

## OAKLAND CITY COUNCIL

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

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**EMERGENCY ORDINANCE EXTENDING AND AMENDING CHAPTER 5.94 OF THE OAKLAND MUNICIPAL CODE TO EXTEND EMERGENCY PAID SICK LEAVE FOR OAKLAND EMPLOYEES DURING THE NOVEL CORONAVIRUS (COVID-19) PANDEMIC**

**WHEREAS**, COVID-19 (also known as the “Coronavirus Disease”) is a respiratory disease which was first detected in China and spread across the globe, with millions of cases now confirmed in California, including thousands in the Bay Area; and

**WHEREAS**, on January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by COVID-19, and the President of the United States issued a Proclamation Declaring a National Emergency Concerning COVID-19 beginning March 1, 2020; and

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

**WHEREAS**, on March 4, 2020, California Governor Gavin Newsom proclaimed that a State of Emergency exists in California as a result of the threat of COVID-19 (Executive Order N-25-20); and

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

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

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

**WHEREAS**, at a Special Townhall Meeting in Oakland on March 25, 2020, numerous members of the public gave commentary about the need to protect workers' health and the health of our community during the COVID-19 crisis, including the need for sick leave; and

**WHEREAS**, on March 31, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP issued a Shelter-in-Place Order (No. 20-04) that clarified, strengthened, and extended certain terms of the prior Shelter-in-Place Order; and

**WHEREAS**, State and County Shelter-in-Place Orders have been amended, updated, and extended numerous times due to the continuing public health emergency related to COVID-19, and currently remain in effect in Alameda County; and

**WHEREAS**, the federal Emergency Paid Sick Leave Act (enacted as part of the Families First Coronavirus Response Act, H.R. 6201), effective April 1, 2020, mandated that certain employers provide emergency paid sick leave to employees who are unable to work or telework due to the COVID-19 crisis; and

**WHEREAS**, the sick leave provisions of the federal Emergency Paid Sick Leave Act contained serious limitations, including, but not limited to, allowing the largest employers in the country to avoid providing emergency sick leave to their employees, ensuring that many workers will go without this vital protection; and

**WHEREAS**, franchises associated with large franchisors are better positioned than non-franchise and non-chain small businesses to access the benefits available to them under the federal stimulus and relief programs; and

**WHEREAS**, on April 16, 2020, Governor Gavin Newsom signed Executive Order N-51-20, which extended paid sick leave benefits for California food sector workers impacted by COVID-19; and

**WHEREAS**, on May 12, 2020, the Oakland City Council passed the Emergency Paid Sick Leave ("EPSL") Ordinance, added to the Oakland Municipal Code ("OMC") as Chapter 5.94, to require that employers provide emergency paid sick leave to employees and compensate laid off employees for certain accrued paid sick leave immediately upon separation; and

**WHEREAS**, the EPSL Ordinance addressed certain coverage gaps created by the federal Emergency Paid Sick Leave Act and entitled Oakland employees to EPSL for additional reasons related to medical conditions, care for family members who are ill with COVID-19 or experiencing COVID-19 symptoms, and other established health risks; and

**WHEREAS**, on November 6, 2018, the People of Oakland approved Measure Z, the Hotel Minimum Wage and Working Conditions Ordinance, which includes provisions for enforcement of City labor standards for hotel and other workers; and

**WHEREAS**, City ordinances should not advantage unregistered janitorial service contractors who may be engaged in fraudulent or abusive practices; and

**WHEREAS**, the following California cities or counties have also enacted emergency paid sick leave measures: Long Beach, the City and County of Los Angeles, Sacramento, San Francisco, San Jose, San Mateo County, Sonoma County, and Santa Rosa; and

**WHEREAS**, on September 9, 2020, California enacted Assembly Bill 1867, which, among other things, extended paid sick leave to employees in firms with more than 500 employees until December 31, 2020, or upon the expiration of any federal extension of the Families First Coronavirus Response Act, whichever is later; and

**WHEREAS**, supplemental paid sick leave available to workers under Assembly Bill 1867 is more limited than Emergency Paid Sick Leave enacted in Oakland; and

**WHEREAS**, the requirements relating to the Emergency Paid Sick Leave Act under the Families First Coronavirus Response Act were set to expire on December 31, 2020; and

