



Rent Stabilization Board
Office of the Executive Director

ACTION CALENDAR
June 14, 2016

To: Honorable Berkeley Mayor and Members of City Council
From: Honorable Members of the Berkeley Rent Stabilization Board
Submitted by: Jay Kelekian, Rent Board Executive Director
Subject: Suggested Amendments to the Rent Ordinance – Berkeley Municipal Code Chapter 13.76

RECOMMENDATION

1. Adopt a resolution placing the proposed amendments to the Rent Stabilization and Good Cause for Eviction Ordinance on the ballot at the November 8, 2016 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

SUMMARY

The Rent Stabilization Board and the 4x4 Committee have recommended a set of amendments to the Rent Stabilization and Good Cause for Eviction Ordinance. These changes would increase the relocation payment for tenants evicted under the owner move-in provision of the ordinance, as well as affording additional protection to families with school-age children. The proposed measure also includes several minor changes to clarify the language of the ordinance and bring it into conformity with current state law.

FISCAL IMPACTS OF RECOMMENDATION

There will be a small financial cost to the City limited to the costs associated with placing the measure on the ballot. Each additional measure added to the ballot increases the cost to the city.

CURRENT SITUATION AND ITS EFFECTS

Berkeley voters passed Measure D in June of 1980 which established the current Rent Ordinance (the Ordinance) as codified in Berkeley Municipal Code (B.M.C.) Chapter

13.76.¹ Because it was passed by voter initiative, the Ordinance may only be amended by voters. Berkeley City Council has, periodically, placed measures on the ballot for the voters to decide when the Board recommends modifications.²

Berkeley voters passed Measure Y in November 2000. It is codified as B.M.C. 13.76.130A.9. The law currently requires landlords who evict for the purpose of moving into the rental unit to pay \$4,500 only to tenant households who qualify as low income.³ Tenants who are evicted for owner move in but do not qualify as low income receive nothing. Berkeley is one of the only major rent control jurisdictions in the state that does not provide relocation assistance to all tenants, regardless of income. Also, the relocation assistance amount set forth in Measure Y has not been adjusted since it was passed almost 16 years ago. The amount of the assistance is nearly four times lower than that required by the cities of San Francisco, Los Angeles, Santa Monica, and West Hollywood – each of which have periodically adjusted relocation payments over the years in response to rising rents, moving costs, and inflation.

Furthermore, staff believes there are several sections of the Ordinance that require modification as they have either been made obsolete by changes to state law or have become functionally inoperable due to changes outside the Board's control. Additionally, we are recommending that the Board and Council consider several other changes in order to remove ambiguities regarding the application of the Ordinance.

BACKGROUND

At its December 14, 2015 regular monthly meeting, the Board voted unanimously to explore the issue of placing a Measure on the 2016 ballot to increase relocation fees for tenants who receive owner move-in eviction notices. After the Eviction/Section 8/Foreclosure Committee surveyed the amount of relocation assistance required in other jurisdictions, the 4 x 4 Committee reviewed and voted without objection to approve the proposal to make three changes to the way owner move-in evictions are regulated under the Ordinance. The changes are as follows:

1. Increase the relocation payment for all tenant households who are evicted under the owner move-in provision to \$15,000, with an additional \$5,000 (\$20,000 maximum per rental unit) for the following qualifying households: low income,

¹ The Ordinance was subsequently amended substantially by Measure G in 1982.

² Most recently, Council placed Measure E on the ballot in 2006 which amended the Charter. The last time Council placed anything on the ballot related to Rent Ordinance modifications was 2004 when Council placed Measures O and P on the ballot which, among other things, standardized calculation of the Annual General Adjustment, changed the way security deposit interest is calculated, and allowed the Board to control rents for Section 8 tenancies when the property owner raised rents above Berkeley Housing Authority's established payment standards.

³ It is important to note that while the owner move in relocation fee was established in 2000 with the passage of Measure Y, it was actually derived from the Ellis Implementation Ordinance passed by Council in 1986. The Ellis Ordinance relocation assistance had not been adjusted since 1986 when Measure Y was placed on the ballot, so the adopted relocation assistance was already somewhat outdated when it passed.

disabled, elderly, families with minor children, or tenancies that began prior to 1999. The relocation payment amount would also be indexed to inflation, to prevent the payment from falling behind the real costs over time.

2. Where there is a dispute about eligibility for the additional \$5,000 payment, City/Rent Board hearing examiners would be empowered to adjudicate those disputes rather than requiring that the parties file their claims in Superior Court (as the Ordinance currently reads).
3. Prohibit the owner move-in eviction of families with school-age children during the academic year. San Francisco has a similar prohibition.

The 4x4 Committee approved these recommended changes at its February 11, 2016 meeting. The Board then reviewed and approved the proposal at its February 22, 2016 monthly meeting.

At its subsequent meeting on March 10, 2016, the 4 x 4 Committee supported without objection the placement on the ballot of several other recommendations proposed by staff to amend the Ordinance. Those recommendations were then approved by the Rent Board at its March 21, 2016 meeting; namely:

1. Modify B.M.C. section 13.76.070 (Security Deposit Interest) to make clear that the rate of interest to be used is no longer tied to a rate published by the Federal Reserve Board as this rate has not been published in several years. Instead, the Ordinance should be amended to track the interest “at the rate equal to the 12-month average of the average rates of interest (APY) paid on the first business day of each month for six-month certificates of deposits (\$5,000 minimum deposit) by insured commercial banks doing business in the City of Berkeley.” This is consistent with the way the Board currently calculates security deposit interest, which was arrived at in collaboration with the Berkeley Property Owners Association as the method the interest should be calculated.
2. Modify B.M.C. section 13.76.110F. (Restoration of Annual General Adjustments) to conform with state law. The Ordinance currently contains language regarding the permanent denial of AGA’s that is preempted by the Petris Act (Civil Code Section 1947.7).
3. Add B.M.C. section 13.76.050 (Conditional Exemption of Fraternities and Sororities) to make clear that rooms/units in recognized fraternities and sororities that are occupied by active members are exempt from all sections of the Ordinance. This simply codifies the way the Board has operated since 1989.
4. Revise B.M.C. section 13.76.050I. (Unpermitted Units) to make clear that only units that received a certificate of occupancy after June 30, 1980, are exempt from rent controls and registration. The Costa-Hawkins Rental Housing Act

originally introduced the use of the date of issuance of a certificate of occupancy as the state law definition of new construction; this change more closely conforms to that standard, while leaving Berkeley’s original new construction date (June 1, 1980) in place.

5. Amend B.M.C. section 13.76.130A.9.k.(i) (Clarification of Number of Units Owned by a Landlord, *listed as subsection n(i) in the proposed changes*) to change “residential rental units” to “residential units.” This will make clear that seniors and disabled tenants who have occupied their units for five or more years will be protected from an OMI eviction if their landlord owns three or more total units in Berkeley (even if the landlord lives in a separate dwelling as an owner occupant or is leaving one or more units vacant). Individuals have argued that a vacant unit is not a “rental” unit; any such confusion would be clarified by this change.

At its March 21, 2016 meeting The Rent Board also recommended a change to clarify B.M.C. section 13.76.130.D. That section reads: “The landlord shall file with the board a copy of any notice of termination, notice to quit, and/or summons and complaint, within ten days after the tenant has been served with such notice or summons and complaint”. The Board voted to delete the word “or” and thereby ensure that all eviction notices are filed with the rent board rather than an unknown proportion of eviction notices. This change will improve the quality of the Board’s data on evictions and is consistent with long-standing practices among landlord-tenant attorneys and advice from Rent Board counselors.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

This report is the result of direction from the 4x4 Committee and direction from the Rent Stabilization Board to put the proposed amendments on the ballot for November 2016. It is anticipated that there will be little or no opposition to the measure.

ALTERNATIVE ACTIONS CONSIDERED

After consultation with the Berkeley Property Owners Association, one proposed change was removed from consideration. The proposed change would have prohibited owner occupancy evictions by a spouse if the owner currently occupied a unit on the property or was concurrently demanding possession of multiple units by way of owner move-in eviction. Staff was given specific direction by the 4 x 4 Committee to discuss the proposals with stakeholders, including property owners’ organizations. After discussing the proposed changes with the Executive Director of the Berkeley Rental Housing Coalition, staff recommended removing this proposal, and it was not among the amendments adopted by the Rent Stabilization Board or the 4 x 4 Committee. There was not strong concern expressed regarding any of the other proposed

amendments to the Ordinance.

CONTACT PERSON

Jay Kelekian, Executive Director of the Rent Stabilization Program
Matt Brown, Staff Attorney, Rent Stabilization Program.

