



4x4 Committee on Housing
City Council and Rent Board

4 X 4 JOINT COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Monday, April 18, 2022 – 3:00 p.m.

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE.

Pursuant to Government Code Section 54953(e)(3), City Council Resolution 70,030-N.S., and Rent Board Resolution 21-29, this meeting of the City Council and Rent Stabilization Board's **4 x 4 Joint Committee on Housing** (Committee) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Resolutions and the findings contained therein that the spread of COVID-19 continues to be a threat to the public health and that holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies. Therefore, **there will not be a physical meeting location available.**

To access this meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/81166286812?pwd=SmM3Uk94L2dKTHA0T21lVWFbQTVPUT09>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "Rename" to rename yourself to be anonymous. To request to speak, use the "Raise hand" icon by rolling over the bottom of the screen.

To join by phone: Dial 1-669-900-6833 and enter Webinar ID: 811 6628 6812 and Passcode: 458408. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Committee Chair.

To submit an e-mail comment to be read aloud during Public Comment, email btran@cityofberkeley.info with the Subject line in this format: "PUBLIC COMMENT ITEM FOR 4 X 4 COMMITTEE". Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 1:00 p.m. on the day of the Committee meeting in order to be included.**

Please be mindful that this will be a public meeting and all rules of procedure and decorum will apply for meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with Government Code Section 54953 and all current state and local requirements allowing public participation in meetings of legislative bodies. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to DéSeana Williams, Executive Director of the Rent Board, at (510) 981-7368 (981-RENT). The Committee may take action related to any subject listed on the Agenda.



4x4 Committee on Housing
City Council and Rent Board

AGENDA

4 X 4 JOINT COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Monday, April 18, 2022 – 3:00 p.m.

1. Roll call
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*
3. Approval of the agenda
4. Public comment on non-agenda matters
5. Approval of February 23, 2022 Committee meeting minutes
6. Discussion and possible action on the proposed revisions to the Demolition Ordinance (Planning Department, see attachment)
7. Discussion and possible action on a memorandum regarding the potential for adding more rent controlled units under CA Civil Code Section 1954.52(b) (Vice-Chair Alpert, see attachment)
8. Discussion and possible policy recommendation to Council regarding Relocation Ordinance and suggested additions from previous discussion regarding Tenant Habitability Plan Ordinance (requested by Mayor Arreguín and Chair Simon-Weisberg)
9. Discussion and possible action to recommend various amendments to the Rent Stabilization and Eviction for Good Cause Ordinance to be placed on the November 2022 general election ballot (Rent Board staff, see attachment)
10. Adjournment

COMMITTEE MEMBERS:

Mayor Jesse Arreguín

City Councilmember Kate Harrison

City Councilmember Rigel Robinson

City Councilmember Terry Taplin

Rent Board Chairperson Leah Simon-Weisberg

Rent Board Vice-Chairperson Soli Alpert

Rent Board Commissioner Xavier Johnson

Rent Board Commissioner Andy Kelley



4x4 Committee on Housing
City Council and Rent Board

4 X 4 JOINT COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Wednesday, February 23, 2022 – 3:00 p.m.

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4x4 Committee on Housing
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4 X 4 JOINT COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Wednesday, February 23, 2022 – 3:00 p.m.

Minutes To Be Approved

- Roll call: Chair Simon-Weisberg called the meeting to order at 3:03 p.m.
Present: RBC Alpert, Mayor Arreguín, CM Harrison, RBC Johnson, RBC Kelley, CM Robinson, RB Chair Simon-Weisberg.
Absent: CM Taplin.
Staff present: Matt Brown, Lief Bursell, Stefan Elgstrand, Margot Ernst, Jen Fabish, Jordan Klein, Basil Lecky, Matthew Siegel, Mike Uberti, DéSeana Williams, Dr. Lisa Warhuus.
- Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*

The Land Acknowledgement statement was read aloud.
- Approval of the agenda: M/S/C (Robinson/Alpert) Motion to approve the agenda as written. Roll call vote. YES: Alpert, Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg; No: None; ABSTAIN: None; ABSENT: Taplin. Carried: 7-0-0-1.
- Public comment on non-agenda matters: There were no speakers.
- Approval of January 11, 2022 Committee meeting minutes: M/S/C (Robinson/Harrison) Motion to approve the minutes as written. Roll call vote. YES: Alpert, Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg; No: None; ABSTAIN: None; ABSENT: Taplin. Carried: 7-0-0-1.
- Update on Measure MM registry expansion (Rent Board Staff): Lief Bursell of the Rent Board presented and took questions from the committee. Committee members suggested additional data points for future updates.

7. Discussion regarding potential for adding more rent controlled units under CA Civil Code Section 1954.52(b) (requested by Vice-Chair Alpert): RBC Alpert introduced the item, which the committee discussed. The committee requested that RBC Alpert draft a memorandum for consideration at the March meeting. Mayor Arreguín offered to send any questions to the City Attorney's Office.

There were no public speakers.

8. Discussion regarding welfare exemption policy (requested by Chair Simon-Weisberg, see attachment): RB Chair Simon-Weisberg introduced the item. The committee had a discussion with input from Mike Uberti, Margot Ernst, and Dr. Lisa Warhuus of the Health, Housing, and Community Services (HHCS) Department.

There were no public speakers.

9. Discussion and possible action to consider remedies for situations where landlords unilaterally change keyed entries to keyless entries and tenants are not able to use the new method of access (requested by Chair Simon-Weisberg): The committee discussed potential tenant rights implications. Jordan Klein of the Planning Department will investigate whether any state or local codes would apply in these situations.

There were no public speakers.

10. Quick updates on previously discussed items
 - a. Update regarding Relocation Ordinance and suggested additions from previous discussion regarding Tenant Habitability Plan Ordinance: Mayor Arreguín shared that Planning and HHCS have met about Relocation Ordinance administration since the last committee meeting. Because formal work on this item will be triggered by referral from Council to the City Manager's Office, the committee agreed to calendar a discussion for next month's meeting to make a formal policy recommendation to Council.