**WHEREAS**, on December 27, 2020, the federal government enacted the Consolidated Appropriations Act, 2021, including Coronavirus Stimulus & Relief, which extended the tax credits aspects of the Families First Coronavirus Response Act, but did not extend the employer mandates of the Emergency Paid Sick Leave Act beyond the December 31, 2020 expiration date; and

**WHEREAS**, it is not presently known whether the federal government will take further action to provide additional emergency paid sick leave to those covered employees who are unable to work or telework due to the COVID-19 pandemic, or whether California will act to extend or otherwise expand the leave protections under AB 1867; and

**WHEREAS**, Oakland's EPSL Ordinance, as codified at OMC Chapter 5.94, was set to expire on December 31, 2020, unless extended by a resolution of the City Council; and

**WHEREAS**, California continues to experience significant community spread of COVID-19 to such a degree that Regional Stay Home Orders may continue to be issued by the State of California; and

**WHEREAS**, as of January 4, 2021, there were more than 55,000 confirmed COVID-19 cases and 656 total deaths attributed to COVID-19 in the County of Alameda; and

**WHEREAS**, it is not presently known the current timeframe for production and widespread distribution of an effective vaccine, which would contain the community spread of COVID-19; and

**WHEREAS**, given the current and anticipated growth in the number of COVID-19 cases in 2021, employees' need for supplemental paid sick leave extends past December 31, 2020, the expiration date for Oakland's EPSL; and

**WHEREAS**, during this extended state of emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to continuing protect vulnerable workers from unnecessary exposure to COVID-19 and remove or reduce the financial incentive some workers face to continue working in the face of this pandemic; and

**WHEREAS**, an emergency ordinance extending and amending Oakland’s EPSL Ordinance to provide sick leave during the COVID-19 crisis will help ensure that residents continue to stay home during the pandemic when ill or caring for an ill family member and will therefore reduce opportunities for transmission of the virus; and

**WHEREAS**, this Ordinance will extend and amend the EPSL Ordinance, retroactive to December 31, 2020, by adding section 5.94.180 to the OMC, which will extend the application of Emergency Paid Sick Leave to Oakland employees from the effective date of this Ordinance through the duration of Oakland’s March 9, 2020 Declaration of COVID-19 Emergency, ratified on March 12, 2020 (Resolution No 88075 C.M.S.); and

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

**WHEREAS**, given the extraordinary public health threat caused by COVID-19, the need to take extraordinary measures to limit its spread, and the lack of clarity regarding whether additional federal or state paid sick leave protections will ultimately be renewed or extended, the City Council is compelled to utilize its authority under City Charter Section 213 and enact this Emergency Ordinance, which sets forth sick leave requirements for certain Oakland employees; and

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

**SECTION 1. Recitals.** The City Council finds the foregoing recitals to be true and correct and hereby incorporates those recitals into this Ordinance.

**SECTION 2. Emergency Need.** In accordance with Section 213 of the Oakland City Charter, the City Council finds and declares that adoption of this Emergency Ordinance is necessary for preserving the public peace, health and safety for the following reasons:

- A. COVID-19 is a pandemic, which continues to threaten the health and safety of the City’s residents as reflected by the various emergencies declared at the local, state and national levels.
- B. Continuing efforts to limit the spread of COVID-19 are critical to protecting the health and safety of the City’s residents.
- C. Among the most effective ways to limit the spread of COVID-19 is for people to “shelter in their places of residence” and to follow “Social Distancing Requirements” as mandated by the orders issued by the Alameda County Health

Officer and California State Health Officer, beginning in March 2020 and continuing in effect through today.

- D. Efforts to limit the spread of COVID-19 are undermined if individuals unable to avail themselves of paid sick leave benefits must leave their residences to continue to receive income (as permitted by the public health orders referenced in subsection C) or even when a public health official or health care provider has advised them to isolate or quarantine due to COVID-19 exposure.
- E. The current Oakland Emergency Paid Sick Leave Ordinance expired on December 31, 2020, however the City still faces a public health and financial crisis, as COVID-19 cases continue to rise, schools remain closed across the Bay Area, and workplaces continue to be disrupted.
- F. Although there is now a COVID-19 vaccine in distribution, there remains a critical need to ensure uninterrupted extension of the worker protections afforded by Chapter 5.94 until vaccine distribution is widespread.

**SECTION 3. Effective Date.** This Ordinance shall take effect immediately, retroactive to December 31, 2020, if adopted in accordance with Section 216 of the Oakland City Charter.

