



Rent Stabilization Board  
Office of the Executive Director

ACTION CALENDAR  
July 28, 2020

TO: Honorable Mayor and Members of the City Council

FROM: Berkeley Rent Stabilization Board

SUBMITTED BY: Matt Brown, Acting Executive Director, Rent Stabilization Board

SUBJECT: Placing a Measure on the November 3, 2020 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)

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RECOMMENDATION

1. Adopt a Resolution placing the proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance on the ballot of the November 3, 2020 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 has recommended a set of amendments to the Rent Stabilization and Eviction for Good Cause Ordinance. These amendments set forth the following changes:

1. Adopt a secondary Registration fee for three types of partially-exempt units (single-family homes, condominiums, and newly constructed units);
2. Amend the Rent Stabilization and Eviction for Good Cause Ordinance to limit the substantive basis for eviction for nonpayment of rent so that it does not apply to rent payments that come due during a state or local state of emergency when triggered by applicable federal, state, or local emergency legislation;

3. Repeal the “golden duplex” exemption for owner-occupied duplexes that were owner-occupied on December 31, 1979, so tenants in eligible owner-occupied duplexes will have rent control and/or eviction protections;
4. Repeal the Accessory Dwelling Unit exemption for rental units in a residential property containing a single, lawfully established and fully permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence and the tenancy was created after November 7, 2018, so tenants in eligible Accessory Dwelling Units will have rent control and/or eviction protections.

### 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 costs to the city.

If a secondary Registration fee for single-family homes, condominiums, and newly constructed units is adopted, the Registration fees currently mandated by B.M.C. 13.76.080 for fully covered rental units may decrease as a result of economies of scale to provide services to partially-covered units that Rent Board staff already provide to fully-covered units.

Limiting the substantive basis for eviction for nonpayment of rent so that it does not apply to rent payments that come due during a state or local state of emergency when triggered by applicable federal, state, or local emergency legislation will have no fiscal impact on the City. This amendment would ensure there is no conflict between the Rent Stabilization and Eviction for Good Cause Ordinance and the emergency legislation adopted by Council (BMC 13.110) in response to the current state of emergency associated with the COVID-19 pandemic. It would also potentially eliminate conflict with similar legislation in the event of a future state of emergency.

If the “golden duplex” and Accessory Dwelling Unit exemptions are repealed, the number of units protected by rent control and/or good cause for eviction will increase, and the Registration fees currently mandated by B.M.C. 13.76.080 for other fully covered rental units may decrease as a result of economies of scale to provide services to these newly-covered units. For Accessory Dwelling Units, in particular, many of these may be partially-exempt as newly constructed rental units, so they would only be required to register if covered by the secondary Registration fee proposal.

### CURRENT SITUATION AND ITS EFFECTS

Berkeley voters passed Measure D in June 1980, establishing the current Berkeley Rent Stabilization and Eviction for Good Cause Ordinance as codified in Berkeley Municipal Code Chapter 13.76. Berkeley City Council has, periodically, placed measures on the general ballot

for the voters to decide when the Board recommends amendments.

1. Secondary Registration Fee

The Rent Ordinance currently exempts single-family homes, condominiums, and newly constructed rental units from Registration. When owners and tenants of these rental units seek information from the Rent Board, staff is unable to provide them with substantive assistance since the agency is funded by Registration fees and thus only provides assistance to those that are fully covered by the Rent Ordinance.

2. Exclusion of Delayed Rent Payments During States of Emergency as a Substantive Basis for Eviction for Nonpayment of Rent

Many jurisdictions, including the City of Berkeley and Alameda County have passed ordinances to prohibit evictions for delayed payment of rent when the tenant has a covered reason related to COVID-19 for delayed payment of rent. BMC 13.110 permits a tenant to repay any accrued late rent payments within 12 months of the expiration of the state of emergency and makes clear that a tenant may not be evicted for failure to repay the rent. The Rent Ordinance, however, is silent on how states of emergency or emergency legislation impact the substantive basis for eviction for nonpayment of rent.

3. Repeal of the “Golden Duplex” Exemption

The Rent Ordinance fully exempts a subset of owner-occupied duplexes from the rent control and eviction protections of the Ordinance. These “golden duplexes” (up to 955) are ones that are currently owner-occupied as a principal residence and were owner-occupied (not necessarily by the same owner) on December 31, 1979. There are other owner-occupied duplexes (up to 1,078) that do not qualify as “golden” and thus, the rented unit is fully covered by rent control and eviction protections.