Mayor Arreguín also proposed discussing the pandemic "eviction cliff" at an upcoming meeting, and mentioned ideas for funding rent relief efforts.

There were no public speakers.

11. Adjournment: M/S/C (Kelley/Harrison) Motion to adjourn. Roll call vote. YES: Alpert, Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg; No: None; ABSTAIN: None; ABSENT: Taplin. Carried: 7-0-0-1.

The meeting adjourned at 5:01 p.m.

COMMITTEE MEMBERS:

Mayor Jesse Arreguín
City Councilmember Kate Harrison
City Councilmember Rigel Robinson
City Councilmember Terry Taplin

Rent Board Chairperson Leah Simon-Weisberg
Rent Board Vice-Chairperson Soli Alpert
Rent Board Commissioner Xavier Johnson
Rent Board Commissioner Andy Kelley



Planning & Development Department
Land Use Planning Division

DATE: April 18, 2022

TO: Members of the City Council and Rent Stabilization Board 4x4 Joint Task Force Committee on Housing

FROM: Jordan Klein, Director, Planning & Development Department
Steven Buckley, Land Use Planning Manager

SUBJECT: Berkeley Municipal Code Chapter 23.326 Demolition and Dwelling Unit Control

This memorandum provides a summary of provisions of the existing City of Berkeley Municipal Code (BMC) Chapter 23.326 Demolition and Dwelling Unit Control, commonly known as the Demolition Ordinance, relating to the demolition of dwelling units,¹ and potential revisions in response to Council referrals and prior discussion at the 4X4 Committee. It also discusses the effect of recent legislation (Senate Bill (SB) 330), which intersects with Density Bonus law and Ellis Act provisions that could affect the City's approach to demolition controls where replacement units are to be provided.

1. Summary of Existing Demolition Ordinance Provisions

The Demolition Ordinance (BMC Chapter 23.326, previously codified as Chapter 23C.08²) requires a use permit to be issued prior to the demolition of a dwelling unit. (BMC § 23C.08.010.B.) Under section 23C.08.020, the Zoning Adjustments Board (ZAB) may issue a use permit for the demolition of a dwelling unit for specific

¹ The Demolition Ordinance also includes provisions regulating the demolition of non-residential structures and residential hotels. Those provisions are outside the scope of this report.

² Code references in this report are to the BMC as it was codified in 2021. Recent reorganization of the code has renumbered code sections, but has not resulted in any changes to the text. A copy of the prior code is attached to this report. The renumbered code sections are found at BMC Section 23.326 and are available online: [Ch. 23.326 Demolition and Dwelling Unit Control | Berkeley Municipal Code](#). The proposed ordinance modifications will be updated to reflect the current Zoning Ordinance numbering and structure when this item is brought to the Planning Commission.

enumerated reasons, including in instances where a building is “hazardous or unusable and is infeasible to repair” or “demolition is necessary to permit construction . . . of at least the same number of dwelling units.” (BMC § 23C.08.20.A.)³ Before permitting the demolition of a dwelling unit, ZAB must also find that “the elimination of the dwelling units would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.” (BMC § 23C.08.010.B.) In addition, section 23C.08.020.A requires applicants to either provide below market rent replacement units to “qualifying household[s]” or pay an in lieu fee, but the fee has never been set. (BMC § 23C.08.020.A.)

Chapter 23C.08 prohibits demolition of dwelling units where a building has been removed from the rental market under the Ellis Act during the preceding five years or “there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.” (BMC § 23C.08.020.B.) Applicants are generally required to provide relocation benefits, including moving expenses and differential rent payments. (BMC § 23C.08.020.C.1.)⁴ In addition, displaced tenants are provided a right of first refusal to rent new units. (BMC § 23C.08.020.C.3.)

2. Impact of SB 330 on Local Demolition Controls

SB 330 amends California Government Code section 66300 to impose specific requirements on the demolition of dwelling units and expands local jurisdictions’ ability to regulate certain aspects of demolition, while limiting other aspects of local discretion. The statute includes specific language that expands the City’s ability to legally require replacement units and to provide for comprehensive relocation benefits. These amendments do not directly modify the provisions of the Ellis Act, which also restricts a local agency’s ability to regulate the removal of rental units from the marketplace.

First, SB 330 imposes a requirement that any housing development project that requires the demolition of dwelling units must “create at least as many residential dwelling units as will be demolished.” (Gov. Code, § 66300(d)(1).) This provision allows (and requires) the City to condition demolition on the provision of replacement units, when units are demolished for the purpose of constructing a new residential development.

Second, SB 330 requires that any “protected units” (including rent control or units occupied by low or very low income households) must be replaced if a new housing

³ The Demolition Ordinance also allows demolition of dwelling units where (a) “[t]he building containing the units will be moved to a different location within the City of Berkeley with no net loss of units and no change in the affordability levels of the units”; and (b) “[t]he demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers and affordable housing developments that serve the greater good of the entire community.” (BMC § 23C.08.20.A.) The occurrence of those conditions is relatively rare and is not addressed in this report.

⁴ “The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City.” (BMC § 23C.08.20.C.1.c.)

development project is being built.⁵ (Gov. Code, § 66300(d)(2)(A).) Where a unit is occupied by a lower-income household, the requirements for providing replacement units are the same as those in the State Density Bonus Law. (See Gov. Code, § 66300(d)(2)(E)(iii).) Generally speaking, the State Density Bonus Law requires that a proposed housing development must “provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy.” (Gov. Code, § 65915(c)(3)(B)(i).) This general rule is subject to somewhat complicated provisions for setting replacement unit rent or housing costs where units are vacant and/or the income of previous residents is unknown. (Gov. Code, § 65915(c)(3)(B)(i)–(ii).) However, the basic requirement ensures that units occupied by lower-income households must be replaced with equivalently sized income-restricted, below-market rate (BMR) units.