**SECTION 4. Emergency Paid Sick Leave Sunset.** Section 5 of this Ordinance shall become ineffective after the expiration of Oakland's March 9, 2020 Declaration of COVID-19 Emergency, ratified on March 12, 2020 (Resolution No 88075 C.M.S.), unless extended by a resolution of the City Council passed in accordance with Section 216 of the Oakland City Charter.

**SECTION 5. Emergency Paid Sick Leave.** Oakland Municipal Code Chapter 5.94 is extended and amended as set out below, retroactive to December 31, 2020, such that OMC section 5.94.180 is added to govern the requirements of emergency paid sick leave from the effective date of this Ordinance through the duration of Oakland's March 9, 2020 Declaration of COVID-19 Emergency, ratified on March 12, 2020 (Resolution No 88075 C.M.S.). Added provisions are shown in double underline and deletions are shown as ~~strikethrough~~.

**5.94.010 - Title.**

This Chapter shall be known as the "Protecting Workers and Communities During a Pandemic - COVID-19 Emergency Paid Sick Leave Ordinance."

**5.94.015 - Authority.**

This Chapter is adopted pursuant to the powers vested in the City of Oakland under the laws of the State of California, including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution, California Labor Code §§ 249(d); 1205(b), and the Charter of the City of Oakland.

**5.94.020 - Definitions.**

The definitions set forth in this Section shall govern the construction and meaning of the terms used in this Chapter:

- A. “City” means the City of Oakland, including the Port of Oakland.
- B. “Employee” means any person who qualifies as an employee entitled to payment of a minimum wage under the California Labor Code, including California Labor Code section 2750.3, and wage orders published by the California Industrial Welfare Commission provided that the person has performed work for remuneration for an Employer for at least two (2) hours after February 3, 2020 within the geographic boundaries of the City. “Employee” includes recipients of public benefits who as a condition of receiving public assistance has performed at least two (2) hours of work within the geographic boundaries of the City for an Employer after February 3, 2020.
- C. “Employer” means any person, association, organization, partnership, business trust, limited liability company, or corporation who directly or indirectly through any other person or entity, Employs an Employee. “Employer” includes a temporary employment agency, staffing agency or similar entity that directly or indirectly employs an employee. An employer who contracts with a contractor for the provision of workers jointly and severally shares with the contractor all liability for the provision of emergency paid sick leave required under this ordinance “Employer” shall not include the United States Government, the State of California or any other entity of government.
- D. “Employ” means to (a) exercise control over the wages, hours or working conditions of a person, (b) suffer or permit a person’s work, or (c) engage, and thereby create a common law employment relationship with a person.
- E. “Emergency Paid Sick Leave” means, except as provided in Section 5.94.030(C), time an Employee is compensated by an Employer at the same hourly rate and with the same benefits, including health benefits, as the Employee normally earns during hours worked, and is provided by an Employer to an Employee for the purposes described in Section 5.94.030(B), but in no event shall this hourly amount be less than that provided for under Oakland Municipal Code Section 5.92.020.
- F. “Family Member” shall have the same meaning as set forth in California Labor Code §245.5(c) and also includes: the child of an Employee’s spouse or domestic partner; the parent of an Employee’s spouse or domestic partner; the sibling, grandparent, and grandchild of an Employee’s spouse or domestic partner; sibling, grandparent, and grandchild relationships resulting from adoption, step-relationships, and foster-care relationships; an individual for whom the Employee is responsible for providing or arranging care, including but not limited to helping that individual obtain diagnostic, preventative, routine, or therapeutic health treatment; or whose close association with the Employee is the equivalent of a family relationship.

- G. “Federal Act” means the federal Emergency Paid Sick Leave Act enacted as part of the Families First Coronavirus Response Act, H.R. 6201, Public Law No. 116-127.
- H. “Franchise” means a written agreement by which:
- a. A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;
  - b. The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol; designating, owned by, or licensed by the grantor or its affiliate; and
  - c. The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.
- I. “Franchisee” means a person to whom or entity to which a Franchise is offered or granted.
- J. “Franchisor” means a person or entity that grants a Franchise to another person.
- K. “Paid Sick Leave” means the sick leave described in Oakland Municipal Code Section 5.92.030.
- L. “Retaliatory Action” shall have the same meaning as “Retaliation” as defined in Section 5.92.050 of the Oakland Municipal Code.
- M. “Small Employer” means an Employer that Employed fewer than 50 Employees between February 3, 2020 through March 4, 2020, but does not include:
- a. Unregistered Janitorial Employers; or
  - b. Franchisees associated with a Franchisor or network of Franchises where that Franchisor or network of Franchises Employs more than 500 Employees in the aggregate.
- N. “Unregistered Janitorial Employer” means a Janitorial Employer as defined in the California Labor Code Section 1420(e) who has not complied with the registration requirements set forth in the Property Service Workers Protection Act (California Labor Code Sections 1420 - 1434) at the time an Employee requests to use Emergency Paid Sick Leave.