Attachments:

1. Resolution to place ordinance amending Rent Stabilization Ordinance on the ballot with attached ballot measure amending Rent Stabilization Ordinance.
 ➔ Exhibit A – Text of Ballot Measure
2. February 11, 2016 Memorandum to 4x4 Committee Re: Increase in Owner Move-in Relocation Assistance
3. March 10, 2016 Memorandum to 4x4 Committee Re: Suggested Amendments to Ordinance

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE A MEASURE TO AMEND BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO PROHIBIT OWNER MOVE-IN EVICTIONS OF FAMILIES WITH CHILDREN DURING THE ACADEMIC YEAR; INCREASE THE AMOUNT OF RELOCATION ASSISTANCE REQUIRED FOR OWNER MOVE-IN EVICTIONS TO \$15,000 WITH ADDITIONAL \$5,000 FOR CERTAIN TENANTS; CLARIFY PROTECTIONS FOR ELDERLY/DISABLED TENANTS; REQUIRE FILING OF EVICTION NOTICES; CHANGE THE SOURCE OF INTEREST RATES FOR SECURITY DEPOSITS; AND CLARIFY EXEMPTIONS AND PENALTIES TO CONFORM WITH STATE LAW.

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 8, 2016 General Municipal Election, a measure to amend Berkeley Municipal Code Chapter 13.76 to prohibit owner move-in evictions of families with children during the academic year; increase the amount of relocation assistance required for owner move-in evictions to \$15,000 with additional \$5,000 for certain tenants; clarify protections for elderly/disabled tenants; require filing of eviction notices; change the source of interest rates for security deposits; and clarify exemptions and penalties to conform with state law; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 8, 2016; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY ORDINANCE	
Shall an ordinance amending the Rent Stabilization Ordinance to: prohibit owner move-in evictions of families with children during the academic year; increase the amount of relocation assistance required for owner move-in evictions to \$15,000 with additional \$5,000 for certain tenants; clarify protections for elderly/disabled tenants; require filing of eviction notices; change the source of interest rates for security deposits; and clarify exemptions and penalties to conform with state law, be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the measure be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Measure

ORDINANCE NO. #,###-N.S.

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO PROHIBIT OWNER MOVE-IN EVICTIONS OF FAMILIES WITH CHILDREN DURING THE ACADEMIC YEAR; INCREASE THE AMOUNT OF RELOCATION ASSISTANCE AND EXPAND ELIGIBILITY FOR RELOCATION ASSISTANCE; CLARIFY PROTECTIONS FOR CERTAIN TENANTS; CHANGE THE SOURCE OF THE INTEREST RATE FOR SECURITY DEPOSITS; AND CHANGE LANGUAGE REGARDING EXEMPTIONS AND PENALTIES TO CONFORM TO STATE LAW.

THE PEOPLE OF THE CITY OF BERKELEY ORDAIN AS FOLLOWS:

Section 1. Section 13.76.050 of the Berkeley Municipal Code is amended to read as follows:

Section 13.76.050 Applicability.

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

- A. Rental units which are owned by any government agency. However, the exemption of units owned by the Berkeley Housing Authority from the terms of this chapter shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.
- B. Rental units which are rented primarily to transient guests for use or occupancy less than fourteen consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen days or less shall not by itself exempt any unit from coverage by this chapter.
- C. Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.
- D. Rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. 11403 et. seq.) or similar federally funded rent subsidy program. Except as may be preempted by state or federal law, the exemption of such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings and Section 13.76.120,

Individual Adjustments of Rent Ceilings, of this chapter. However, the exemption from Sections 13.76.080, 13.76.110 and 13.76.120 shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Berkeley Housing Authority or successor agency. For units where the rent demanded exceeds the Payment Standard, the Payment Standard or an initial rent above the Payment Standard if approved by the Berkeley Housing Authority, as reported to the board by the Berkeley Housing Authority or successor agency, shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120.

E. Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for the aged.

F. Rental units in a residential property which is divided into a maximum of four units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080I and 13.76.100C. applied to them.

G. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord also occupies a unit in the same property as his/her principal residence.

H. For the purposes of Subsections 13.76.050 F. and G., the term landlord shall be defined only as the owner of record holding at least 50% interest in the property.

I. Newly constructed rental units that have received a certificate of occupancy issued after June 30, 1980. ~~which are completed and offered for rent for the first time after the effective date of this chapter, provided that such new units were not created as a result of rehabilitation or conversion as opposed to new construction.~~ However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

J. A rental unit which is rented by a nonprofit, accredited institution of higher education to a tenant or tenants who are student(s), faculty, or staff of the institution or of a member school of the Graduate Theological Union, provided, however, that the institution owned the unit as of January 1, 1988.

K. A rental unit in a residential property owned by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that is rented to a low income tenant and subject to a regulatory agreement with a governmental agency that controls the unit's rent levels. However, the exemption for such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings of this chapter and shall apply only for so long as the regulatory agreement is in effect. This exemption shall not apply to rental units at the property that are not subject to a regulatory agreement with a governmental agency or that are rented by a tenant who occupied the unit prior to the property's acquisition by the tax-exempt organization.

L. Rental units in a facility owned or leased by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that has the primary purpose of operating a treatment, recovery, therapy, sanctuary or shelter program for qualified clients, where such rental units are provided incident to the client's participation in the primary program and where the client has been informed in writing of the temporary or transitional nature of the housing at the inception of his or her participation in the program. However, except as may be preempted by the Transitional Housing Participant Misconduct Act (California Health and Safety Code Sections 50580 et. seq.) or other state or federal law, such rental units shall not be exempted from the terms of Section 13.76.130, Good Cause Required for Eviction. For purposes of Section 13.76.130.A.2, the client's continued eligibility for participation in the treatment, recovery, therapy, sanctuary or shelter program shall be deemed a material term of the client's rental agreement with the program's operator.

M. A rental unit or room which is rented by an active member of a fraternity or sorority recognized by the University of California Berkeley, or a rental unit or room which is rented by an active member of a fraternity or sorority identified by Rent Board Resolution. To qualify for the exemption, the rental unit must be owned by the fraternity or sorority or by an entity whose sole purpose is the maintenance and operation of the fraternity or sorority's rental units for the benefit of the members in order to provide housing to said members at cost.

Section 2. Section 13.76.070 of the Berkeley Municipal Code is amended to read as follows:

Section 13.76.070 Security Deposits.

Any payment or deposit of monies by the tenant, the primary function of which is to secure the performance of a rental agreement or any part of such agreement, including an advance payment of rent, shall be held by the landlord, in a fiduciary capacity for the benefit of the tenant and shall accrue simple interest at the rate equal to the average rates of interest paid on six-month certificates of deposit by ~~insured-commercial~~ banks doing business in the City of Berkeley until such time as the payment or deposit is returned to the tenant or entitled to be used by the landlord as provided in Civil Code Section 1950.5. The interest accrued by said payment or deposit through October 31st of each year shall be returned to the tenant annually in December of each year, either through a rent rebate or cash payment, and shall be at a rate equal to the 12-month average of the average rates of interest paid on six-month certificates of deposit by ~~insured-commercial~~ banks doing business in the City of Berkeley as published by the Federal Reserve Board on the first business day of each month for the prior 12 months ending on November 1st, rounded to the nearest tenth. On or before November 15th of each year, the board shall give public notice of the rate to be effective for the following December. Upon the tenant's departure from the premises, the balance of any interest accrued since the last October 31st shall be paid at the average monthly rate from the last November 1st to the date of departure and shall be returned to the tenant along with the appropriate part of the principal and any prior unpaid interest. The board shall compute and publicize the interest rate applicable under this section on an ongoing basis.

Section 3. Section 13.76.110 of the Berkeley Municipal Code is amended to read as follows:

Section 13.76.110 Annual General Adjustment of Rent Ceilings.

A. Effective January 1 of each year, the rent ceiling for all rental units covered by this chapter for which the landlord did not establish an initial rent during the prior calendar year shall be adjusted by 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve month period ending the previous June 30. In determining the allowable percentage rent increase, numbers of .04 and below shall be rounded down to the nearest tenth decimal place and numbers of .05 and above shall be rounded up to the nearest tenth decimal place. In no event, however, shall the allowable annual adjustment be less than zero (0%) or greater than seven percent (7%). The board shall publish and publicize the annual general adjustment on or about October 31st of each year.

B. An upward general adjustment in rent ceilings does not automatically provide for a rent increase. Allowable rent increases pursuant to a general upward adjustment shall become effective only after the landlord gives the tenant at least a 30 days written notice of such rent increase and the notice period expires.

C. If the maximum allowable rent specified under this chapter for a rental unit is greater than the rent specified for such unit in the rental agreement, the lower rent specified in the rental agreement shall be the maximum allowable rent until the rental agreement expires. If the maximum allowable rent specified under this chapter for a rental unit is less than the rent specified for such unit in the rental agreement, the lower rent specified under this chapter shall be the maximum allowable rent.