With respect to the replacement of any rent controlled unit that “is or was occupied by persons or families above lower income,” the City can elect whether to (1) “[r]equire that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families,” or to (2) “[r]equire that the units be replaced in compliance with the jurisdiction’s rent or price control ordinance.” (Gov. Code, § 66300(d)(2)(A)(iii) (emphasis added).)

Under either of the above provisions, any BMR units provided as replacement units must also be counted as BMR units for purposes of State Density Bonus Law and the City’s local affordable housing requirements. (Gov. Code, § 66300(d)(2)(A)(ii).)

Subjecting replacement units for moderate and higher-income households to rent control instead of requiring such units to be income-restricted has several advantages. First, it would allow moderate- and higher-income tenants who would not qualify for BMR units to move into replacement units. Second, any increase in rents would be limited under the Rent Stabilization Ordinance to a rate that has in recent years been less than the increase in Area Mean Income (“AMI”) that is used to set BMR rents under the City’s BMR Program Guidelines and certain state and federal programs.

Note, however, that applying rent control to newly constructed replacements units is currently not permitted under the Berkeley Municipal Code and would require a ballot measure to amend the voter-approved Rent Stabilization Ordinance. Additionally, while SB 330 allows a local jurisdiction to subject replacement units to rent control, it does not address the vacancy decontrol provisions of the Costa-Hawkins Act, which would likely restrict the ability of the Rent Board to set initial rents for replacement units.⁶

⁵ Protected units also include units that were withdrawn from the rental market under the Ellis Act within the past 10 years. (Gov. Code, § 66300(d)(2)(E)(ii).)

⁶ The Costa Hawkins-Act includes an exception that allows the imposition of rent control where the property owner has agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3. . . of the Government Code [section 65915 *et seq.*]. (Civ. Code, § 1954.52(b).)

Requiring that all replacement units charge below-market rate rents has the advantage of creating deeper and longer-term affordability (55 years under state law, and permanently under City ordinances). While rent control may be the most effective and established means of limiting rents for existing tenants, it is unlikely that the City has authority to establish initial rents for replacement units, and subsequent tenants will similarly be subject to vacancy decontrol unless the Costa-Hawkins Act is repealed.

It may also be possible to address the impact of AMI-related rent increases on existing BMR tenants through modifications to the City's BMR housing program, assuming state and federal law, regulations, and program guidelines allow rent increases to be limited to the CPI or a similar metric. HUD regulations expressly preempt any local rent regulation of certain federally subsidized and insured projects. (24 C.F.R. §§ 246.20–246.21.) In contrast, the Housing Choice Voucher program (Section 8) explicitly preserves the ability to regulate rental charges through rent control or “other limits under local, state, or federal law.” (24 C.F.R. §§ 982.509, 983.305) These provisions appear to allow the City to contractually limit increase in rents for units receiving Section 8 funding through its BMR program. Ultimately, the ability to limit rent increases through a BMR regulatory agreement must be evaluated on a case-by-case basis, given the diversity of funding sources available for affordable housing development in the City.⁷

Third, SB 330 creates statewide tenant protections. Existing residents will be allowed to occupy their units until six months before the start of construction activities. (Gov. Code, § 66300(d)(2)(C).) In addition, residents of protected units must be provided relocation benefits under Government Code section 7260 *et seq.* (generally, actual and reasonable moving expenses) and a right of first refusal for lower income households to a comparable unit available in the new housing development affordable to the household at an affordable rent or housing cost. (Gov. Code, § 66300(d)(2)(D).)

Fourth, SB 330 includes a savings clause that expressly preserves the validity of “any objective provision of a locally adopted ordinance that places restrictions on the demolition of residential dwelling units or the subdivision of residential rental units that are [1] more protective of lower income households, [2] requires the provision of a greater number of units affordable to lower income households, or [3] that requires greater relocation assistance to displaced households.” (Gov. Code, § 66300(d)(3).)

3. Draft Amendments to Demolition Ordinance

The 4x4 Committee met and discussed a draft revision to the demolition ordinance in November of 2020 (see Attachment 3). That version of the revisions was a streamlined amendment that referred to other State law and local ordinances and regulations, relying on those generally-applicable provisions for the more detailed requirements related to tenant protections (such as notice, relocation assistance, and right to return), rent control and below-market-rent, and replacement unit standards. The Planning

⁷ For example, the state Housing and Community Development Department website currently lists 29 different “active” affordable housing programs. (See <https://www.hcd.ca.gov/grants-funding/active-funding/index.shtml>.)

Commission also took up the topic in November of 2020, as did the Rent Stabilization Board in December of 2020.

Feedback included a desire to make the local ordinance more robust than State law wherever possible, including to enhance tenant protections and relocation assistance, to explore means of applying rent control as well as below-market-rent provisions to replacement units, and to ensure that the provisions based in SB330 carry forward if that law expires.

A revised ordinance amendment has been prepared that responds to the previous feedback and addresses some aspects of State law described above (see Attachment 2). Options are provided where policy decisions are needed.

Alternative A requires replacement units as BMRs. Alternative B allows the applicant to request continuation of rent control on units occupied by households who are not lower income, including at the existing rent level, subject to rent control regulations, and that tenants who would not otherwise qualify for a BMR unit would have the right of first refusal.

BMC Section 13.77.040.D also incorporates and expands upon the Ellis Act provisions related to removal of rental units from the market. It requires that, where units are demolished and replaced, the newly constructed accommodations shall be subject to rent control notwithstanding any provision of law which otherwise exempts newly constructed units.

Also subject to discussion is the method of calculating the rent differential for displaced tenants. While several factors are provided, no fixed amount or explicit formula is provided in this draft. BMC Section 13.84 offers some guidance. That section addresses situations where code enforcement requires temporary displacement. The draft demolition ordinance makes that provision applicable to tenants that are involuntarily displaced due to demolition.