4. Repeal of the Accessory Dwelling Unit Exemption

The Rent Ordinance and corresponding regulations fully exempt rental units on properties with a permitted Accessory Dwelling Unit where one unit on the property is owner-occupied as a principal residence and the tenancy was created after November 7, 2018.

BACKGROUND

1. Secondary Registration Fee

If a secondary registration fee is adopted for rental units in single-family homes, condominiums, and new construction, Rent Board staff would be able to assist tenants and landlords of these

units. In addition, aggregated information about these types of units would allow policymakers to monitor the ongoing housing crisis and improve the efficacy of local regulatory efforts to mitigate the crisis. The Registration Fee for these units would cover only those additional expenses incurred by the Board as a result of counseling the owners and tenants of these partially-exempt units, as well as registration of those units, and would not cover the costs associated with petitions for individual rent adjustments and other services that are not provided to partially-exempt units.

The IRA-AGA-Registration Committee voted unanimously on May 8, 2020 and the Rent Board voted unanimously on May 29, 2020 to support this proposal. The approved language is set forth in Attachment A, in subsections 13.76.050, 13.76.060, and 13.76.080

2. Exclusion of Delayed Rent Payments During States of Emergency as a Substantive Basis for Eviction for Nonpayment of Rent

If the Rent Ordinance was amended to make clear that delayed rent payments during states of emergency could not be used as a substantive basis for eviction for nonpayment of rent, then it would ensure there is no conflict between the Ordinance and eviction moratoriums passed in response to the COVID-19 global pandemic, including the Berkeley COVID-19 Emergency Response Ordinance (B.M.C. 13.110).

The IRA-AGA-Registration Committee voted unanimously on May 8, 2020 and the Rent Board voted unanimously on May 29, 2020 to support this proposal. The approved language is set forth in Attachment A, in subsection 13.76.130.

3. Repeal of the “Golden Duplex” Exemption

If the “Golden Duplex” exemption was repealed from the Rent Ordinance, tenants in rental units in all duplexes would be protected by rent control and good cause for eviction protections unless they were exempt under a separate provision, such as new construction. Rent ceilings must be established for units that lose exemption. Thus, this proposal would set the rent ceilings at the amount of rent in effect on March 1, 2020, for tenants who occupied the unit continuously on or before March 1, 2020, through the date this amendment becomes effective. For tenancies that begin after March 1, 2020, the rent ceiling would be the lawfully established initial rent under the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et. seq.).

The IRA-AGA-Registration Committee voted unanimously on May 8, 2020 and the Rent Board voted 7-2-0-0 on May 29, 2020 to support this proposal. The approved language is set forth in Attachment A, in subsections 13.76.050 and 13.76.080.

4. Repeal of the Accessory Dwelling Unit Exemption

If the Accessory Dwelling Unit exemption was repealed from the Rent Ordinance, tenants in previously exempt rental units would be protected by rent control and good cause for eviction protections unless they were exempt under a separate provision, such as new construction. Rent ceilings must be established for units that lose exemption. Thus, this proposal would set the rent ceilings at the amount of rent in effect on March 1, 2020, for tenants who occupied the unit continuously on or before March 1, 2020, through the date this amendment becomes effective. For tenancies that begin after March 1, 2020, the rent ceiling would be the lawfully established initial rent under the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et. seq.).

The IRA-AGA-Registration Committee voted unanimously on May 8, 2020 and the Rent Board voted 5-2-2-0 on May 29, 2020 to support this proposal. The approved language is set forth in Attachment A, in subsections 13.76.050 and 13.76.080.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

This report and its recommendations are the result of direction from the Rent Stabilization Board, which voted on May 20, 2020 to recommend to the City Council to place the proposed amendments on the ballot for November 3, 2020.

#### ALTERNATIVE ACTIONS CONSIDERED

While no specific alternatives were proposed, some concern was expressed about the lack of comprehensive data regarding the proposals to eliminate the “golden duplex” and Accessory Dwelling Unit exemptions. The Rent Board does not collect comprehensive data on partially or fully exempt rental units, so the data that was provided is an approximation. The Board is currently unable to compel landlords or tenants to submit any information regarding tenancies as this information is only collected for controlled units – the Rent Ordinance connects the Registration Fee directly to rent-controlled units only. The elected Board has made a policy decision to propose removal of the full exemptions associated with “golden duplex” and Accessory Dwelling Units, but Board staff is unable to collect tenancy information for these units as they currently fall outside the Board’s regulatory umbrella. The Planning Department does not have data on the number of Accessory Dwelling Units that receive a final inspection and are completed. The Department has identified the number of permits approved each year (16 in 2016, 74 in 2017, 80 in 2018, and 70 in 2019), but construction could be completed in a different year or not completed (or started) at all.