D. No rent increase pursuant to an upward general adjustment of a rent ceiling shall be effective if the landlord:

1. Has continued to fail to comply, after order of the board, with any provisions of this chapter and/or orders or regulations issued thereunder, or
2. Has failed to bring the rental unit into compliance with the implied warranty of habitability, or
3. Has failed to make repairs as ordered by the housing inspection services of the City of Berkeley, or
4. Has failed to completely register by July 1, except as provided in Subsection E. below.

E. The amount of an upward general adjustment for which a landlord shall be eligible shall decrease by ten percent (10%) per month for each month beyond October 1 for which the landlord fails to register.

~~F. A landlord who is ineligible to raise rents under an upward general adjustment for an entire calendar year shall not be eligible to raise rents under that particular general adjustment in future years.~~ An owner who has previously been out of compliance with the ordinance, regulations, or applicable housing, health and safety codes, and has been denied Annual General Adjustments, may be granted them prospectively as set forth in Rent Board Regulations.

Section 4. Section 13.76.130 of the Berkeley Municipal Code is amended to read as follows:

Section 13.76.130 Good cause required for eviction.

A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this chapter unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of

state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days.

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement. Notwithstanding any contrary provision in this chapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

- a. The landlord has unreasonably withheld consent to the subtenancy; and
- b. The tenant remains an actual occupant of the rental unit; and
- c. The number of tenants and subtenants actually occupying the rental unit does not exceed the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater.
- d. Withholding of consent by the landlord shall be deemed to be unreasonable where:
 - (i) The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy;
 - (ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information; and
 - (iii) The proposed new subtenant meets the landlord's customary occupancy qualifications and has not refused the

landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and

(iv) The landlord has not articulated in writing a well-founded reason for refusing consent.

3. The tenant has wilfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.

4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.

5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises or the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.

6. The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.

7a. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.

b. Where such repairs can be completed in a period of 60 or fewer days, and the tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this subsection (13.76.130A.7.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.

c. Where the landlord owns any other residential rental units in the City of Berkeley, and any such unit is vacant and available at the time of premises or the entry of a judgment by a court of competent

jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this subsection (13.76.130A.7.), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:

(i) To enter into a rental agreement (to be designated as a "temporary rental agreement") on any available rental unit which the tenant may choose, at a rent not to exceed the lesser of the lawful rent which may be charged for such available rental unit or the lawful rent in effect, at the time of the notice of termination of tenancy, on the unit being vacated, said rental agreement to be for a term of the lesser of ninety days or until completion of repairs on the rental unit being vacated by tenant; or

(ii) To enter into a new rental agreement or lease for such available rental unit at a rent not to exceed the lawful rent which may be charged for such available rental unit.

d. Where the landlord recovers possession under this subsection (13.76.130A.7.), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this subsection.

8. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.

9. Owner Move-in Evictions.

a. The landlord seeks in good faith with honest intent and without ulterior motive to recover possession for his/her own use and occupancy as his/her principal residence for a period of at least 36 consecutive months; or

b. For the use and occupancy as the principal residence by the landlord's spouse or by the landlord's child, or parent for a period of at least 36 consecutive months.

c. For the purposes of this subsection (13.76.130A.9.), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating ~~the tenant's~~ tenancy, and at all times thereafter to and including the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord, holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record.

~~d. A landlord who endeavors to recover possession under this subsection shall, at the time of giving notice terminating the tenant's tenancy, notify the tenant in writing of the~~All notices terminating tenancy pursuant to subsection 13.76.130A.9 shall include the following: the existence and availability of relocation assistance under subsection 13.76.130A.9.g; the existence of tenant protections for families with minor children as defined in subsection 13.76.130A.9.k; the name and relationship of any qualified relative for purposes of subsection 13.76.130A.9b; and the landlord's ownership interest in any residential properties in the City of Berkeley where such interest, in any form whatsoever, is ten percent (10%) or greater. ~~and, The landlord shall,~~ within ten days of giving notice, file a copy of the ~~notification of such ownership interest~~ notice terminating tenancy with the Rent Board.

~~de.~~ The landlord may not recover possession under this subsection (13.76.130A.9.) if a comparable unit, owned by the landlord in the City of Berkeley, was, at the time of the landlord's decision to seek to recover possession of the rental unit, already vacant and available, or if a comparable unit, owned by the landlord in the City of Berkeley, thereafter becomes vacant at any time until the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available within ninety days prior to the date of a notice terminating the tenant's tenancy shall create a presumption that such unit was vacant and available at the time of the landlord's decision to seek to recover possession of the premises. "Presumption" means that the court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

~~ef.~~ The landlord shall offer any non-comparable unit owned by the landlord to the tenant if a non-comparable unit becomes available before the recovery of possession of the tenant's unit at a rate based on the rent the tenant is paying with an upward or downward adjustment based on the condition, size, and other amenities of the

replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board.

fg. Where a landlord recovers possession of a unit under subsection 13.76.130A.9, the landlord is required to provide ~~standard~~ relocation assistance in the amount of \$15,000 to any low-income tenants tenant households where at least one occupant has who have resided in the unit for one year or more ~~in the amount of four thousand five hundred (\$4500). The landlord is required to provide an additional \$5,000 relocation assistance to tenant households that qualify as low-income; or include disabled or elderly tenants; minor children; or tenancies which began prior to January 1, 1999. The maximum amount of relocation assistance per household required by this subsection shall be \$20,000 prior to any applicable increases provided by subsection 13.76.130A.9.h below. The procedures for payment of this relocation assistance are set forth below in subsection 13.76.130A.9.p.(i) through (iv). For the purposes of this subsection (13.76.130A.9f) The following definitions apply for any tenant households evicted for owner move-in under subsection 13.76.130A.9:~~

(i) "low-income tenants" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5.

(ii) a person is "disabled" if he/she has a physical or mental impairment that limits one or more of a person's major life activities within the meaning of the California Fair Housing and Employment Act (Government Code § 12926).

(iii) "elderly" is defined as sixty (60) years of age or older.

(iv) "minor child" means a person who is under 18 years of age.

(v) "tenancy began prior to January 1, 1999" is a tenancy where an "original occupant" (as defined by Berkeley Rent Board Regulation) still permanently resides in the rental unit.

h. Effective January 1 of each year beginning in 2018, the fees set forth above in subsection 13.76.130A.9.g., shall be increased by the percentage increase in the Consumer Price Index - All Urban Consumers in the San Francisco-Oakland-San Jose Region for the

12-month period ending June 30, of the prior year, as published by United States Department of Labor. Any increase shall be published by the Board on or before October 31st of each year.

gi. It shall be evidence that the landlord has acted in bad faith if the landlord or the landlord's qualified relative for whom the tenant was evicted does not move into the rental unit within three months from the date of the tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least 36 consecutive months.

hj. Once a landlord has successfully recovered possession of a rental unit pursuant to ~~this~~ subsection (13.76.130A.9.a.), then no other current or future landlords may recover possession of any other rental unit on the property pursuant to ~~S~~subsection 13.76.130A.9.a. It is the intention of this subsection that only one specific unit per property may be used for such occupancy under ~~S~~subsection 13.76.130A.9.a and that once a unit is used for such occupancy, all future occupancies under ~~S~~subsection 13.76.130A.9.a must be of that same unit.

k. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit has a custodial or family relationship with a minor child who is residing in the unit, the tenant with the custodial or family relationship has resided in the unit for 12 months or more, and the effective date of the notice of termination of tenancy falls during the school year. The term "school year" as used in this subsection means the first day of instruction for the Fall Semester through the first day of the month following the last day of instruction for the Spring Semester, as posted on the Berkeley Unified School District website for each year.