#### **5.94.030 - Sick Leave Requirement, Use, and Wage Replacement.**

Employers shall immediately provide Emergency Paid Sick Leave in accordance with the requirements of this Section to each of their Employees:

## A. Emergency Paid Sick Leave Hours

- a. Employers shall immediately provide:
  - i. Eighty (80) hours of Emergency Paid Sick Leave to all Employees who provided labor or services for remuneration for at least forty (40) hours per week within the City of Oakland over the period of February 3, 2020 through March 4, 2020 or at any point thereafter or are classified as full-time by their Employer; and
  - ii. To any Employee who provided labor or services for remuneration for fewer than forty (40) hours per week over the period of February 3, 2020 through March 4, 2020 and who continues to do so after March 4, 2020, Emergency Paid Sick Leave equal to the average number of hours the Employee worked within the City of Oakland over fourteen (14) days during the period of February 3, 2020 through March 4, 2020. The fourteen (14) days must be the fourteen (14) days with the highest number of hours worked within the City of Oakland during the period of February 3, 2020 through March 4, 2020.
- b. Employers shall provide payment for Emergency Paid Sick Leave taken by an Employee no later than the payday for the next regular payroll period after the Emergency Paid Sick Leave is taken and in no event more than fourteen (14) days after the Emergency Paid Sick Leave is taken.
- c. For Employees that begin performing labor or services for remuneration after March 4, 2020, Employers shall provide Emergency Paid Sick Leave in the same amount as described Section 5.94.030(A)(a)(i)-(ii).

## B. Emergency Paid Sick Leave Use

- a. For the purposes of this Chapter, all Employers shall provide each Employee with Emergency Paid Sick Leave to the extent the Employee is unable to work (or telework) for the purposes defined below:
  - i. The Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
  - ii. The Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
  - iii. The Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;



- iv. The Employee is caring for an individual who is subject to an order as described in Section 5.94.030(B)(a)(i) or has been advised as described in Section 5.94.030(B)(a)(ii);
  - v. The Employee is caring for a son or daughter of such Employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or
  - vi. The Employee is experiencing any other substantially similar condition specified by the federal Secretary of Health and Human Services in consultation with the Secretary of Labor and Secretary of the Treasury.
- b. Employers shall also provide each Employee with Emergency Paid Sick Leave to the extent the Employee is unable to work (or telework) for the purposes defined below:
- i. To enable the Employee is to care for a Family Member who has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19;
  - ii. To take time off work because the Employee:
    - 1. Is at least 65 years old;
    - 2. Has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or weakened immune system;
    - 3. Has any condition identified by an Alameda County, California or federal public health official as putting the public at heightened risk of serious illness or death if exposed to COVID-19; or
    - 4. Has any condition certified by a healthcare professional as putting the Employee at a heightened risk of serious illness or death if exposed to COVID-19.
- c. An Employer may not require a doctor's note or other documentation for the use of Emergency Paid Sick Leave, except for additional conditions that require certification under the Section 5.94.030(B)(b)(ii)(4). An Employee obtaining such certification need not disclose the Employee's condition, only that they are at a heightened risk for serious illness or death if exposed to COVID-19.
- d. An Employee may certify their need for leave by utilizing virtual or telephonic appointments with their healthcare provider.

- e. An Employee may elect to use the leave for any purpose described in this Section in one-hour increments and intermittently, as necessary. An Employer may not require an Employee to use leave in more than one-hour increments.
- f. Where the need to use Emergency Paid Sick Leave is foreseeable, an Employee should provide notice to the Employer of the need for use of the leave as soon as practicable.

C. Aggregated Wages for All Purposes

- a. The Emergency Paid Sick Leave amount paid to an Employee shall not exceed \$511 per day or \$5,110 in the aggregate.
- b. Employees of joint Employers are only entitled to the total aggregate amount of leave specified for Employees of one Employer.

