinate efforts, discretely. B) Oakland Warehouse Coalition is very close to having an emergency tenant protection ordinance submitted to Council, and we would of course appreciate your input.

The ordinance is pretty close to done; we're on Draft 5, attached to this email. Laura Holtan (Kaplan) and Alex Marquesee (Gibson-McElhany) had some valuable input for us today, and support the measure. We've gone about getting input from all (yes, all) of the tenants' rights organizations in Oakland, and once Draft 6 is done I will be in charge of getting these organizations' support. That is happening tomorrow. Next steps are submitting to the Clerk on Thursday (which we would like Kaplan to do), and getting the Mayor on the ball with how to represent this publicly. I am already in contact with Michael Hunt from Libby's office about this. We feel this is an opportunity for Oakland to stand up and be a model city for tenant protections in the eyes of the international media, which are very much upon us at this time.

Please let me know what you think of the ordinance and I will forward your comments to its writer.

Please give me a moment of your time this week, even if only by phone. I am fully available. Your input would be of great value.

By Shavonda's request, I am CCing her in order to facilitate scheduling. She was very welcoming to me on my unannounced visit today - thank you Shavonda.

- Jonah

Jonah Strauss



From: [Jonah Strauss](#)
To: [Illgen, Richard](#)
Subject: the Negev
Date: Sunday, December 18, 2016 11:24:27 AM

Hi Richard,

You may remember me as the lead tenant of 14 surviving the fire at [REDACTED] on March 21 of 2015.

I am swiftly gathering all former tenants of [REDACTED]
[REDACTED] It is becoming clear that we will need a class action, with City support, in order to drive Haber, Lushinsky, and Gutman out of town. This is a concrete goal; we want the Negev to cease operations in Oakland entirely.

I have started an advocacy and policy organization called Oakland Warehouse Coalition, whose core constituents are people living or working in converted commercial and industrial spaces. I run a recording studio called Survivor Sound at 28th & MLK, and I am the Lighting Director at the UC Theater.

Please call me tomorrow or just tell me when to show up at your office. I am free all day.

Thanks.

- Jonah

Jonah Strauss
[REDACTED]

From: [Jonah Strauss](#)
To: [Martinelli, Gene](#)
Cc: [Illgen, Richard](#)
Subject: Fwd: 24th Street Violations
Date: Saturday, November 07, 2015 12:33:47 PM

Hi Geno,

My apologies; I forgot to CC you on this. Hope you're having a good weekend.

Best,
Jonah

Jonah Strauss

[shipwreckoakland.com](#)
[safewordoakland.com](#)

Begin forwarded message:

From: Jonah Strauss <jonahstrauss@gmail.com>
Date: November 7, 2015 at 12:50:26 PM EST
To: "rfillgen@oaklandcityattorney.org"
<rfillgen@oaklandcityattorney.org>
Cc: Steven Rood <rood1@mindspring.com>, Steven Schectman
<scheclaw@gmail.com>, [REDACTED]
Subject: 24th Street Violations

Hi Richard,

I recognize that we have not spoken previously, so hopefully you'll have the time to respond to this email, or call me at your convenience on Monday. I will be busy 1:30-3:30pm. I am free to meet in person any day this week aside from Tuesday.

I am the lead tenant at [REDACTED], one of two buildings damaged by fire on March 21st of this year. Two of our neighbors died, and the story has rightfully been making the rounds in City circles, the art and music communities, and in the media as well.

We have an exceedingly difficult landlord, Kim Marienthal, of Coldwell-Banker in Berkeley. It sounds like you and Geno have been in touch about him and my building's status. We the tenants have tried our best with Mr. Marienthal over the past seven months to convince him to comply with Geno's very simple initial requests that he follow standard City procedure to bring the building up to standards of habitability. It is a long road, to be sure, but Marienthal refuses to take even the first steps in the order that Geno wants them. He doesn't place priority on return of utilities, structural reinforcement of the burned unit, or routine inspections. Rather, his focus has been solely on clearing the building of

debris and our personal possessions, and he clearly feels he does not need permits to do either of these things. As you may have seen in Marienthal's emails, he would love to evict us to have us out of his hair. As is the story with too many buildings in Oakland these days, the owner is going to use this opportunity to do capital improvements and hike up rents.

We have told Marienthal that we are happy to remove our possessions from the building pending an about-face in tactics, meaning: his immediate and continued compliance with Geno's requests, a guarantee of our right to return to the building at our current rents once completed and permitted for occupancy, a complete stop to his seven-month-long unlawful eviction crusade, and potentially funding to enable the movement of six live/work apartments' worth of personal and business assets - none of us have major personal savings here. The immediate concern, of course, is simply that Marienthal play ball with Geno, which is where I hope you can be of assistance.

Our attorney Steven Rood (who is working with Steven Schectman on this) has spoken with Marienthal's attorney Bill Segesta several times regarding the matter, and it appears that despite Steven and Bill's good terms and long professional history together, Bill is unable to reign in his client and get him to agree to some basics regarding City rebuilding guidelines.

It is my understanding from speaking with Geno that Marienthal's ongoing passive noncompliance and recent unpermitted demolition attempt have led the Planning and Building Department to seek steps towards putting the building into Receivership, or H7 status.

We the tenants would love to see some documentation or a simple summary of what Receivership means for our landlord and for us, as we have every intention of complying with your needs, but in truth we do not know how it works.

We are very interested in the timeline of this matter as well, as it has become clear in Steven and Bill's most recent conversation that Marienthal will not hesitate to send a demolition crew in to sweep the building - despite its red-tagged status. We fear this will happen in the coming days, in blatant violation of both Planning Department guidelines and our ongoing active leases.

I am CCing Steven Rood, Steven Schectman, Geno, and the thirteen surviving tenants, as I strive for transparency with all parties. However, it is just fine if you'd like to have a dialogue directly with Mr. Rood or Mr. Schectman. We'd just like to get some movement on this ASAP so we can get a game plan together.

Thanks for your time.

Jonah

Jonah Strauss



shipwreckoakland.com
safewordoakland.com