Should the Council choose not to adopt the Rent Board’s recommendation to repeal the full exemption of Accessory Dwelling Unit units on the November 3, 2020 ballot, staff would like to offer an amendment to ensure that rental units that were never meant to be exempted will not be.

Beginning in January 2020, owners can create Accessory Dwelling Units on multi-family properties. If voters do not eliminate the ADU exemption as proposed by the Rent Board, they should amend the exemption as currently written in the Rent Ordinance. Otherwise, there would likely be unintended exemptions created, since rental units in multi-family properties would all become exempt if an owner occupied one of the units as their principal residence. As initially drafted, the existing exemption was only meant to apply narrowly to situations in which a single family dwelling shares a property with a single ADU. Staff has language available in the event Council chooses this option. It is not being included in this report, since the Board did not recommend this option.

CONTACT PERSON

Matt Brown, Acting Executive Director, Rent Stabilization Board, (510) 981-4905

Attachments:

1. Resolution

Exhibit A: Ordinance as Amended

2. May 29, 2020 Staff Report to Rent Board

Attachment 1

RESOLUTION NO. ##,###-N.S.

SUBMITTING TO THE BERKELEY ELECTORATE A MEASURE TO AMEND BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO ADOPT A SECONDARY REGISTRATION FEE FOR SINGLE-FAMILY HOMES, CONDOMINIUMS, AND NEWLY CONSTRUCTED UNITS; PROHIBIT EVICTION FOR NONPAYMENT OF RENT OF TENANTS WHO QUALIFY UNDER ADOPTED EMERGENCY LEGISLATION; AND APPLY RENT CONTROL AND/OR EVICTION FOR GOOD CAUSE PROTECTIONS TO OWNER-OCCUPIED DUPLEXES THAT WERE OWNER-OCCUPIED ON DECEMBER 31, 1979 AND ELIGIBLE LAWFULLY PERMITTED ACCESSORY DWELLING UNITS.

WHEREAS, the purposes of the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance are to regulate residential rent increases in the City of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the city with regard to low and fixed income persons, minorities, students, handicapped, and the aged; and

WHEREAS, the Berkeley Rent Stabilization Board will be able to provide services to landlords, owners, and tenants of single family homes, condominiums, and new construction with the imposition of a secondary Registration Fee; and

WHEREAS, protections against eviction established by the Berkeley City Council's COVID-19 Emergency Ordinance (B.M.C. Chapter 13.110) and similar future local emergency legislation will be codified in the Berkeley Rent Ordinance (B.M.C. 13.76.130); and

WHEREAS, the exemption established by B.M.C. 13.76.050F. will be eliminated, so that rental units in owner-occupied duplexes that were owner-occupied on December 31, 1979 may be covered by the registration, rent control, and/or good cause for eviction provisions of the chapter; and

WHEREAS, the exemption established by B.M.C. 13.76.050N. will be eliminated, so that rental units in properties that contain a lawfully permitted Accessory Dwelling Unit would not be fully exempt from the Berkeley Rent Ordinance and may be covered by the registration, rent control, and/or good cause for eviction provisions of the chapter; and

WHEREAS, these enumerated amendments to the Rent Stabilization and Eviction for Good Cause Ordinance will prevent displacement of tenants by extending additional protections and services to tenants who do not enjoy such protections under existing law; and

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a measure to amend Berkeley Municipal Code Chapter 13.76 to adopt a secondary registration fee for single-family homes, condominiums, and newly constructed units; prohibit eviction for nonpayment of rent of tenants who qualify under the terms of adopted emergency legislation; and apply rent control and/or eviction for good cause protections to owner-occupied duplexes that were owner-occupied on December 31, 1979 and eligible lawfully permitted accessory dwelling units; 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 3, 2020; 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 the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

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 the measure amending the Rent Stabilization and Eviction for Good Cause Ordinance to: adopt a registration fee for single-family homes, condominiums, and newly-constructed units to be set by the Rent Stabilization Board to cover reasonable registration and counseling costs for such units; prohibit eviction of qualifying tenants for nonpayment of rent during state or local emergencies; and apply rent control and/or eviction limitations to eligible owner-occupied duplexes and accessory dwelling units 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