Finally, the provisions of SB330 are incorporated by reference, and those provisions are intended to be carried forward even if the law sunsets. It may also be prudent to include reference to possible future amendments to the pertinent Government Code to the extent they are more protective or extend the provisions of the law.

Note, in no case is a mitigation fee required. This is because State law now provides, in several scenarios, that replacement units are required with no option to instead pay a fee. The City needs to maintain consistency with state law and avoid duplication of mitigation efforts, and prior efforts to establish a fee have not been successful.

The State law also has several provisions that address projects that include demolition of existing units, construction of replacement units, qualification for a density bonus, and satisfaction of local inclusionary requirements. The law generally requires that local agencies recognize proposed BMR units as satisfying all of these requirements. It may

be possible that a local ordinance could require additional inclusionary units for projects that demolish existing units, but any such requirement would have to be subjected to careful legal and economic review to ensure that it does not reduce the development capacity of the parcel or otherwise render infeasible the construction of new housing. As noted above, the Costa Hawkins Act also limits how the City can regulate any newly constructed units that might be voluntarily brought under rent-control; i.e., they would likely be subject to vacancy decontrol, so the long-term affordability of those units would be limited.

Next Steps

Staff requests that the committee discuss and provide feedback on the issues identified in this report and proposed draft ordinance. Subsequently, staff can advance the draft ordinance to the Planning Commission, Housing Advisory Committee, and others for input.

ATTACHMENTS:

1. Excerpts of State Law
Govt. Code 66300 (SB-330)
Govt. Code 65915 (Density Bonus)
Govt. Code 7060 (Ellis Act)
2. Revised Draft Demolition Ordinance (2022)
3. Previous 4x4 Committee Meeting Packet (November 2020)
4. Existing Demolition Ordinance

ATTACHMENT 1 – STATE LAW EXCERPTS

Govt. Code section 66300 (SB-330, Housing Crisis Act of 2019)

.....

(d) Notwithstanding any other provision of this section, both of the following shall apply:

(1) An affected city or an affected county shall not approve a housing development project that will require the demolition of residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished.

(2) An affected city or an affected county shall not approve a housing development project that will require the demolition of occupied or vacant protected units, unless all of the following apply:

(A) (i) The project will replace all existing or demolished protected units.

(ii) Any protected units replaced pursuant to this subparagraph shall be considered in determining whether the housing development project satisfies the requirements of Section 65915 or a locally adopted requirement that requires, as a condition of the development of residential rental units, that the project provide a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households, as specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code.

(iii) Notwithstanding clause (i), in the case of a protected unit that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power, and that is or was occupied by persons or families above lower income, the affected city or affected county may do either of the following:

(I) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years.

(II) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit is replaced. Unless otherwise required by the affected city or affected county's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(B) The housing development project will include at least as many residential dwelling units as the greatest number of residential dwelling units that existed on the project site within the last five years.

(C) Any existing residents will be allowed to occupy their units until six months before the start of construction activities with proper notice, subject to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1.

(D) The developer agrees to provide both of the following to the occupants of any protected units:

(i) Relocation benefits to the occupants of those affordable residential rental units, subject to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1.

(ii) A right of first refusal for a comparable unit available in the new housing development affordable to the household at an affordable rent, as defined in Section 50053 of the Health and Safety Code, or an affordable housing cost, as defined in 50052.5.

(E) For purposes of this paragraph:

(i) "Equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(ii) "Protected units" means any of the following:

(I) Residential dwelling units that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income within the past five years.

(II) Residential dwelling units that are or were subject to any form of rent or price control through a public entity's valid exercise of its police power within the past five years.

(III) Residential dwelling units that are or were occupied by lower or very low income households within the past five years.

(IV) Residential dwelling units that were withdrawn from rent or lease in accordance with Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 within the past 10 years.

(iii) "Replace" shall have the same meaning as provided in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915.

(3) This subdivision shall not supersede any objective provision of a locally adopted ordinance that places restrictions on the demolition of residential dwelling units or the subdivision of residential rental units that are more protective of lower income households, requires the provision of a greater number of units affordable to lower income households, or that requires greater relocation assistance to displaced households.

(4) This subdivision shall only apply to a housing development project that submits a complete application pursuant to Section 65943 on or after January 1, 2020.

Govt. Code section 65915 (Density Bonus Law)

(c) (1) (A) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

(B) (i) Except as otherwise provided in clause (ii), rents for the lower income density bonus units shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(ii) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), rents for all units in the development, including both base density and density bonus units, shall be as follows:

(I) The rent for at least 20 percent of the units in the development shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(II) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next

whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if the applicant's application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

Govt. Code section 7060 et seq (Ellis Act)

(a) No public entity, as defined in Section 811.2, shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease, except for guestrooms or efficiency units within a residential hotel, as defined in Section 50519 of the Health and Safety Code, if the residential hotel meets all of the following conditions:

(1) The residential hotel is located in a city and county, or in a city with a population of over 1,000,000.

(2) The residential hotel has a permit of occupancy issued prior to January 1, 1990.

(3) The residential hotel did not send a notice of intent to withdraw the accommodations from rent or lease pursuant to subdivision (a) of Section 7060.4 that was delivered to the public entity prior to January 1, 2004.

(b) For the purposes of this chapter, the following definitions apply:

(1) "Accommodations" means either of the following:

(A) The residential rental units in any detached physical structure containing four or more residential rental units.

(B) With respect to a detached physical structure containing three or fewer residential rental units, the residential rental units in that structure and in any other structure located on the same parcel of land, including any detached physical structure specified in subparagraph (A).

(2) "Disabled" means a person with a disability, as defined in Section 12955.3 of the Government Code.