(i) For purposes of subsection 13.76.130A.9.k, the term "custodial relationship" means that the person is a legal guardian of the child, or has a caregiver's authorization affidavit for the child as defined by Section 6550 of the California Family Code, or that the person has provided full-time custodial care of the child pursuant to an agreement with the child's legal guardian or court-recognized caregiver and has been providing that care for at least one year or half of the child's lifetime, whichever is less. The term "family relationship" means that the person is the biological or adoptive parent, grandparent, brother, sister, aunt or uncle of the child, or the spouse or domestic partner of such relations.

h. A landlord may not recover possession of a unit from a tenant under Ssubsection 13.76.130A.9 if any tenant in the rental unit:

(i) Is 60 years of age or older and has been residing on the property for five years or more; or

(ii) Is disabled and has been residing on the property for five years or more. ~~For the purposes of this subsection (13.76.130A.9i) a person is "disabled" if he/she has a physical or mental impairment that substantially limits one or more of a person's major life activities within the meaning of the California Fair Housing and Employment Act (Government Code § 12955.3.);~~ or

(iii) Has resided on the property for five years or more and the landlord has a ten percent (10%) or greater ownership interest, in any form whatsoever, in five or more residential rental units in the City of Berkeley.

jm. A tenant who claims to be a member of one of the classes protected by Ssubsection 13.76.130A.9.h must submit a statement, with supporting evidence, to the landlord. A tenant's failure to submit a statement at any point prior to the trial date of an unlawful detainer action for possession of the tenant's unit shall be deemed an admission that the tenant is not protected by Ssubsection 13.76.130A.9.h. A landlord may challenge a tenant's claim of protected status by raising it as an issue at trial in an unlawful detainer action for possession of the tenant's unit.

kn. The provisions of Ssubsection 13.76.130A.9.h shall not apply to the following situations:

(i) Where a person is ~~the owner-a landlord~~ of three or fewer residential ~~rental~~ units in the City of Berkeley and has no greater than a nine percent (9%) ownership interest in any other residential ~~rental~~ unit in the City of Berkeley; or

(ii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by Ssubsection 13.76.130A.9.h and the landlord's qualified relative who is seeking possession of a unit subject to Ssubsection 13.76.130A.9.b is 60 years of age or older or is disabled as defined in Ssubsection 13.76.130A.9.h.(ii) above; or

(iii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by ~~S~~subsection 13.76.130A.9.i, the landlord has owned the unit for which possession is being sought subject to ~~S~~subsection 13.76.130A.9.a for five years or more and is 60 years of age or older or is disabled as defined in ~~S~~subsection 13.76.130A.9.ii(ii).

~~lq. The provisions established by Subsection 13.76.130A.9i include, but are not limited to, any rental unit where a notice to vacate/quit has been served as of the date this amendment takes effect but where the rental unit has not yet been vacated or an unlawful detainer judgment has not been issued.~~

~~mq.~~ Where a landlord recovers possession under Subsection 13.76.130A.9, the tenant must be given the right of first refusal to re-occupy the unit upon its next vacancy.

~~np.~~ When a landlord is required to provide a relocation assistance payment subject to ~~S~~subsection 13.76.130A.9.gf above, the payment shall be divided among the tenants occupying the rental unit equally among all low-income tenants occupying the rental unit at the time of service of the notice to terminate tenancy. ~~Only those persons who have a written or oral agreement with the owner for possession of the rental unit or who have paid rent to the landlord shall be deemed low-income tenants for purposes of Subsection 13.76.130A.9f.~~

(i) Within ten days of service of a notice terminating tenancy under subsection 13.76.130A.9, the landlord shall deposit the standard relocation assistance (for households where an occupant has resided one year or more) with the City or its designated agent to be held in escrow. Within ten days after the funds are deposited into escrow, the City shall release the standard relocation assistance to the tenant household, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant household's eligibility to receive such assistance.

(ii) In order to claim entitlement to additional relocation assistance under ~~S~~subsection 13.76.130A.9.gf, a tenant must notify the landlord and the Rent ~~Board~~ Stabilization Program in writing that he/she is claiming "low-income, disabled, elderly, tenant with minor child status, or a claim that the tenancy began prior to January 1, 1999 (hereinafter

~~“entitlement to additional relocation assistance”) tenant” status per § subsection 13.76.130A.9.gf within 30 days of filing receipt of the notice of termination of tenancy with the Rent Stabilization Program. The landlord shall deposit the full additional relocation payment with the City Rent Stabilization Program or its designated agent to be held in escrow for any tenant household who claims entitlement to additional relocation assistance tenants who claim low-income status within ten days after such notice claiming low-income status entitlement to additional relocation assistance is mailed. Thereafter, the City or its designated agent shall distribute amounts held in escrow as follows: 1. Within ten days after the funds are deposited into escrow, the Rent Stabilization Program shall authorize release of the relocation assistance to the tenant household that claims entitlement to additional relocation assistance, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant’s eligibility to receive such assistance. If no written challenge is made to the tenant’s claim of low income within ten days after the notice claiming such status is mailed, the City shall release the relocation assistance to the tenant.~~

~~2.(iii) When a tenant household’s eligibility to receive standard or additional relocation assistance as described in subsection 13.76.130A.9.g is disputed, either party may file a Rent Board petition requesting a determination of eligibility or file a claim in a court of competent jurisdiction. If the City receives conflicting information or assertions which indicate that there is a dispute or uncertainty concerning the tenant’s qualification or status as low income, the City shall continue to retain the disputed relocation assistance funds in escrow. The City Rent Stabilization Program shall release disputed relocation assistance funds to either the tenant or the landlord upon receipt of either a written agreement by both the landlord and the affected tenant(s), an order of a court of competent jurisdiction, or an order of a City or Rent Board hearing examiner issued pursuant to a petition process conducted in accordance with applicable Rent Board Regulations.~~

~~(iv) The landlord may rescind the notice of termination of tenancy prior to any release of relocation payment to the low-income tenants by serving written notice stating such rescission on the tenants. In such instance, the relocation payment shall be released to the landlord. Subsequent to the~~

release of any relocation payment to the ~~low-income~~ tenants, the landlord may rescind the notice of termination of tenancy only upon the written agreement of the tenants to remain in possession of the rental unit. If the ~~low-income~~ tenants remain in possession of the rental units after service of a landlord's written notice of rescission of the eviction, the ~~low-income~~ tenants shall provide an accounting to the landlord of the amount of the relocation payment expended for moving costs, return to the landlord that portion of the relocation payment not expended for moving costs, and assign to the landlord all rights to recover the amount of relocation payment paid to third parties. If a rescission occurs under this subsection, the tenant(s) shall continue the tenancy on the same terms as before the notice was served.

(iii) Where a landlord has served a notice of termination of tenancy on a tenant prior to the date that this amendment takes effect and the notice of termination of tenancy has not expired, the landlord shall deposit the full relocation payment with the City or its designated agent to be held in escrow for the ~~low-income~~ tenants if the tenants have not vacated the rental unit as of the effective date of this amendment, and the landlord shall pay the full relocation payment to the ~~low-income~~ tenants if the ~~low-income~~ tenants have vacated the rental unit as of the effective date of this amendment. Said deposit in escrow or payment to the ~~low-income~~ tenants shall be made within ten days of the effective date of this amendment.

(iv) Failure of the landlord to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the landlord's termination of tenancy notice pursuant to this subsection (13.76.130A.9). In addition, if the ~~low-income~~ tenants of a rental unit have vacated the unit as a result of a notice of termination of tenancy pursuant to this subsection (13.76.130.A.9), and the landlord fails to make any payment specified herein, the landlord shall be liable to the ~~low-income~~ tenants for three times the amount of the payment as well as reasonable attorney fees.

eg. A tenant who prevails in an action brought under this subsection (13.76.130A.9), in addition to any damages and/or costs awarded by the court, shall be entitled to recover all reasonable attorney's fees incurred in bringing or defending the action.

~~pr.~~ At least twice annually, Rent Board staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered pursuant to this subsection (13.76.130A.9) within the prior 36 months.

~~qs.~~ If any provision or clause of this subsection (13.76.130A.9) or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this subsection are severable.

10. A landlord or lessor seeks in good faith to recover possession of the rental unit for his/her occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as his/her principal residence and has the right to recover possession of the unit for his/her occupancy as a principal residence under an existing rental agreement with the current tenants.

11. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of ~~S~~subsection 13.76.130A.7.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of 90 days).

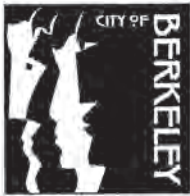
B. A landlord's failure to specify good cause as listed above in ~~S~~subsections 1. through 11. of Section 13.76.130A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this chapter.

C. In any action to recover possession of a rental unit covered by the terms of this chapter, except an action to recover possession under ~~S~~subsection 13.76.130A.7., 13.76.130A.8, or 13.76.130A.11., a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this chapter.

D. The landlord shall file with the board a copy of any notice of termination, notice to quit, and ~~or~~ summons and complaint, within ten days after the tenant has been served with such notice or summons and complaint.

Section 5. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.



Rent Stabilization Board
Office of the Executive Director

Item 4.

MEMORANDUM

DATE: February 11, 2016

TO: Honorable Members of the 4 x 4 Committee

FROM: Jesse Townley, Chair, Berkeley Rent Board
 Jay Kelekian, Executive Director

SUBJECT: Increase in Owner Move In Relocation Assistance

Reason Action is Needed

Berkeley voters passed Measure Y in November 2000. It is codified as Berkeley Municipal Code (B.M.C.) section 13.76.130A.9. The law currently requires landlords to pay \$4,500 only to tenant households who qualify as low income when the landlord recovers possession of the tenant's unit pursuant to owner-move-in (OMI) eviction. No other Berkeley tenants qualify for any relocation assistance despite being displaced through no fault of their own. Berkeley is one of the only major rent control jurisdictions in the state that does not provide relocation assistance to all tenants, regardless of income status. Also, the relocation assistance the voters approved with Measure Y has not been adjusted since it was passed almost 16 years ago. The assistance is close to four times lower than that offered by the cities of San Francisco, Los Angeles, Santa Monica, and West Hollywood – each of which have periodically adjusted relocation payments over the years in response to rising rents, moving costs, and inflation.