Exhibit A

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

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO ADOPT A SECONDARY REGISTRATION FEE FOR SINGLE-FAMILY HOMES, CONDOMINIUMS, AND NEWLY CONSTRUCTED UNITS; PROHIBIT EVICTION FOR NONPAYMENT OF RENT OF TENANTS WHO QUALIFY UNDER THE TERMS OF ADOPTED EMERGENCY LEGISLATION; APPLY RENT CONTROL AND EVICTION FOR GOOD CAUSE PROTECTIONS TO OWNER-OCCUPIED DUPLEXES THAT WERE OWNER-OCCUPIED ON DECEMBER 31, 1979; AND APPLY RENT CONTROL AND EVICTION FOR GOOD CAUSE PROTECTIONS TO LAWFULLY PERMITTED ACCESSORY DWELLING UNITS.

The people of the City of Berkeley do ordain as follows:

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

**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, as defined in Section 13.76.040. 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. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

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.

~~N. A rental unit in a residential property containing a lawfully established and fully-permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence. This subsection (13.76.050N) shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units-compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling-Units"), and shall only apply to tenancies created after November 7, 2018.~~

N. A dwelling or a unit alienable separate from the title to any other dwelling unit unless the tenancy commenced before January 1, 1996. However, the exemption of such units shall be limited to their exemption from the terms of 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. The exemptions provided in this Section shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.

Section 2. Section 13.76.060 of the Berkeley Municipal Code is amended to read as follows:

**13.76.060 Rent Stabilization Board**

A. Composition. There shall be in the city of Berkeley an elected rent stabilization board; the board shall consist of nine commissioners. The board shall elect annually as chairperson one of its members to serve in that capacity.

B. Eligibility. Residents who are duly qualified electors of the city of Berkeley are eligible to serve as commissioners on the board.

C. Full disclosure of holdings. Candidates for the position of commissioner shall fulfill the requirements as set forth in the City Charter in Article III, Section 6 1/2.

In addition, when filing nomination papers, candidates shall submit a verified statement of their interests and dealings in real property, including but not limited to its ownership, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in its ownership, sale or management during the previous three years.

D. Election of commissioners. Commissioners shall be elected at the statewide general election held in November of even numbered years.

E. Terms of office. Commissioners' terms of office shall be as set forth in Article XVII of the Berkeley City Charter.

F. Powers and duties. The elected rent stabilization board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions. The board shall have the following powers and duties:

1. Set the rent ceilings for all rental units.
2. Require registration of all rental units under Section 13.76.080.
3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.
4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.
5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this chapter.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set below.
7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
8. Report annually to the city council of the city of Berkeley on the status of rental housing units covered by this chapter.

9. Request the City Council to remove rent controls under Section 13.76.060Q.
10. Administer oaths and affirmations and subpoena witnesses and relevant documents.
11. Establish rules and regulations for settling civil claims under Section 13.76.150.
12. Seek injunctive relief under Section 13.76.150.
13. Pursue civil remedies in courts of appropriate jurisdiction.
14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this chapter.
15. Hold public hearings.
16. Charge and collect registration fees, including penalties for late payments.
17. Other powers necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter.
18. Except as provided in Section 13.76.060N of this chapter, the board shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the city of Berkeley.

G. Rules and Regulations: The board shall issue and follow such rules and regulations, including those which are contained in this Chapter, as will further the purposes of this Chapter. The board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the city of Berkeley.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the board shall be kept in the board's office and shall be available to the public for inspection and copying.

The board shall publicize this Chapter so that all residents of Berkeley will have the opportunity to become informed about their legal rights and duties under this Chapter. The board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this Chapter. The brochure shall be made available to the public.

H. Meetings: The board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the commissioners of the board. The board shall hold its initial meeting no later than July 15, 1980.

I. Quorum: Five commissioners shall constitute a quorum for the board.

J. Voting: The affirmative vote of five commissioners of the board is required for a decision, including all motions, rules, regulations, and orders of the board.

K. Compensation: The rent stabilization board shall be a working board. Commissioners shall be paid compensation and benefits in an amount set by the board in order to

compensate commissioners for their time and work performed as required by this chapter and the city charter.

L. Dockets: The board shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.

M. Vacancies: If a vacancy shall occur on the board, a qualified person to fill such vacancy shall be selected in accordance with the procedures set forth in Article V of the City Charter.