7060.1

Notwithstanding Section 7060, nothing in this chapter does any of the following:

(a) Prevents a public entity from enforcing any contract or agreement by which an owner of residential real property has agreed to offer the accommodations for rent or lease in consideration for a direct financial contribution or, with respect to written contracts or agreements entered into prior to July 1, 1986, for any consideration. Any contract or agreement specified in this subdivision is not enforceable against a person who acquires title to the accommodations as a bona fide purchaser for value (or successors in interest thereof), unless:

(1) the purchaser at the time of acquiring title to the accommodations has actual knowledge of the contract or agreement, or

(2) a written memorandum of the contract or agreement which specifically describes the terms thereof and the affected real property, and which identifies the owner of the property, has been recorded with the county recorder prior to July 1, 1986, or not less than 30 days prior to transfer of title to the property to the purchaser. The county recorder shall index such a written memorandum in the grantor-grantee index.

As used in this subdivision, “direct financial contribution” includes contributions specified in Section 65916 and any form of interest rate subsidy or tax abatement provided to facilitate the acquisition or development of real property.

(b) Diminishes or enhances, except as specifically provided in Section 7060.2, any power which currently exists or which may hereafter exist in any public entity to grant or deny any entitlement to the use of real property, including, but not limited to, planning, zoning, and subdivision map approvals.

(c) Diminishes or enhances any power in any public entity to mitigate any adverse impact on persons displaced by reason of the withdrawal from rent or lease of any accommodations.

(d) Supersedes any provision of Chapter 16 (commencing with Section 7260) of this division, Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of this code, Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, Part 2 (commencing with Section 43) of Division 1 of the Civil Code, Title 5 (commencing with Section 1925) of Part 4 of Division 3 of the Civil Code, Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, or Division 24 (commencing with Section 33000) of the Health and Safety Code.

(e) Relieves any party to a lease or rental agreement of the duty to perform any obligation under that lease or rental agreement.

7060.2

If a public entity, by valid exercise of its police power, has in effect any control or system of control on the price at which accommodations may be offered for rent or lease, that entity may, notwithstanding any provision of this chapter, provide by statute or ordinance, or by regulation as specified in Section 7060.5, that any accommodations which have been offered for rent or lease and which were subject to that control or system of control at the time the accommodations were withdrawn from rent or lease, shall be subject to the following:

(a) (1) For all tenancies commenced during the time periods described in paragraph (2), the accommodations shall be offered and rented or leased at the lawful rent in effect at the time any notice of intent to withdraw the accommodations is filed with the public entity, plus annual adjustments available under the system of control.

(2) The provisions of paragraph (1) shall apply to all tenancies commenced during either of the following time periods:

(A) The five-year period after any notice of intent to withdraw the accommodations is filed with the public entity, whether or not the notice of intent is rescinded or the withdrawal of the accommodations is completed pursuant to the notice of intent.

(B) The five-year period after the accommodations are withdrawn.

(3) This subdivision shall prevail over any conflicting provision of law authorizing the landlord to establish the rental rate upon the initial hiring of the accommodations.

(b) If the accommodations are offered again for rent or lease for residential purposes within two years of the date the accommodations were withdrawn from rent or lease, the following provisions shall govern:

(1) The owner of the accommodations shall be liable to any tenant or lessee who was displaced from the property by that action for actual and exemplary damages. Any action by a tenant or lessee pursuant to this paragraph shall be brought within three years of the withdrawal of the accommodations from rent or lease. However, nothing in this paragraph precludes a tenant from pursuing any alternative remedy available under the law.

(2) A public entity which has acted pursuant to this section may institute a civil proceeding against any owner who has again offered accommodations for rent or lease subject to this subdivision, for exemplary damages for displacement of tenants or lessees. Any action by a public entity pursuant to this paragraph shall be brought within three years of the withdrawal of the accommodations from rent or lease.

(3) Any owner who offers accommodations again for rent or lease shall first offer the unit for rent or lease to the tenant or lessee displaced from that unit by the withdrawal pursuant to this chapter, if the tenant has advised the owner in writing within 30 days of the displacement of the tenant's desire to consider an offer to renew the tenancy and has furnished the owner with an address to which that offer is to be directed. That tenant, lessee, or former tenant or lessee may advise the owner at any time during the eligibility of a change of address to which an offer is to be directed.

If the owner again offers the accommodations for rent or lease pursuant to this subdivision, and the tenant or lessee has advised the owner pursuant to this subdivision of a desire to consider an offer to renew the tenancy, then the owner shall offer to reinstitute a rental agreement or lease on terms permitted by law to that displaced tenant or lessee.

This offer shall be deposited in the United States mail, by registered or certified mail with postage prepaid, addressed to the displaced tenant or lessee at the address furnished to the owner as provided in this subdivision, and shall describe the terms of the offer. The displaced tenant or lessee shall have 30 days from the deposit of the offer in the mail to accept the offer by personal delivery of that acceptance or by deposit of the acceptance in the United States mail by registered or certified mail with postage prepaid.

(c) A public entity which has acted pursuant to this section, may require by statute or ordinance, or by regulation as specified in Section 7060.5, that an owner who

offers accommodations again for rent or lease within a period not exceeding 10 years from the date on which they are withdrawn, and which are subject to this subdivision, shall first offer the unit to the tenant or lessee displaced from that unit by the withdrawal, if that tenant or lessee requests the offer in writing within 30 days after the owner has notified the public entity of an intention to offer the accommodations again for residential rent or lease pursuant to a requirement adopted by the public entity under subdivision (c) of Section 7060.4. The owner of the accommodations shall be liable to any tenant or lessee who was displaced by that action for failure to comply with this paragraph, for punitive damages in an amount which does not exceed the contract rent for six months, and the payment of which shall not be construed to extinguish the owner's obligation to comply with this subdivision.