Issue:

Is there a basis for requesting that the City Council place an item on this year's November ballot to amend B.M.C. section 13.76.130A.9.f. to increase the amount of relocation assistance an owner must provide his or her tenants when the owner evicts them from their rental units by way of an OMI eviction?

Answer:

Yes. The amount of relocation assistance passed by the voters in November 2000 has never been increased. During this time, median market rents have increased by 160% when compared to median rents, and moving expenses have also sharply increased. These expenses, along with inflation, serve to erode the actual value of the current required relocation assistance. Moreover, Berkeley is the only jurisdiction that does not require relocation assistance to all tenants evicted for owner occupancy. Because the Berkeley Rent Ordinance was passed by voter initiative, the relocation assistance may only be adjusted by the voters. Accordingly, it would be appropriate for the City Council to place a measure on the November ballot to amend B.M.C. section 13.76.130A.9.f. to increase the amount of relocation assistance an owner must provide his or her tenants when the owner evicts them from their rental units by way of an OMI eviction. Given that the Rent Ordinance is so rarely amended, it would also be appropriate to incorporate an automatic inflationary adjustment into the new fee structure, so that it increases automatically commensurate with the local Consumer Price Index. Additional options to expand protections and improve the administration of the Ordinance are also listed for consideration.

Analysis:

I. Legislative Framework and City's Authority to Require Relocation Assistance

The Costa Hawkins Rental Housing Act (Costa Hawkins) completely eliminated vacancy control on January 1, 1999. After that date, Costa Hawkins allowed all landlords a vacancy rent adjustment to market rate for any new tenancy. As such, landlords had great incentive to evict sitting tenants and establish new tenancies with no restrictions on the rental amount. The law did not require any relocation assistance or minimum length of occupancy once the property owner successfully recovered possession from the tenants. During the three-month period before Measure Y passed some forty-seven (47) tenancies were served with OMI notices¹ (well more than in any other documented three-month period). Many of these notices were filed with no intent to move in but rather to convince the tenant to leave, since there are few, if any, defenses to an OMI eviction.

Measure Y amended Berkeley's OMI requirements to require, among other things, that landlords live in the unit for at least 36 continuous months and provide \$4,500 relocation assistance to qualifying low income households that are evicted.² The City Council adopted the Ellis Implementation Ordinance (B.M.C. section 13.77) in 1986 and set the relocation fee at \$4,500

¹ The Board received 47 OMI notices during the period from September – November 2000. There may have been many other OMI notices served on other tenancies that the Board did not receive.

² "Low income" is defined as "persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5." B.M.C. section 13.76.1309.f. Currently, a family of four would have to make under \$71,600 to qualify for relocation assistance if they are displaced pursuant to an OMI notice.

per unit (B.M.C. 13.77.055). At that time, however, case law limited no-fault eviction relocation assistance (including Ellis) to low-income tenants.³ Nevertheless, the courts have recognized the longstanding principle that cities may use their police power to require landlords to provide relocation assistance to tenants evicted on “no-fault” grounds in order to mitigate the effects of displacement. See, *Pieri v. City and County of San Francisco*, 137 Cal.App.4th 886 (2006) (affirming that mitigation for displaced tenants could come in the form of monetary payments); *Kalaydjian v. City of Los Angeles* (1983) 149 Cal.App.3d 690, 692 (1983) (holding that the city’s ordinance requiring landlords who converted apartments to condominium use to provide relocation payments to displaced tenants was within the city’s police power.)

Measure Y was drafted using the same amount as the Ellis Implementation Ordinance provided at the time. In response to inflation, increasing rents, and more costly moving expenses, the Ellis Implementation Ordinance has been amended three times – most recently in 2007 – and now requires property owners to pay *all* Ellis evicted tenants a relocation fee ranging from \$8,700 - \$16,200.⁴

California case law and the legislature have since upheld higher relocation assistance to all tenants evicted by no-fault evictions such as OMI and Ellis. Although rents are among the highest in the state, Berkeley currently requires property owners to pay some of the lowest OMI and Ellis relocation fees in the state.

II. OMI Evictions on the rise

The Board maintains detailed records regarding all OMI evictions.⁵ There were a large number of OMI evictions immediately before and after Measure Y passed. Thereafter, there were very few OMI evictions reported to the Board from 2006 – 2013 (between 8 – 14 per year). The years 2014 and 2015, however, have seen a sharp increase in the number of reported OMI evictions. For example, there were at least three times the number of OMIs reported to the Board in both 2014 and 2015 as there were in either 2007 or 2008.

³ *Channing Properties v. City of Berkeley* (1992) 11 Cal.App.4th 88

⁴ B.M.C. 13.77.055 requires payment of \$8,700 for all tenant households evicted using the Ellis Act and additional relocation fees for tenancies that began prior to 1/1/99 (\$5,000); and low-income, disabled, or elderly tenants, and tenant households with minor children (\$2,500). Thus, the maximum a Berkeley tenant household may currently receive when evicted pursuant to the Ellis Act is \$16,200.

⁵ It is important to note, however, that a number of OMI evictions fly under the radar with no reporting to the Board whatsoever. Often owners or their representatives will inform tenants that they intend to move in and convince the tenant to leave without formal notice. The Board has no authority to decide whether a tenant must surrender possession of her rental unit in an eviction action – such power is granted solely to the state court – so our participation in the process is strictly to warehouse the data. When an owner evicts a tenant through OMI or threat of an OMI but does not notify the Board, we have no way of capturing this data. We would not hazard a guess as to how many tenants are permanently displaced by way of unreported OMIs or threats of OMIs, but we believe – based on anecdotal evidence collected informally by the Board’s Public Information Unit – that the numbers are significant.

Board staff further analyzed the demographics of the property owners serving these notices over the last three years. During this time, over 50% of owners who served OMI notices have owned the property for fewer than two years (with the overwhelming majority evicting tenants within the first year of purchase). The tenants evicted for OMIs are generally longer term tenants who have made Berkeley their home for many many years. They are being replaced by property owners who, by and large, have just purchased their home and often have no roots in Berkeley. Given the dramatic increase in rents (particularly over the last three years), many tenants that are displaced from their long-time homes are unable to find suitable replacement housing and are thus forced to move away from Berkeley. An increase in relocation fees has the potential to bridge the gap to find a replacement home in Berkeley for many of these tenants while preserving for a property owner, acting in good faith, the right to occupy her home.

III. Current OMI relocation assistance

Property owners often target homes with two or more bedrooms for OMI. The median rent for units rented at market for a two bedroom rental unit during the 3rd Quarter of 2015 was \$2,600 and the median rent for a three bedroom during that quarter was \$3,498.⁶ Tenants living in a unit that the landlord recovers for owner occupancy are likely paying far less than they would pay for a similar unit on the open market. Assuming a landlord charges a tenant the common deposit of first and last month's rent, plus a one month deposit, a tenant would have to pay \$7,800 up front for a two bedroom and \$10,494 for a three bedroom plus moving expenses. The current OMI relocation fee is \$4,500 and *only* available for tenants who qualify as low income.

IV. Potential Costs for Tenants of OMI Evictions

While the impacts of OMI evictions on Berkeley's tenant households varies depending on the current rent of the unit and circumstances of the household, the vast majority of tenants displaced from their homes by OMIs have lived in their rental units for many years and are paying a rent below the current market. In short, rents for these tenants are very likely to increase dramatically. These tenants are often the most vulnerable to rent increases, and many are forced to leave Berkeley. According to a 2010 Rent Board study, nearly two-thirds of long-term tenant households are low-income and 44% are very low-income. Long-term tenants also comprise a higher proportion of disabled, elderly, retired, African American, and single parents.

In cases of evictions from units that have not obtained full vacancy decontrol Costa Hawkins rent increases it is almost certain that the tenant would face a minimum 150% rent increase to remain in Berkeley. As of January 2016, 2,405 rental units, 12.4% of all rental units covered by the Rent Ordinance were in this class. The difference between the median rent for units that have not had any vacancy rent increase since 1999 and the median market rent in the 3rd Quarter of 2015 is significant – on average, tenants would pay more than \$14,250 in additional yearly rent.

⁶ The citywide average non-market rent for two and three bedroom units was \$1,836 and \$2,593 respectively with rents for longer-term tenants substantially lower than that.

Tenants living in vacancy-decontrolled units would likely experience a less dramatic rent increase. While likely less than pre-'99 tenants would be affected, post Costa Hawkins tenants still may experience a significant increase as median market rents have risen 62.5% for two bedrooms from the 3rd Quarter of 2010 to the 3rd Quarter of 2015.⁷ Nevertheless, displaced tenants would still incur moving expenses, the time and effort associated with finding a replacement unit, and effort associated with packing and unpacking all household possessions, and possibly would face other losses due to a change in location.