N. Financing: The board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the board. The registration fee for partially-exempt units shall reasonably approximate the cost of registration and counseling services for such units, and shall not include the cost of services from which such units are exempt. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the board. The board is also empowered to request and receive funding, when and if necessary, from the city of Berkeley and/or any other available source for its reasonable and necessary expenses, including expenses incurred at the request of the City.

O. Staff: The board shall be a working board and shall employ such staff as may be necessary to perform its functions efficiently and as provided by Berkeley Ordinance.

P. Registration: The board shall require the registration of all rental units covered by this chapter as provided for in Section 13.76.080. The board may also require landlords to provide current information supplementing their registration statements.

Q. Decontrol: If the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six month period, the city council is empowered, upon request by the board, at its discretion and in order to achieve the purposes of this chapter, to exempt rental units covered by this chapter from Sections 13.76.080, 13.76.100, 13.76.110 and 13.76.120 of this chapter. In determining the vacancy rate for the city of Berkeley the board and the city council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection Q coverage shall be reimposed if the city council finds that the average annual vacancy rate has thereafter fallen below five percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection Q the board shall hold at least two public hearings.

R. Conflict of Interest: Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

Section 3. Section 13.76.080 of the Berkeley Municipal Code is amended to read as follows:

**13.76.080 Rent registration**

A. The board shall require all landlords subject to the provisions of this chapter, including Section 13.76.130, to file with the board by September 1, 1980 a rent registration statement for each rental unit covered by this chapter. An owner who has resided in a single family dwelling for at least three hundred sixty five consecutive calendar days need not file a rent registration statement under the provisions of this chapter if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.

B. Landlords shall provide in their initial rent registration statement the following information:

- (1) The address of each rental unit;
- (2) The name and address of the landlord(s) and the managing agent, if any;
- (3) The date on which the landlord received legal title to or equitable interest in the rental unit;
- (4) The housing services provided for the rental unit;
- (5) The rent in effect on June 6, 1978;
- (6) The rent in effect on December 30, 1979;
- (7) The base rent ceiling;
- (8) The lowest rent in effect between June 6, 1978, and the date of the adoption of this chapter;
- (9) The amount of any deposits or other monies in addition to periodic rent demanded or received by the landlord in connection with the use or occupancy of the rental unit;
- (10) Whether the rental unit was vacant or occupied on May 31, 1980;
- (11) Rent in effect on December 31, 1981.

C. All rent registration statements provided by landlords in accordance with this chapter shall include an affidavit signed by the landlord declaring under penalty of perjury that the information provided in the rent registration statement is true and correct.

D. The first annual registration fee of twelve dollars per unit shall be paid by the landlords to the board no later than September 1, 1980. Subsequent annual registration fees set in accordance with Section 13.76.060N of this chapter shall be paid no later than July 1 of each. Because fees charged in years prior to 1991 were due on



September 1, but paid for board expenses from each preceding July 1, the fee due 1991 shall be calculated to pay for twelve months of board expenses.

E. The board shall provide forms for the registration information required by this section and shall make other reasonable efforts to facilitate the fulfillment of the requirements set forth in this section.

F. Every annual registration fee required by this chapter which is not paid on or before July 1 is declared delinquent, and the board shall add to said registration fee and collect a penalty of one hundred percent of the fee so delinquent in addition to the fee. Every six months that the fee and penalty remain delinquent, the penalty shall be increased by one hundred percent of the original fee. The board may waive the penalty if payment is made within thirty days of the original due date.

A landlord may request the board to waive all or part of the penalty if he/she can show good cause for the delinquent payment.

G. The amount of any registration fee and penalty imposed by the provisions of this chapter shall be deemed a debt to the city.

H. Within thirty days after the filing of a rent registration statement, the board shall provide a true and correct copy of said statement to the occupant of the respective unit.

I. Landlords of formerly exempt units shall register within sixty days of coming under coverage of this chapter. Units with tenancies established on or before March 1, 2020, that were formerly exempt as owner-occupied duplexes (under repealed subsection 13.76.050.F) shall register the rent in effect on March 1, 2020, and the initial rent ceiling shall be established on the basis of that monthly rent, subject to applicable annual general adjustments. Units with current tenancies established after March 1, 2020, that were formerly exempt as owner-occupied duplexes (under repealed subsection 13.76.050.F) shall register the monthly rent in effect on the first day of the tenancy and the initial rent ceiling shall be established on the basis of that initial rent set pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50, et. seq.). The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

J. No landlord shall be deemed to be in compliance with this section with respect to a given unit until the landlord has completed registration for all covered units in the same property. Registration shall be deemed complete when all required information has been provided and all outstanding fees and penalties have been paid.

