



June 27, 2013

Via e-mail: clerk@cityofberkeley.info; mayor@cityofberkeley.info; Imaio@cityofberkeley.info; dmoore@cityofberkeley.info; manderson@cityofberkeley.info; jarreguin@cityofberkeley.info; lcapitelli@cityofberkeley.info; swengraf@cityofberkeley.info; kworthington@cityofberkeley.info; gwozniak@cityofberkeley.info

Honorable Mayor and Members of the Berkeley City Council

RE: Zoning Amendments to BMC Chapter 23C.08 – Demolition and Dwelling Unit Controls

Dear Mayor and Councilmembers,

I write to reiterate East Bay Community Law Center's position on the Demolition Ordinance that was proposed to council on June 11, 2013. Despite two letters carefully stating that EBCLC supported the ordinance *as proposed*, it has come to our attention that EBCLC's position was misrepresented at the June 11, 2013 meeting. Apparently, various commenters, including city staff, mistakenly reported that EBCLC felt that the proposed demolition ordinance violates Costa-Hawkins. *We do not take the position that the demolition ordinance proposed on June 11, 2013 violates Costa-Hawkins.*

Ironically, the revised demolition ordinance, which comes before council on July 2, 2013, *does* violate Costa-Hawkins. Although the distinction between BMR units and rent controlled units may seem trivial, *Costa-Hawkins expressly prohibits the application of rent control to any rental unit constructed after 1995.* There is no loophole in Costa-Hawkins allowing cities to control rents on replacement units. By changing the replacement units defined in the demolition ordinance from BMR units to rent controlled units, the city has practically guaranteed that the demolition ordinance will be challenged in court and invalidated as a violation of Costa-Hawkins.

We remain optimistic that this most recent iteration of the demolition ordinance can be modified slightly to avoid conflict with Costa-Hawkins. By simply striking out all of the references to rent control, the ordinance can be brought back into compliance with state law, and can achieve the goal we all agree is critical; the preservation and promotion of affordable housing in Berkeley.

Sincerely,

Brendan Darrow
Staff Attorney and Clinical Supervisor