**5.94.040 - Interaction with Federal Law.**

- A. An Employer may credit the total sick leave hours provided under the Federal Act against their Emergency Paid Sick Leave obligation under Section 5.94.030(A)(a)(i)-(ii).
- B. In no case shall references to federal law indicate or permit a reliance on regulations, interpretations, or guidance issued by the U.S. Department of Labor or an office or division thereof, in whole or in part, to construe any provision of this Chapter unless explicitly permitted by a section of this Chapter or if such regulations, interpretations, or guidance would further the purposes of this Chapter.

**5.94.050 - Sequencing of Leave.**

An Employee may elect to use Emergency Paid Sick Leave before any other leave provided by an Employer or leave required to be provided to the Employee under Oakland Municipal Code Section 5.92.030. An Employer may not require an Employee to use any other leave before using the leave described in this Chapter.

**5.94.060 - Retention of Health Benefits.**

Employers may not reduce, withhold, delay, or eliminate contributions to Employee health benefits while an Employee is using Emergency Paid Sick Leave.

**5.94.070 - Use of Non-Emergency Paid Sick Leave Prior to Layoffs.**

If an Employer lays off an Employee, the Employer must compensate the Employee for all Paid Sick Leave accrued pursuant to Oakland Municipal Code section 5.92.030 immediately upon separation.

**5.94.080 - Prohibitions.**

- A. It shall be unlawful for an Employer or any other person to interfere with, restrain or deny the exercise of, or the attempt to exercise, any right protected under this Chapter.
- B. Employers shall not take Retaliatory Action or discriminate against an Employee or former Employee because the person has exercised rights protected under this Chapter. Such rights include, but are not limited to, the right to request or use Emergency Paid Sick Leave pursuant to this Chapter, the right to file a complaint with the City or inform any person about an Employer's alleged violation of this Chapter; the right to participate in an investigation, hearing or proceeding or cooperate with or assist the City in its investigations of alleged violations of this Chapter, and the right to inform any person of their rights under this Chapter.
- C. An Employer may only take reasonable measures to verify or document that an Employee's use of Emergency Paid Sick Leave is lawful, and shall not require an Employee to incur expenses in excess of five dollars in order to demonstrate his or her eligibility for such paid leave. Requiring a doctor's note for the use of leave described in this Chapter is not reasonable, except as provided under Section 5.94.030(B)(b)(ii)(4) of this Chapter.
- D. An Employer shall not require an Employee to find or secure a replacement if they request sick leave for the uses described in this Chapter.
- E. An Employer must comply with this Ordinance as to all Employees, regardless of immigration status.

**5.94.090 - Exemptions.**

- A. Employers of Employees who are health care providers or emergency responders, as defined by 29 CFR 826.30(c), may elect exemption from the requirements of this Chapter. Such an election made by an Employer shall comply with the regulations referenced in Section 5111(1) of the Federal Act.
  - a. Any Employer who elects an exemption under this Section shall retain information describing the Employee classifications exempted, from which locations, and from which provisions of this Chapter such Employee

classifications are exempted for three (3) years from the date the exemption was elected.

- b. Any Employer who elects an exemption under this Section shall document which Employee classifications are not exempt and ensure that Employees in non-exempt classifications are provided adequate notice of their right to Emergency Paid Sick Leave consistent with Section 5.94.140 of this Chapter.
- B. Section 5.94.030(A) of this Chapter shall not apply to any Employer that, after February 3, 2020:
- a. Provides its Employees with the ability to accrue at least one hundred sixty (160) hours of paid personal leave. For this subsection to apply:
    - i. Each Employee must have immediate access to at least eighty (80) hours of leave after the effective date of this Chapter, available for the uses described in Section 5.94.030(B), and
    - ii. Any Employee who has used paid personal leave prior to the effective date of this Ordinance and has fallen below eighty (80) hours of accrued paid personal leave on the effective date of this Ordinance shall be provided additional leave, to bring their paid personal leave balance to eighty (80) hours, to be used for the purposes described in Section 5.94.030(B), or
  - b. Provides its Employees immediate access to paid personal leave in amounts at least equivalent to and for the purposes specified in Section 5.94.030. For the exemption in this subsection to apply, the paid personal leave must have been in addition to any paid leave the Employer was otherwise required to provide pursuant to a collective bargaining agreement, employment contract, or public policy.
- C. Any paid personal leave described in subsection B of this section includes personal time off, sick leave, or vacation time and shall be paid in the manner specified in Section 5.94.020(E) when taken for any use described in Section 5.94.030(B). Paid personal leave under this subsection shall not include any paid time for holidays the Employer provides to its Employees.
- D. All Small Employers are exempt from the requirements of this Chapter.