K. Registration fees shall not be passed along to the tenants without the express, prior approval of the board. Under no circumstances shall penalties be passed along to tenants.

L. Landlords of partially-exempt units (set forth above in Sections 13.76.050I. and 13.76.050N.) shall register within sixty days of coming under coverage of this chapter. The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

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

**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. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in Berkeley shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency.

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 willfully 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 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. All notices terminating tenancy pursuant subsection 13.76.130.A.9 shall include the following: the existence and potential 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. The landlord shall, within ten days of giving notice, file a copy of the notice terminating tenancy with the Rent Board.

e. 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.

f. 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.

g. Where a landlord recovers possession of a unit under subsection 13.76.130A.9, the landlord is required to provide standard relocation assistance to tenant households where at least one occupant has resided in the unit for one year or more in the amount of \$15,000. 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 relocation fees set forth above shall be increased in accordance with the rules set forth in 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). 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., may be increased in an amount based on the Consumer Price Index - All Urban Consumers in the San Francisco-Oakland-San Jose Region averaged for the 12-month period ending June 30, of each year, as determined and published by United States Department of Labor. Any increase shall be published by the Board on or before October 31<sup>st</sup> of each year.

i. 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.

j. Once a landlord has successfully recovered possession of a rental unit pursuant to 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 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 subsection 13.76.130A.9.a and that once a unit is used for such occupancy, all future occupancies under 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.

l. 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:

(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; 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.

m. A tenant who claims to be a member of one of the classes protected by subsection 13.76.130A.9.l 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 subsection 13.76.130A.9.I. 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.

n. The provisions of subsection 13.76.130A.9.I shall not apply to the following situations:

(i) Where a person is the owner of three or fewer residential units in the City of Berkeley and has no greater than a nine percent (9%) ownership interest in any other residential 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 subsection 13.76.130A.9.I and the landlord's qualified relative who is seeking possession of a unit subject to subsection 13.76.130A.9.b is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(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 subsection 13.76.130A.9.I, the landlord has owned the unit for which possession is being sought subject to 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 subsection 13.76.130A.9.I.(ii).

o. 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.

p. When a landlord is required to provide a relocation assistance payment subject to subsection 13.76.130A.9.g, the payment shall be divided among the tenants occupying

the rental unit at the time of service of the notice to terminate tenancy.

(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's eligibility to receive such assistance.

(ii) In order to claim entitlement to additional relocation assistance under subsection 13.76.130A.9.g, a tenant must notify the landlord and the Rent 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") per subsection 13.76.130A.9.g within 30 days of filing of notice of termination of tenancy with the Rent Stabilization Program. The landlord shall deposit the additional relocation payment with the Rent Stabilization Program or its designated agent to be held in escrow for any tenant household who claims entitlement to additional relocation assistance within ten days after such notice claiming entitlement to additional relocation assistance is mailed. Within ten days after the funds are deposited into escrow, the Rent Stabilization Program shall authorize release 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.

(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. The 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, 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 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 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 tenants remain in possession of the rental units after service of a landlord's written notice of rescission of the eviction, the 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.

(v) 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

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 tenants if the tenants have vacated the rental unit as of the effective date of this amendment. Said deposit in escrow or payment to the tenants shall be made within ten days of the effective date of this amendment.

(vi) 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 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 tenants for three times the amount of the payment as well as reasonable attorney fees.

q. 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.

r. 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.

s. 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

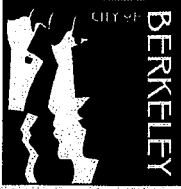
his/her occupancy as a principal residence under an existing rental agreement with the current tenants.

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 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 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 subsection 13.76.130A.7., 13.76.130.A.8, or 13.76.130.A.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 summons and complaint, within ten days after the tenant has been served with such notice or summons and complaint.