V. Relocation Assistance in Other Jurisdictions

Since established by the voters in November 2000, the OMI relocation fee of \$4,500 has not been adjusted. Other rent control jurisdictions throughout California, however, have significantly increased relocation assistance requirements in the past ten years in response to rising rents, moving costs, and inflation. While most jurisdictions require a landlord to pay relocation fees to all tenant households, Berkeley is the only jurisdictions that only requires landlords to pay relocation fees to low-income tenants. Further, all cities other than Berkeley require higher relocation payments for tenant households that include seniors or disabled tenants, and many allow for additional benefits for households with minor children.

The chart on the following page surveys other rent control cities throughout the state. It is instructive for comparative purposes:

⁷ The Rent Board has many other documented cases of landlords attempting to raise rents by well more than the average rent increases for market medians. For example, in 2014, the Board ruled on an appeal where the property owner attempted to raise the rent more than 50% on the one-year anniversary of a tenancy. While she was not successful, it shows just how dramatically rents have risen that landlords are now able to charge upwards of 50% rent increase on a year over year basis for a unit that was already recently decontrolled.

	Berkeley	Los Angeles	San Francisco	Santa Monica	West Hollywood
All Tenants	None	< 3 years \$7,800 > 3 years \$10,300	\$5,890/tenant Maximum of \$17,670/unit	Bedroom 0 - \$8,650 1 - \$13,300 2+ - \$18,050	Bedroom 0 - \$5,100 1 - \$7,200 2 - \$9,200 3+ - \$12,800
Protected Classes	Low-income \$4,500	Low-income \$10,300 Senior, disabled, or family with minor < 3 years \$16,500 > 3 years \$19,500	Disabled, Elderly, Family with Minor Additional \$3,927	Disabled, Elderly, Family with Minor Bedroom 0 - \$9,950 1 - \$15,350 2+ - \$20,750	Moderate income, Senior, Disabled, Terminally ill, Family with Minor \$13,500 Low-income \$17,000
Source	BMC Section 13.76.1309f.	Los Angeles Municipal Code Section 151.09G.	San Francisco Administrative Code Section 37.9C	Santa Monica Municipal Code Section 4.36.040(d)	West Hollywood Municipal Code Section 17.52.020
How the fee is increased	Popular vote	Consumer Price Index	Consumer Price Index	Consumer Price Index	Current proposed legislation to link increase to Consumer Price Index

Los Angeles

The City of Los Angeles establishes its relocation payment scheme on a per household basis. It allows for an increased payment based on length of tenancy and senior/disabled/family with minor children status. Los Angeles also provides a higher payment for low-income tenants.

In setting the initial fee in 2007, the City Council noted that relocation had a disproportionate impact on particular identified classes of tenants. The relocation fees are based on the average rent differential a displaced tenant will encounter. The fee for a short-term tenant (i.e. less than three years occupancy) was set at six times the rent differential. The fee for a short-term tenant who is elderly, disabled, low-income or who has a minor child was set at 18 times the rent

differential. The fee for a long-term tenant (i.e., more than three years of occupancy) was set at 12 times the rent differential plus \$1,000 for moving costs. Finally, the fee for a long-term tenant in a protected class was set at 24 times the rent differential plus \$1,000 for moving expenses.

The fee is increased in an amount based on the Consumer Price Index – All Urban Consumers averaged for the twelve (12) month period ending September 30 of each year as determined and published by the Department on or before May 30 of each year. The adjusted amount is rounded to the nearest \$50 increment.

San Francisco

San Francisco requires a relocation fee based on the number of tenants. In November 2006, the voters of San Francisco passed a proposition that established relocation fees of \$4500 per tenant with a maximum fee of \$13,500 per unit. Elderly or disabled tenants or households with a minor child were entitled to an additional fee of \$3000. The base relocation payment has been adjusted annually and will be \$5,890 per tenant with a maximum fee of \$17,670 per unit and the additional fee allowed for households containing elderly or disabled tenants, or families with minor children is \$3,927.⁸ San Francisco does not allow for a higher relocation payment for lower income households. The fee is increased annually at the rate of increase in the “rent of primary residence” expenditure category of the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region for the preceding calendar year, as that data is made available by the United States Department of Labor and published by the Board.

Santa Monica

Santa Monica ties its relocation benefits to the size of the unit with no reference to the length of the tenancy and does not allow for increased payments to low-income households. The current Santa Monica relocation fees are derived by increasing fee amounts established in 2011 for inflation. In 2011, relocation fees were set based on the following factors: (1) the average rent differential a displaced tenant will encounter; (2) the new security deposit; (3) moving expenses; and (4) utility start-up costs. Current fees are determined by annually increasing the fee established in 2011 by the percentage change in the rent of primary residence component of the CPI-W Index for the Los Angeles/Riverside/Orange County area, as published by the United States Department of Labor, Bureau of Labor Statistics, between November 2011 and the July 1st preceding the date of vacancy rounded to the nearest fifty dollars. This amount is updated annually commencing on July 1, 2012 and on July 1st of each year thereafter.

West Hollywood

West Hollywood, like Santa Monica, ties its relocation benefits to the size of the unit with no reference to the length of the tenancy. This is done to reflect the higher cost associated with relocating the increased number of occupants and volume of belongings in larger units.

⁸ The relocation fees quoted for San Francisco become effective in March 2016.

Additionally, the City of West Hollywood has established two additional payment categories, "Qualified Tenants," which includes tenant households with moderate-income tenants, elderly, disabled, or minor children, and "Lower-Income Tenants." These categories are provided with higher benefit amounts to capture the additional moving costs and greater financial pressures certain tenants face when relocating.

West Hollywood's fee considers the following factors: (1) six months, rent differential; (2) the new security deposit; (3) moving costs; and (4) dislocation costs (utility hook-ups, personal expenses, etc.). The fee for moderate-income tenants, elderly, disabled tenants, and tenants living with a minor child is based on an 18-month rent differential. The fee for low-income tenants is based on a 24-month rent differential. The fees for tenants in the protected classes are set regardless of unit size.⁹

VI. Recommendation

Previously, the Board and Council have desired simplicity and clarity over precision when determining relocation payments for tenants displaced in a no-fault eviction. The Board recommends the Rent Ordinance (specifically, B.M.C. 13.76.130A.9.f.) be amended so that *all* tenant households receive \$15,000 in relocation fees when they are displaced from their homes by OMI eviction.¹⁰ The other cities surveyed in this report provide relocation payments in this range. Additionally, the Board recommends additional relocation fees of \$5,000 for tenants who qualify as low-income, disabled, elderly, families with minor children, or those tenancies that began prior to 1999 as these tenants are often disproportionately impacted by displacement. Thus, the maximum a tenant household could receive if displaced by an OMI eviction is \$20,000.

Furthermore, the base relocation fee of \$15,000 should be paid to the Board within ten days of service of the notice of termination of tenancy on the tenants. The Board has always held OMI and Ellis relocation fees in escrow and dispersed the funds to eligible tenants. Requiring that the base fee be paid up front will deter landlords who do not actually intend to move into the rental unit from serving a notice as means to unlawfully secure a vacancy through displacing tenants with no good cause.

The Board also recommends that the relocation payment be indexed to inflation, so that it is

⁹ West Hollywood has not adjusted its relocation fee since 2007. The city, however, is considering increasing the current fee by incorporating the yearly increase in CPI. Moving forward, the relocation fees would be adjusted annually by the percentage change in the "rent of primary residence" component of the CPI-U Index for the Los Angeles/Riverside/Orange County area from May to May each year, rounded to the nearest whole dollar. In the event there is a decrease in the percentage change, no increase or decrease in relocation fees would be authorized. The adjusted fee amounts would be effective July 1st of every year, beginning this coming July, 2016. West Hollywood City Council is scheduled to consider this proposal on February 16, 2016.

¹⁰ The amount a landlord is required to pay a tenant must be "roughly proportional to the typical relocation costs that the property owner causes a tenant to incur by withdrawing a unit from the rental market." *Levin v. City and County of San Francisco*, (N.D. Cal) 3:14-ev-03352-CRB.

adjusted annually commensurate with the yearly increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous June 30.¹¹

VII. Other Possible Amendments

The Board and Council may also wish to consider two other minor, but important, changes to the OMI section of Rent Ordinance. The first involves meaningful protections for families with minor children, and the other allows for more effective administration of the Ordinance.

A. Protection for families with children during the school year

While displacement from their homes may cause considerable disruption for tenants, evicting families with children from homes during the school year can be particularly harmful. If a family is forced to move away from the neighborhood or to another town, a student often has to enter a new school mid-year. Studies have shown that students who are displaced during the school year do not perform to their potential.¹² Teachers also report that mid-year turnover can be disruptive to the entire class.