#### **5.94.100 - Enforcement.**

- A. The provisions related to enforcement set forth in Oakland Municipal Code Section 5.92.050(A), (C), and (E)-(K) shall apply equally to the enforcement of this Chapter and individuals and entities afforded rights and protections under those Sections are hereby granted those same rights and protections in connection with the enforcement of any provision of this Chapter. Employers shall have all obligations of “Employers” and

“employers” under Section 5.92.050. The terms “Employer,” “Employ,” and “Employee,” when used in Section 5.92.050 for purposes of enforcing provisions of this Chapter, shall have the meanings set forth in Section 5.94.020 of this Chapter. The provisions of this Chapter do not diminish, alter, or negate any other legal rights, remedies, or procedures available to an Employee.

- B. If an Employee or representative of Employees reports a suspected violation of this Chapter to the City in accordance with Oakland Municipal Code Section 5.92.050(G), the City shall acknowledge the claim within one week, and shall strive to respond to and investigate the claim within two weeks of the date the claim is filed. The City shall strive to close all claims related to violations of this Chapter within one month of when the claim is filed.

#### **5.94.110 - Waiver.**

- A. Any waiver by an individual Employee of any of the provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Chapter if such waiver is set forth in clear and unambiguous terms and the written valid collective bargaining agreement meets the requirements under California Labor Code Section 245.5(a).
- B. Any request to an individual Employee by an Employer to waive his or her rights under this Chapter shall constitute a violation of this Chapter.

#### **5.94.120 - Conflict.**

Nothing in this Chapter shall be interpreted or applied to create any power or duty in conflict with any federal or state law. The term “conflict,” means a conflict that is preemptive under federal or state law.

#### **5.94.130 - Severability.**

If any subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have adopted this Chapter and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without

regard to whether any portion of the article would be subsequently declared invalid or unconstitutional. The courts are hereby authorized to reform the provisions of this Chapter in order to preserve the maximum permissible effect of each subsection herein.

**5.94.140 - Notice.**

- A. The City shall, as expeditiously as possible, publish and make available on its website and through electronic communication to Employers a notice suitable for Employers to inform Employees of their rights under this emergency Chapter. Such notice shall be translated into Spanish, Mandarin, Cantonese, and Vietnamese, and any other languages reasonably calculated by the City Administrator, or their designee, to reach the broadest number of Oakland Employers.
- B. Every Employer shall, within three days after the City has published and made available the notice described in Subsection (A) of this Section, provide the notice to Employees in a manner calculated to reach all employees, including, but not limited to, posting in a conspicuous place at the workplace; via electronic communication; or posting in a conspicuous place in an Employer's web-based or app-based platform. The Employer notification shall be provided in all languages spoken by more than ten percent (10%) of Employees.

**5.94.150 – Documentation.**

- A. No Employer may prevent an Employee's access to or use of Emergency Paid Sick Leave under this Chapter in order to obtain documentation to satisfy the reimbursement or tax credit reporting requirements contained in the Federal Act or as described in regulations or guidance issued by the federal Department of Labor.
- B. City of Oakland shall provide guidance for businesses regarding this Ordinance. Employers must comply with this Chapter as of the effective date of the Ordinance, even if the guidance is published subsequently.

**5.94.160 - Regulations.**

The City and, on and after July 1, 2020, the Department of Workplace and Employment Standards, may promulgate and enforce rules and regulations, and issue determinations and interpretations, consistent with and necessary for the implementation of this Chapter. Such rules and regulations, determinations, and interpretations shall have the force of law and may be relied upon by employers, employees, and other persons to determine their rights and responsibilities under this Chapter.

### **5.94.170 - No Preemption of Higher Standards.**

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City or Port of Oakland.