Rent Stabilization Board  
Office of the Executive Director

**MEMORANDUM**

**DATE:** May 21, 2020

**TO:** Honorable Members of the Berkeley Rent Board

**FROM:** Honorable Members of the IRA/AGA/Habitability Committee

By: Matt Brown, Acting Executive Director   
Matthew Siegel, Staff Attorney  
Lynn Wu, Staff Attorney

**SUBJECT:** Proposed Amendments to Rent Stabilization and Eviction for Good Cause Ordinance

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**Summary**

The IRA-AGA-Registration Committee met on May 8, 2020 to discuss amendments to the Rent Stabilization and Eviction for Good Cause Ordinance and voted unanimously to propose them to the full Board. This memorandum compiles the Committee's recommendations for proposed amendments that are designed to ensure that the Ordinance better serves its purpose; namely the prevention of arbitrary, discriminatory or retaliatory evictions, in order to maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. In light of both the ongoing housing crisis and the new threat to housing stability posed by the COVID-19 pandemic, these proposed amendments enhance the ability of the Board and City Council to preserve the public peace, health and safety, and the availability of housing for low and fixed income households, people of color, students, people with disabilities, and older residents.

The proposed amendments include an expanded registration requirement for partially-exempt units; an amendment to eliminate the exemption for owner-occupied duplexes; an amendment to the nonpayment of rent cause for eviction to exclude rent that is delayed due to a covered reason related to a state of emergency such as the COVID-19 pandemic; and an amendment to eliminate the exemption for Accessory Dwelling Units (ADUs). Each proposed amendment is discussed separately below.

**1. Expanded Registration**

**Background and Need for Rent Stabilization Board Action:**

This proposal would require the registration of certain types of units not covered by rent control for purposes of monitoring the ongoing housing crisis and improving the efficacy of local regulatory efforts to mitigate the crisis.

If this proposal were enacted, the Board would adopt a secondary Registration Fee for two types of partially-exempt units: single-family homes and newly constructed units. The Registration Fee for these units would cover only those additional expenses incurred by the Board as a result of counseling the owners and tenants of these partially-exempt units, as well as registration of those units, and would not cover the costs associated with petitions for individual rent adjustments and other services that are not provided to partially-exempt units.

The proposal should set forth a deadline for the registration of partially-exempt units, which are currently exempt from registration requirements. This deadline should be established in consideration of the administrative resources required by Board staff, in addition to the other policy goals of the proposal.

**Proposed Language:**

Chapter 13.76 is amended 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:

...  
I. Newly constructed rental units, as defined in Section 13.76.040. 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. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

...  
O. A dwelling or a unit alienable separate from the title to any other dwelling unit unless the tenancy commenced before January 1, 1996. However, the exemption of such units shall be limited to their exemption from the terms of 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. The exemptions provided in this Section shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.

Section 13.76.060

RENT STABILIZATION BOARD

...  
N. Financing: The board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the board. The registration fee for partially-exempt units shall reasonably approximate the cost of registration and counseling services for such units, and shall not include the cost of services from which such units are exempt. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the board. The board is also empowered to request and receive funding, when and if necessary, from the city of Berkeley and/or any other available source for its reasonable and necessary expenses, including expenses incurred at the request of the City.

Section 13.76.080

RENT REGISTRATION

A. The board shall require all landlords subject to the provisions of this chapter, including Section 13.76.130, to file with the board by September 1, 1980 a rent registration statement for each rental unit covered by this chapter. An owner who has resided in a single family dwelling for at least three hundred sixty five consecutive calendar days need not file a rent registration statement under the provisions of this chapter if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.

...  
L. Landlords of partially-exempt units (set forth above in Sections 13.76.050I. and 13.76.050O.) shall register within sixty days of coming under coverage of this chapter. The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

**2. "Golden Duplex" Repeal**

**Background and Need for Rent Stabilization Board Action:**

This proposal would repeal the "golden duplex" exemption for owner-occupied duplexes that were owner-occupied on December 31, 1979, and would bring all duplexes within the coverage of the ordinance, except those that are also exempt under a separate provision, such as new construction. Rent ceilings must be established for units that lose exemption. Thus, this proposal would set the rent ceilings at the amount of rent in effect on March 1, 2020, for tenants who occupied the unit continuously on or before March 1, 2020, through the date this amendment becomes effective. For tenancies that begin after March 1, 2020, the rent ceiling would be the lawfully established initial rent under the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et. seq.).



**Proposed Language:**

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:

...  
~~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.~~

Section 13.76.080

RENT REGISTRATION

A. The board shall require all landlords subject to the provisions of this chapter to file with the board by September 1, 1980 a rent registration statement for each rental unit covered by this chapter. An owner who has resided in a single family dwelling for at least three hundred sixty five consecutive calendar days need not file a rent registration statement under the provisions of this chapter if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.