San Francisco prohibits OMI evictions of families with minor children during the school year.¹³ San Francisco Administrative Code section 37.9(j). Given the potentially harmful impact on students displaced during the school year, we recommend the issue be brought to the voters so Berkeley can consider doing the same. Owners will still be entitled to occupy a unit on their property, but tenants with minor children would gain a meaningful protection, so that they do not have to transfer during a school year.

B. Allow Board to adjudicate disputes regarding low-income status

Currently, the Ordinance provides that all disputes regarding a tenant's qualification for low-income status shall be settled through mutual agreement or an order from a court of competent jurisdiction. B.M.C. section 13.76.1309.n.(i). A landlord must deposit the relocation fee of \$4,500 with the Rent Board within ten days of a tenant's claim of entitlement to such funds, but the landlord has the opportunity to challenge the tenant's eligibility to receive them. Often times, the Board holds these funds for several months while the parties are held in limbo. Given the relatively minor sum of money required, it is rare, indeed, for a landlord to seek a court order regarding a tenant's eligibility to receive relocation assistance. If the relocation fee is adjusted as

¹¹ Given that this ballot initiative, if successful, would pass in November 2016, when drafting the legislation it should be made clear that the first CPI-U increase would take effect in July 2018 rather than July 2017.

¹² Editorial Projects in Education Research Center. (2004, August 4). Issues A-Z: Student Mobility. *Education Week*. Retrieved February 3, 2016 from <http://www.edweek.org/ew/issues/student-mobility/>

¹³ This provision does not apply where there is only one rental unit in the building owned by the landlord or where the owner will move into the rental unit with a minor child. San Francisco Administrative Code section 37.9(j)(2).

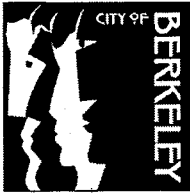
proposed, however, there may be more landlords who challenge a tenant's entitlement to increased assistance. Moreover, once it is established that the unit is vacated, the majority of the money should not be in dispute and could be summarily distributed. Allowing the Board to adjudicate these claims and make determinations regarding a tenant household's eligibility to receive these funds would make it easier for the Board to more efficiently and effectively administer the Ordinance and give parties more streamlined relief when there are disputes of this manner.

VIII. Conclusion

The OMI relocation assistance fee of \$4,500 was established in 2000 by popular vote and has not been adjusted since. During this time, median market rents have increased by 160% when compared to median rents. Additionally, moving costs have risen significantly, and inflation has eroded the actual purchasing power of the current fee. The overwhelming majority of other rent control jurisdictions have either periodically increased their relocation fees to account for increased rents/moving costs or built in adjustments to the formula, so that the fees are increased automatically based on the Consumer Price Index.

In recommending an amount by which the OMI relocation fees should be increased, many factors may be considered. As set forth above, other jurisdictions have considered inflation, rent differentials, security deposit requirements, moving expenses, utility hook-up costs, length of tenancy, and whether displacement will cause exceptional hardship due to age, income status, disability, or presence of a minor child. Given what other cities require property owners to pay tenants displaced by OMI, a relocation fee between \$15,000 and \$20,000 should withstand judicial scrutiny.

Finally, to avoid a rush of preemptive OMI eviction filings, any amendment to the Rent Ordinance (B.M.C. Chapter 13.76.130A.9.f.) increasing the amount of the relocation fee should specifically state that all tenants in possession of their rental unit at the time the ordinance is amended are also entitled to the higher fee.



Rent Stabilization Board
Office of the Executive Director

MEMORANDUM

DATE: March 10, 2016

TO: Honorable Members of the 4 x 4 Committee

FROM: Jay Kelekian, Executive Director
By: Matt Brown, Staff Attorney

SUBJECT: Additional Suggested Amendments to the Rent Ordinance – Berkeley Municipal Code Chapter 13.76

Reason Action is Needed

Berkeley voters passed Measure D in June of 1980 which established the current Rent Ordinance (the Ordinance) as codified in Berkeley Municipal Code (B.M.C.) Chapter 13.76.¹ Because it was passed by voter initiative, the Ordinance may only be amended by voters. Berkeley City Council has, periodically, placed measures on the general ballot for the voters to decide when the Board recommends modifications.

Currently, staff believes there are several sections of the Ordinance that require modification as they have either been made obsolete by changes to state law or have become functionally inoperable due to changes outside the Board's control. Additionally, we are recommending that the Board and Council consider several other changes in order to remove ambiguities regarding the application of the Ordinance or update the law to reflect more realistic assistance.

This memo will suggest the sections of the Ordinance that require amendments but will not identify the specific proposed language to be used. Traditionally, proposed changes to the Ordinance are reviewed and first discussed at the 4 x 4 Committee. Specific proposed Ordinance language is developed by staff and reviewed/recommended by the Board and then submitted to Council for consideration of being placed on the November ballot.

¹The Ordinance was subsequently amended substantially by Measure G in 1982.

Proposed Modifications due to Changes Outside Board's Control

B.M.C. section 13.76.070 (Security Deposit Interest)

Background – As amended by Measure P in 2004, this section of the Ordinance provides that tenant security deposits held by a landlord “shall accrue simple interest at the rate equal to the average rates of interest paid on six-month certificates of deposit by insured commercial banks” until the deposit is returned to the tenant. The section further provides that the interest accrued through October 31st of each year shall be returned to the tenant annually in December of each year “at a rate equal to the 12-month average of the average rates of interest paid on six-month certificates of deposit by insured commercial banks as published by the Federal Reserve Board on the first business day of each month for the prior 12 months ending on November 1st.” The section mandates that the Rent Board compute and publicize the interest rate each year on an ongoing basis. Thus, the Rent Board is expressly charged with responsibility for determining the rates of interest paid on six-month CDs “by insured commercial banks as published by the Federal Reserve Board on the first business day of each month.”

Following the enactment of Measure P, the Rent Board amended Regulation 702 to implement the language of section 13.76.070 by requiring the Board to calculate the average of the six-month CD rates published in the Federal Reserve Board's Statistical Release H.15 on the first business day of each month. The Federal Reserve Board's Statistical Release H.15 contains daily interest rates for selected U.S. Treasury and private money market and capital market instruments, including rates for one-, three- and six-month CDs.

Board staff published the H.15 rate and the 12-month average each month since the Ordinance was revised. In December of 2013, however, the Federal Reserve Board issued a statement that the H.15 would cease publication of six-month CD rates.² Given this information, the Board must again adjust the methodology used to calculate the amount landlords are required to pay tenants for their security deposit interest. While there are several other rates published on a monthly basis by the Federal Reserve Board,³ Berkeley landlords are not able to put money into accounts that track these indexes. Furthermore, this data does not track rates that would allow landlords to follow the mandate of B.M.C. section 13.76.070 that tenant security deposits held by a landlord “shall accrue simple interest at the rate equal to the average rates of interest paid on six-month certificates of deposit by insured commercial banks” until the deposit is returned to the tenant.

After the Federal Reserve Board ceased publishing the H.15 rate, the Board amended Regulation 702 in April 2014 to track the interest “at the rate equal to the 12-month average of the average

² In its release on the matter, the Federal Reserve noted “Recent attrition has reduced both the number and types of institutions that provide quotes creating a challenge to construct statistically robust estimates of CD rates, and it is not feasible to resume publication.”

³ The Federal Reserve Board also publishes the 90-Day Financial Commercial Paper rate; and the 1- year Treasury and 2-year Treasury rates. These rates, however, are not accessible to Berkeley landlords and do not track six-month CD rates as required by the Rent Ordinance. If the Ordinance were amended to use one of these rates, owners would be paying noticeably higher rates of interest to their tenants than they generally earn at a bank.

rates of interest (APY) paid on the first business day of each month for six-month certificates of deposits (\$5,000 minimum deposit) by insured commercial banks doing business in the City of Berkeley.” The Board has received no complaints regarding this change; indeed, landlords are pleased with this revision as the Berkeley Property Owners Association suggested the rate be tied to the average of Berkeley banks after Measure P was passed.

Proposed Action – Since the H.15 rate is no longer published, the Ordinance should no longer reference “insured commercial banks” and “Federal Reserve Board.” Instead, we should use language used in current Board Regulation 702 regarding the Berkeley Bank rate or alternatively, some other court-tested standard.

B.M.C. section 13.76.110F. (Restoration of Annual General Adjustments)

Background – This section of the Ordinance, added in 1982, states that a landlord who is ineligible to raise rents under an upward general adjustment for an entire calendar year shall not be eligible to raise rents under that particular general adjustment in future years. In other words, once an owner has “lost” the right to raise rents by an annual adjustment, that specific increase is lost forever and cannot be restored. These instances most commonly occur when an owner has failed to timely pay the Rent Board any fees or penalties that are owed or when a tenant has received an order from the Board via an administrative hearing reducing the rent ceiling based on housing code violations and the defect lasts for at least one year.