### **5.94.180 - Extension of Emergency Paid Sick Leave Ordinance**

- A. Except as provided in Sections 5.94.180 (B) and (C) below, all provisions of Sections 5.94.010 through 5.94.170 remain unchanged and in full effect, and govern the requirements of Employers to provide Emergency Paid Sick Leave to Employees and the use of non-emergency paid sick leave prior to Employee layoffs in the City of Oakland from the effective date of this Ordinance through the duration of Oakland's March 9, 2020 Declaration of COVID-19 Emergency, ratified on March 12, 2020 (Resolution No 88075 C.M.S.) This Section is intended to make clear that all of the rights and responsibilities of the Emergency Paid Sick Leave Ordinance, as passed by City Council on May 12, 2020, are hereby reinstated unless otherwise provided or modified in this Section.
- B. Emergency Paid Sick Leave Hours
- a. Employers shall immediately provide, subject to the deductions in Section 5.94.180(B)(b) and the exemptions in Section 5.94.090:
- i. Eighty (80) hours of Emergency Paid Sick Leave to all Employees who provided labor or services for remuneration for at least forty (40) hours per week within the City of Oakland over the period of January 1, 2021 through January 21, 2021, or at any point thereafter or are classified as full-time by their Employer; and
- ii. To any Employee who provided labor or services for remuneration for fewer than forty (40) hours per week over the period of January 1, 2021 through January 21, 2021 and who continues to do so after January 21, 2021, Emergency Paid Sick Leave equal to the average number of hours the Employee worked within the City of Oakland over fourteen (14) days during the period of January 1, 2021 through January 21, 2021. The fourteen (14) days must be the fourteen (14) days with the highest number of hours worked within the City of Oakland during the period of January 1, 2021 through January 21, 2021. If any Employee has performed labor or services for remuneration for less than fourteen (14) days over the period of January 1, 2021 through January 21, 2021, the Employer shall provide Emergency Paid Sick Leave once the Employee has received

remuneration for fourteen (14) days, in an amount equal to the number of hours the Employee worked within the City of Oakland over the fourteen (14) days.

iii. For Employees that begin performing labor or services for remuneration after January 21, 2021, Employers shall provide Emergency Paid Sick Leave in the same amount as described in Section 5.94.180(B)(a)(i)-(ii).

b. Employers are only required to provide the Emergency Paid Sick Leave hours under Section 5.94.030(A) and Section 5.94.180(B)(a) on a one-time basis. An Employer may credit the total number of Emergency Paid Sick Leave hours provided prior to January 1, 2021 under Sections 5.94.010 through 5.94.170 against their Emergency Paid Sick Leave obligation under Section 5.94.180(B)(a).

C. Interaction with State and Federal Law.

a. An Employer may credit the total sick leave hours provided under the Federal Act or State Act against their Emergency Paid Sick Leave obligation under Section 5.94.030(A) and Section 5.94.180(B).

b. For purposes of this Section, “Federal Act” means both the federal Emergency Paid Sick Leave Act enacted as part of the Families First Coronavirus Response Act, H.R. 6201, Public Law No. 116-127 (FFCRA) and any substantially similar legislation enacted to extend or expand the FFCRA.

c. For purposes of this Section, “State Act” means Assembly Bill 1867, Chapter 45, supplemental paid sick leave, and any substantially similar legislation enacted to extend or expand the protections of Assembly Bill 1867.

**SECTION 6.** The Department of Workplace and Employment Standards shall continue to have the jurisdiction and duty to enforce OMC Chapter 5.94, as provided by Section 6 of the Emergency Paid Sick Leave Ordinance, passed by City Council on May 12, 2020.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND  
PRESIDENT KAPLAN

NOES –

ABSENT –



ABSTENTION –

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council of the City of  
Oakland, California

Date of Attestation: \_\_\_\_\_

**NOTICE AND DIGEST**

**EMERGENCY ORDINANCE REENACTING AND AMENDING  
CHAPTER 5.94 OF THE OAKLAND MUNICIPAL CODE TO EXTEND  
EMERGENCY PAID SICK LEAVE FOR OAKLAND EMPLOYEES  
DURING THE NOVEL CORONAVIRUS (COVID-19) PANDEMIC**

This Emergency Ordinance reenacted and amends Chapter 5.94 to the Oakland Municipal Code to extend emergency paid sick leave for Oakland employees during the novel Coronavirus (COVID-19) pandemic.

This Emergency Ordinance is necessary for preserving the public peace, health, or safety during the COVID-10 health emergency. Pursuant to Section 213 of the City Charter, upon final adoption on first reading this ordinance will become effective immediately if it receives six or more affirmative votes.