(d) If the accommodations are demolished, and new accommodations are constructed on the same property, and offered for rent or lease within five years of the date the accommodations were withdrawn from rent or lease, the newly constructed accommodations shall be subject to any system of controls on the price at which they would be offered on the basis of a fair and reasonable return on the newly constructed accommodations, notwithstanding any exemption from the system of controls for newly constructed accommodations.

(e) The amendments to this section enacted by the act adding this subdivision shall apply to all new tenancies created after December 31, 2002. If a new tenancy was lawfully created prior to January 1, 2003, after a lawful withdrawal of the unit under this chapter, the amendments to this section enacted by the act adding this subdivision may not apply to new tenancies created after that date.

7060.3

If a public entity determines to apply constraints pursuant to Section 7060.2 to a successor in interest of an owner who has withdrawn accommodations from rent or lease, the public entity shall record a notice with the county recorder which shall specifically describe the real property where the accommodations are located, the dates applicable to the constraints and the name of the owner of record of the real property. The notice shall be indexed in the grantor-grantee index.

A person who acquires title to the real property subsequent to the date upon which the accommodations thereon have been withdrawn from rent or lease, as a bona fide purchaser for value, shall not be a successor in interest for the purposes of this chapter if the notice prescribed by this section has not been recorded with the county recorder at least one day before the transfer of title.

7060.4

(a) Any public entity which, by a valid exercise of its police power, has in effect any control or system of control on the price at which accommodations are offered for rent or lease, may require by statute or ordinance, or by regulation as specified in

Section 7060.5, that the owner notify the entity of an intention to withdraw those accommodations from rent or lease and may require that the notice contain statements, under penalty of perjury, providing information on the number of accommodations, the address or location of those accommodations, the name or names of the tenants or lessees of the accommodations, and the rent applicable to each residential rental unit. Information respecting the name or names of the tenants, the rent applicable to any residential rental unit, or the total number of accommodations, is confidential information and for purposes of this chapter shall be treated as confidential information by any public entity for purposes of the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). A public entity shall, to the extent required by the preceding sentence, be considered an "agency," as defined by subdivision (d) of Section 1798.3 of the Civil Code.

(b) The statute, ordinance, or regulation of the public entity may require that the owner record with the county recorder a memorandum summarizing the provisions, other than the confidential provisions, of the notice in a form which shall be prescribed by the statute, ordinance, or regulation, and require a certification with that notice that actions have been initiated as required by law to terminate any existing tenancies. In that situation, the date on which the accommodations are withdrawn from rent or lease for purposes of this chapter is 120 days from the delivery in person or by first-class mail of that notice to the public entity. However, if the tenant or lessee is at least 62 years of age or disabled, and has lived in their accommodations or unit within the accommodations for at least one year prior to the date of delivery to the public entity of the notice of intent to withdraw pursuant to subdivision (a), then the date of withdrawal of the accommodations of that tenant or lessee shall be extended to one year after the date of delivery of that notice to the public entity, provided that the tenant or lessee gives written notice of their entitlement to an extension to the owner within 60 days of the date of delivery to the public entity of the notice of intent to withdraw. In that situation, the following provisions shall apply:

(1) The tenancy shall be continued on the same terms and conditions as existed on the date of delivery to the public entity of the notice of intent to withdraw, subject to any adjustments otherwise available under the system of control.

(2) No party shall be relieved of the duty to perform any obligation under the lease or rental agreement.

(3) The owner may elect to extend the tenancy on any other unit within the accommodations up to one year after date of delivery to the public entity of the notice of intent to withdraw, subject to paragraphs (1) and (2).

(4) Within 30 days of the notification by the tenant or lessee to the owner of their entitlement to an extension, the owner shall give written notice to the public entity of the claim that the tenant or lessee is entitled to stay in their accommodations or unit within the accommodations for one year after date of delivery to the public entity of the notice of intent to withdraw.

(5) Within 90 days of date of delivery to the public entity of the notice of intent to withdraw, the owner shall give written notice of the owner's election to

extend a tenancy under paragraph (3) and the revised date of withdrawal to the public entity and any tenant or lessee whose tenancy is extended.

(6) The date of withdrawal for the accommodations as a whole, for purposes of calculating the time periods described in Section 7060.2, shall be the latest termination date among all tenants within the accommodations, as stated in the notices required by paragraphs (4) and (5). An owner's further voluntary extension of a tenancy beyond the date stated in the notices required by paragraphs (4) and (5) shall not extend the date of withdrawal.

(c) The statute, ordinance, or regulation of the public entity adopted pursuant to subdivision (a) may also require the owner to notify any tenant or lessee displaced pursuant to this chapter of the following:

(1) That the public entity has been notified pursuant to subdivision (a).

(2) That the notice to the public entity specified the name and the amount of rent paid by the tenant or lessee as an occupant of the accommodations.

(3) The amount of rent the owner specified in the notice to the public entity.

(4) Notice to the tenant or lessee of their rights under paragraph (3) of subdivision (b) of Section 7060.2.

(5) Notice to the tenant or lessee of the following:

(A) If the tenant or lessee is at least 62 years of age or disabled, and has lived in their accommodations for at least one year prior to the date of delivery to the public entity of the notice of intent to withdraw, then tenancy shall be extended to one year after date of delivery to the public entity of the notice of intent to withdraw, provided that the tenant or lessee gives written notice of their entitlement to the owner within 60 days of date of delivery to the public entity of the notice of intent to withdraw.

(B) The extended tenancy shall be continued on the same terms and conditions as existed on date of delivery to the public entity of the notice of intent to withdraw, subject to any adjustments otherwise available under the system of control.

(C) No party shall be relieved of the duty to perform any obligation under the lease or rental agreement during the extended tenancy.

(d) The statute, ordinance, or regulation of the public entity adopted pursuant to subdivision (a) may also require the owner to notify the public entity in writing of an intention to again offer the accommodations for rent or lease.