...  
I. Landlords of formerly exempt units shall register within sixty days of coming under coverage of this chapter. Units with tenancies established on or before March 1, 2020, that were formerly exempt as owner-occupied duplexes (under repealed subsection 13.76.050.F) shall register the rent in effect on March 1, 2020, and the initial rent ceiling shall be established on the basis of that monthly rent, subject to applicable annual general adjustments. Units with current tenancies established after March 1, 2020, that were formerly exempt as owner-occupied duplexes (under repealed subsection 13.76.050.F) shall register the monthly rent in effect on the first day of the tenancy and the initial rent ceiling shall be established on the basis of that initial rent set pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50, et. seq.). The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

**3. COVID19 Delayed Payments Are Not Good Cause for Eviction**

**Background and Need for Rent Stabilization Board Action:**

The Berkeley City Council’s COVID-19 Emergency Response Ordinance (Berkeley Municipal

Code Chapter 13.110) provides that where a tenant has a Covered Reason for Delayed Payment, those delayed payments shall not constitute grounds for eviction, even after the expiration of the local State of Emergency. Alameda County has enacted a similar protection that applies countywide. This proposal would amend the Rent Stabilization Ordinance to ensure that there is no conflict with these or any other future pieces of emergency legislation by limiting the substantive basis for eviction for nonpayment of rent so that it does not apply to rent payments that come due during a state or local state of emergency when triggered by applicable federal, state, or local emergency legislation.

**Proposed Language:**

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. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in Berkeley shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency.

**4. Eliminating the Accessory Dwelling Unit (ADU) Exemption**

**Background and Need for Rent Stabilization Action:**

The committee proposes to eliminate the ADU exemption entirely.<sup>1</sup>

Rent ceilings must be established for units that lose exemption. Thus, this proposal would set the rent ceilings at the amount of rent in effect on March 1, 2020 for tenants who occupied the unit continuously from on or before March 1, 2020 through the date this amendment becomes effective. For tenancies that begin after March 1, 2020, the rent ceiling would be the lawfully

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<sup>1</sup> Starting in January 2020, owners may create ADUs in multi-family properties. If voters do not eliminate the ADU exemption as proposed by the committee, they will need to amend the exemption as currently written in the Rent Ordinance. Otherwise, there would likely be unintended exemptions created, since rental units in multi-family properties would become exempt after an owner occupies a unit on the property as their principal residence. As initially drafted the existing exemption was only meant to apply narrowly to situations in which only a Single Family Dwelling shares a property with a single ADU. If nothing else, this language must be amended to ensure that rental units are not exempted that were never meant to be.

established initial rent under the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et. seq.).

**Proposed Language:**

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:

...

~~N. A rental unit in a residential property containing a lawfully established and fully permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence. This subsection (13.76.050N) shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling Units"), and shall only apply to tenancies created after November 7, 2018.~~

Section 13.76.080

RENT REGISTRATION

A. The board shall require all landlords subject to the provisions of this chapter to file with the board by September 1, 1980 a rent registration statement for each rental unit covered by this chapter. An owner who has resided in a single family dwelling for at least three hundred sixty five consecutive calendar days need not file a rent registration statement under the provisions of this chapter if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.

...

I. Landlords of formerly exempt units shall register within sixty days of coming under coverage of this chapter. Units with tenancies established on or before March 1, 2020, that were formerly exempt as Accessory Dwelling Units where the landlord also occupies a unit in the same property as his/her principal residence (under repealed subsection 13.76.050.N) shall register the monthly rent in effect on March 1, 2020, and the initial rent ceiling shall be established on the basis of that rent, subject to applicable annual general adjustments. Units with current tenancies established after March 1, 2020, that were formerly exempt as owner-occupied duplexes (under repealed subsection 13.76.050.N) shall register the monthly rent in effect on the first day of the tenancy and the initial rent ceiling shall be established on the basis of that initial rent set pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et. seq.). The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

**CONCLUSION**

The IRA/AGA/Registration Committee has unanimously proposed that the Board adopt these proposed amendments at its May 8, 2020 meeting. After the Board discusses them and decides what it wishes to propose, the City Council will have to vote to place these matters on the ballot for the November general election. Typically, proposed Rent Ordinance amendments have also been brought to the 4 x 4 Committee, but that Committee has not been deemed essential and consequently is not convening at this time as a result of the local state of emergency related to the COVID-19 pandemic.

Time is of the essence as Council will have to place these matters on an agenda soon in order to meet any ballot measure deadlines. Staff awaits the Board's instruction on how it wishes to proceed.