In 1989 the California legislature enacted Civil Code Section 1947.7 (“Petris Act”). The statute created, in part, a condition where once a landlord brought her property into substantial compliance with the applicable registration requirements and other applicable local and state housing code provisions, any previously lost AGA’s would be prospectively restored (CC§1947.7(c)). The Rent Board codified the Petris Act via regulation in 1990 (Rent Board Regulation 1278), but the existing, anachronistic, language in the Ordinance could be misleading to owners and tenants.

Proposed Action – It is proposed that B.M.C. section 13.76.110F. be stricken from the Ordinance since it is preempted by state law and no longer valid.

Proposed Modifications to Remove Ambiguities and Otherwise Update Ordinance

B.M.C. section 13.76.050 (Conditional Exemption of Fraternities and Sororities)

Background – Berkeley Municipal Code section 13.76.050 exempts from rent control such properties as non-profit cooperatives (B.M.C.§13.76.050C) and units rented by a nonprofit accredited institution of higher education to a tenant or tenants who are students, faculty or staff of the institution or of a member school of the Graduate Theological Union (GTU) (B.M.C.§13.76.050J). These classifications are primarily directed towards the UC system and exempt the co-ops that are run and managed by the Berkeley Student Cooperative (BSC), UC Berkeley dormitories and properties owned by entities that operate in conjunction with the GTU. Neither sororities nor fraternities are specifically exempt from any provisions of the Ordinance.

In 1985, as the result of litigation, (*Pi Chapter of Alpha Chi Omega House Ass'n v. City of Berkeley* C 84 2709, U.S. Dist. Ct. Northern California) the Rent Board and various sororities entered into a settlement agreement wherein it was stipulated that sororities would be exempt from all provisions of rent control provided that:

- 1) Occupancy of any particular sorority was restricted to its members;
- 2) Any fees charged its members would be approved by vote of the members;
- 3) Each house must be owned by one of the actual sororities or an affiliated nonprofit legal entity whose sole purpose was to manage and maintain the house;
- 4) The monies charged each sorority would be restricted to the maintenance and operation of the house; and
- 5) Active members would not be subject to eviction provided they remained in good standing with their respective sorority.

It was further agreed that the agreement does not apply when the house or any portion thereof is rented to non-members. In 1989 the Rent Board and fraternities entered into a similar settlement as the 1985 sorority agreement.

Proposed Action – Add a new section M. to B.M.C. section 13.76.050 making clear that fraternities and sororities recognized by the University are exempt from all provisions of the Ordinance as is the case with co-ops and dormitories. This exemption would be limited to only those rooms/units that are rented to active members who are residing in their respective houses/chapters under the terms described above. Rooms/units rented to non-members, either year-round or on a seasonal basis, would not be exempt from the Ordinance; the chapter would need to register those particular rooms/units.⁴

B.M.C. section 13.76.050I. (Unpermitted Units)

Background – Traditionally, rental units have been covered by rent stabilization in Berkeley regardless of their zoning or building permit status. This policy was built into the original ordinance enacted by the voters to deliberately avoid rewarding property owners who violate Berkeley's building and zoning codes by awarding so-called "illegal units" an exemption from rent stabilization. It was believed that if we granted an owner not following local laws greater rights/fewer restrictions than an owner renting a permitted unit that the effect would be to increase non-compliance with local zoning laws. For this reason, the terms of the rent ordinance have always applied to unpermitted/"illegal" units.

The de facto rent stabilization of unlawfully constructed rental units invites the question of whether rental units that are constructed unlawfully can avail themselves of the new construction exemption. The intent of the Ordinance as well as Costa Hawkins is to encourage lawful and

⁴ In 2010 the Board became aware that there was a wide-spread practice of fraternities renting rooms to non-members on a seasonal basis (primarily during the summer). Since 2010 the Rent Board has been registering such rooms, offering fraternities a reduced registration fee based on the unique relationship between the chapters and their on-going seasonal practice.

permitted new construction by exempting them from rent controls. The Rent Board's current policy regarding newly constructed rental units depends upon the date that a certificate of occupancy has been issued, and where there is none, staff conducts a case-by-case analysis to determine whether or not the rental unit is exempt under a variety of different potential exemptions. Further refining this approach, the Rent Board has enacted two separate resolutions (Nos. 91-5 and 05-08) designed to prevent the *loss* of exemptions for properties where the number of units increases due to the *lawful, permitted* construction of new rental units. These policies reflect a long-standing commitment to encouraging the production of additional lawfully permitted rental units.

Costa-Hawkins prohibits rent control of new construction in two ways:

- "(1) It has a certificate of occupancy issued after February 1, 1995.*
- (2) It has already been exempt from the residential rent control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units."*

The rent ordinance was written 15 years before the passage of Costa Hawkins, which defined issuance of a certificate of occupancy as the seminal indicia for determining new construction.

Proposed Action – Clarify the ordinance to more closely conform to Costa-Hawkins by stating that exemption for new construction is limited to rental units with a certificate of occupancy issued after July 1, 1980.

B.M.C. sections 13.76.130A.9.f. and 13.76.130A.9.n.(i) (Owner Move In)

Background – The 4 x 4 Committee already approved the recommendation to revise B.M.C. section 13.76.130A.9.f. (OMI relocation assistance) and B.M.C. section 13.76.130A.9.n.(i) (allow a City or Board hearing examiner to adjudicate OMI relocation benefit disputes); as well as adding a section to the Ordinance that prohibits OMI evictions during the school year for families with children at its February 11, 2016 meeting.

Proposed Action/Status – Board legal staff is in the process of drafting proposed language for the revisions to section 13.76.130A.9. of the Ordinance. After the Board reviews and approves the proposed language, staff will submit it to the Council so that it may be included as a November ballot initiative.

B.M.C. section 13.76.130A.9.k.(i) (Clarification of Number of Units Owned by a Landlord)

Background – This section of the Ordinance clarifies that a landlord who owns three or fewer "residential rental units" in Berkeley may evict seniors and disabled tenants from his rental units in order to owner occupy the unit without regard to who lives in other rental units the landlord owns.⁵ The Board has always interpreted "rental units" broadly and has considered an owner's

⁵ Landlords who own more than three rental units in Berkeley may not use an OMI eviction to displace senior or disabled tenants who have lived in their units for five years or more. See B.M.C. section 13.76.130A.9.i.

home to qualify as a “residential rental unit” for purposes of this section. The existing language is imprecise and open for conflicting interpretations.

The vast majority of OMI evictions occur in smaller buildings. While it is important to preserve a small property owner’s right to evict tenants from a unit with as few hurdles as possible, the displacement protections are crucial to maintain for senior and disabled tenants – many of whom have occupied these rental units for an extremely long time and have the most trouble relocating when evicted through no fault of their own.

Proposed Action – Amend B.M.C. section 13.76.130A.9.k.(i) to change “residential rental units” to “residential units.” This will make clear that seniors and disabled tenants who have occupied their units for five or more years will be protected from an owner move-in (OMI) eviction if their landlord owns three or more total units in Berkeley (even if the landlord lives in a separate dwelling as an owner occupant).

B.M.C. section 13.76.130A.9.b. (Clarifying when Spouse may use Owner Move In Eviction)

Background – Currently, under the OMI provisions, a property owner may evict a tenant from a unit so that the property owner is able to owner occupy the unit or to move in a qualifying relative – specifically, the landlord’s spouse, child, or parent. The existing law makes clear, however, that where an owner has recovered possession for owner occupancy by terminating a tenancy, no other current or future landlords may recover possession for owner move-in by terminating a tenancy in any other rental unit on that property.

The problem arises when an owner has already evicted a tenant under the OMI provisions in order to move himself into the subject unit and then attempts to displace a tenancy from a second unit by serving a notice to move in his spouse. This creates great risk for abuse wherein an owner and his spouse try to evict multiple tenant households while only occupying one unit or unlawfully occupying two. The current OMI provisions do not place any limitations on evictions for the use and occupancy of a unit by the property owner’s spouse and are ripe for manipulation in the type of market we have experienced the past several years.

Proposed Action – Amend section 13.76.130A.9.b. so that a spouse is not allowed to use an OMI eviction to evict a tenant in the same property if the owner is already occupying a unit or currently endeavoring to dispossess a tenant from a unit by OMI on the property (or if there is already a unit designated for owner occupancy).

Conclusion

We are seeking 4x4 discussion, comment and feedback on these potential changes to the Rent Stabilization Ordinance so that a formal proposal (including draft language) can be presented to the Rent Board for consideration. The Board will make the final recommendation to the City Council suggesting which items be placed on the ballot along with specific proposed language.