7060.5

The actions authorized by Sections 7060.2 and 7060.4 may be taken by regulation adopted after public notice and hearing by a public body of a public entity, if the members of the body have been elected by the voters of the public entity. The regulation shall be subject to referendum in the manner prescribed by law for the ordinances of the legislative body of the public entity except that:

(a) The decision to repeal the regulation or to submit it to the voters shall be made by the public body which adopted the regulation.

(b) The regulation shall become effective upon adoption by the public body of the public entity and shall remain in effect until a majority of the voters voting on the issue vote against the regulation, notwithstanding Section 9235, 9237, or 9241 of the Elections Code or any other law.

7060.6

If an owner seeks to displace a tenant or lessee from accommodations withdrawn from rent or lease pursuant to this chapter by an unlawful detainer proceeding, the tenant or lessee may appear and answer or demur pursuant to Section 1170 of the Code of Civil Procedure and may assert by way of defense that the owner has not complied with the applicable provisions of this chapter, or statutes, ordinances, or regulations of public entities adopted to implement this chapter, as authorized by this chapter.

7060.7

It is the intent of the Legislature in enacting this chapter to supersede any holding or portion of any holding in *Nash v. City of Santa Monica*, 37 Cal.3d 97 to the extent that the holding, or portion of the holding, conflicts with this chapter, so as to permit landlords to go out of business. However, this act is not otherwise intended to do any of the following:

(a) Interfere with local governmental authority over land use, including regulation of the conversion of existing housing to condominiums or other subdivided interests or to other nonresidential use following its withdrawal from rent or lease under this chapter.

(b) Preempt local or municipal environmental or land use regulations, procedures, or controls that govern the demolition and redevelopment of residential property.

(c) Override procedural protections designed to prevent abuse of the right to evict tenants.

(d) Permit an owner to do any of the following:

(1) Withdraw from rent or lease less than all of the accommodations, as defined by paragraph (1) or (2) of subdivision (b) of Section 7060.

(2) Decline to make a written rental offer to any tenant or lessee who occupied a unit at the time when the owner gave the public entity notice of its intent to withdraw the accommodations, in the manner and within the timeframe specified in paragraph (3) of subdivision (b), or in subdivision (c), of Section 7060.2. But the requirements of this paragraph shall not apply to:

(A) A unit that was the principal place of residence of any owner or owner's family member at the time of withdrawal, provided that it

continues to be that person's or those persons' principal place of residence when accommodations are returned to the rental market as provided in this section.

(B) A unit that is the principal place of residence of an owner when the accommodations are returned to the rental market, if it is the owners' principal place of residence, at the time of return to the rental market, as provided in this section. If the owner vacates the unit within 10 years from the date of withdrawal, the owner shall, within 30 days, offer to rerent if required under this paragraph.

(e) Grant to any public entity any power which it does not possess independent of this chapter to control or establish a system of control on the price at which accommodations may be offered for rent or lease, or to diminish any such power which that public entity may possess, except as specifically provided in this chapter.

(f) Alter in any way either Section 65863.7 relating to the withdrawal of accommodations which comprise a mobilehome park from rent or lease or subdivision (f) of Section 798.56 of the Civil Code relating to a change of use of a mobilehome park.

1 **ATTACHMENT 2 – REVISED DRAFT DEMOLITION ORDINANCE**

2 **BMC Chapter 23C.08**
3 **Demolition and Dwelling Unit Controls**

4 **Sections:**

5 **23C.08.010 Demolition or Elimination of Residential Units**

6 **23C.08.020 Demolition of Accessory Buildings and Buildings Used for**
7 **Commercial, Manufacturing, Community, Institutional or Other Non-**
8 **Residential Uses**

9 **23C.08.030 Building Relocations**

10 **23C.08.040 Imminent Hazards**

11 **23C.08.010 Demolition or Elimination of Residential Units**

12 A. No residential unit may be eliminated or demolished except as authorized by the
13 provisions of the chapter and State law, including but not limited to Government Code
14 section 66300 *et seq.* For purposes of this Chapter, “residential unit” includes any
15 Dwelling Unit, bedroom or sleeping quarters in a Group Living Accommodation,
16 Live/Work Unit, or Residential Hotel Room.

17 **[Alternative A]**

18 B. A Use Permit for the demolition of one or more residential units in connection with a
19 housing development project shall be issued only if the project complies with the
20 requirements of Government Code sections 65915(c)(3) and 66300(d), as applicable,
21 and the Board makes the findings required under Section 23B.32.040.A. Any protected
22 units shall be replaced with units of equivalent size that comply with applicable
23 affordability requirements in Chapter 22.20, Chapter 23C.12, and Section 23E.20.080.

24 **[Alternative B]**

25 B. A Use Permit for the demolition of one or more residential units in connection with a
26 housing development project shall be issued only if the project complies with the
27 requirements of Government Code sections 65915(c)(3) and 66300(d), as applicable,
28 and the Board makes the findings required under Section 23B.32.040.A. Any protected
29 units shall be replaced with units of equivalent size that comply with applicable
30 affordability requirements in Chapter 22.20, Chapter 23C.12, and Section 23E.20.080;

31 provided, however, the applicant may request that any protected unit occupied at the
32 time the application is filed by a tenant who is not eligible to occupy an affordable unit
33 under Chapter 22.20, Chapter 23C.12, or Section 23E.20.080 be replaced with a unit
34 that complies with the requirements of the Rent Stabilization Ordinance, Chapter 13.76
35 *et seq.* The Board shall condition the approval on the requirements that (1) the rent for
36 the replacement unit may not exceed the rent that would what have been charged if the
37 tenancy had continued uninterrupted, and (2) a written restriction requiring compliance
38 with the Rent Stabilization Ordinance be recorded against the title to the property.

39 C. A Use Permit for the demolition of one or more residential units that is not subject
40 to Section 23C.08.010.B shall issue if the Board makes the findings required by Section
41 23B.32.040.A, and:

42 1. The building containing the unit(s) is hazardous or unusable and is
43 infeasible to repair as determined by the Chief Building Official and Zoning
44 Officer;

45 2. The demolition will result in no net loss in protected units, as defined in
46 Government Code section 66300(d)(2)(E)(ii);

47 3. The demolition would not be materially detrimental to the public interest of
48 the affected neighborhood and the City, taking into the account the housing
49 needs of the neighborhood, the City, and the region; or

50 4. Denial of the demolition permit would conflict with state law applicable to
51 the City of Berkeley, as a charter city, including but not limited to the Ellis Act
52 (Government Code section 7060 *et seq.*).

53 D. Notwithstanding Subdivision (C), demolition will not be allowed if the building was
54 removed from the rental market under the Ellis Act during the preceding five (5) years or
55 there have been verified cases of harassment or threatened or actual illegal eviction
56 during the immediately preceding three years. Where allegations of harassment or
57 threatened or actual illegal eviction are in dispute, either party may request a hearing
58 before a Rent Board Hearing Examiner, who will provide an assessment of the evidence
59 and all available documentation to the Zoning Adjustments Board, which shall
60 determine whether harassment or threatened or actual illegal eviction occurred.

61 E. A Use Permit issued pursuant to this Section must comply with Chapter 3.24,
62 except where enforcement of that Chapter would conflict with state law.

63 F. A Use Permit issued pursuant to this Section shall require the applicant to
64 comply with the following conditions:

65 1. The applicant shall provide all tenants with notice of the application to
66 demolish the building no later than the date it is submitted to the City, including
67 notice of their rights under Chapter [13.76](#). Any existing residents must be allowed
68 to occupy their units until six months before the start of construction activities.

69 2. The applicant shall provide assistance with moving and relocation
70 assistance equivalent to the requirements set forth in Chapter [13.84](#) or
71 Government Code section 66300(d)(2)(D)(i), whichever requires greater
72 relocation assistance to displaced households. Notwithstanding the requirements
73 of Chapter 13.84, the applicant shall subsidize the rent differential for a
74 comparable replacement unit, in the same neighborhood if feasible, until new
75 units are ready for occupancy. Funding for the rent differential shall be
76 guaranteed in a manner approved by the City; provided, however, that any
77 project that is carried out or funded by the state or federal government shall be
78 subject to applicable provisions of the California Relocation Act (Government
79 Code section 7260 *et seq.*) and/or the Uniform Relocation Assistance and Real
80 Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-
81 4655). [Need an objective formula for determining rent differential]

82 3. Any tenant of a protected unit that is demolished shall have the right of
83 first refusal to rent any new protected units designated to replace the units that
84 were demolished, consistent with the requirements of Government Code section
85 66300(d)(2)(D)(ii), if applicable, and subject to any applicable eligibility
86 requirements for affordable units.

87 G. The provisions of Government Code section 66300 incorporated herein shall
88 remain effective and enforceable under this Chapter to the maximum extent permitted
89 by law, notwithstanding the subsequent repeal of those provisions under Government
90 Code section 66301 or otherwise.

91 **23C.08.020 Demolition of Accessory Buildings and Buildings Used for**
92 **Commercial, Manufacturing, Community, Institutional, or Other Non-Residential**
93 **Uses**

94 A. The demolition of any structure in any general, community, retail, and
95 neighborhood commercial districts shall comply with all applicable requirements of
96 Chapter 22.12.

97 B. Notwithstanding any other provision of Title 23, a Main Building used for non-
98 residential purposes containing less than 5,000 square feet of floor area may be
99 demolished subject to issuance of an AUP; a Main Building containing 5,000 square
100 feet or more of floor area may be demolished subject to issuance of Use Permit.

101 C. A demolition of an Accessory Building other than an Accessory Dwelling Unit
102 containing less than 300 square feet of floor area is permitted subject to the issuance of
103 a Zoning Certificate; an Accessory Building other than an Accessory Dwelling Unit
104 containing 300 square feet or more of floor area may be demolished subject to the
105 issuance of an AUP.

106 D. Any application for a Use Permit or AUP to demolish a non-residential building or
107 structure which is 40 or more years old shall be forwarded to the Landmarks
108 Preservation Commission (LPC) for review prior to consideration of the Use Permit or
109 AUP. The LPC may initiate a landmark or structure-of-merit designation or may choose
110 solely to forward to the Board or Zoning Officer its comments on the application. The
111 Board or Zoning Officer shall consider the recommendations of the LPC in considering
112 its action on the application.

113 E. A Use Permit or an AUP for demolition of an Accessory Building other than an
114 Accessory Dwelling Unit or for the demolition of a non-residential building or structure
115 shall issue if the Board or Zoning Officer if the application complies with the
116 requirements of Chapter 3.24; the Board or Zoning Officer makes the findings required
117 under Section 23B.32.040.A.; and one of the following findings is made:

118 1. The demolition is required to allow the construction of a new building or other
119 new Use approved by the Board or Zoning Officer;

120 2. The demolition will remove a building that is unusable for activities
121 compatible with the purposes of the District in which it is located or that is
122 infeasible to modify for such uses;

123 3. The demolition will remove a structure which represents an unabatable
124 nuisance; or

125 4. The demolition is required for the furtherance of specific plans or projects
126 sponsored by the City or other local district or authority. In such cases, it shall be
127 demonstrated that it is infeasible to obtain prior or concurrent approval for the
128 new construction or new use which is contemplated by such specific plans or
129 projects and that adhering to such a requirement would threaten the viability of
130 the plan or project.

131 **23C.08.030 Building Relocations**

132 A. The relocation of a building from a lot is considered a demolition for purposes of
133 this Ordinance.

134 B. The relocation of a building to a lot is considered new construction and shall be
135 subject to all requirements applicable to new construction.

136 C. When a building is relocated to a different lot within the City, the lot from which the
137 building is being removed shall be known as the source lot and the lot on which the
138 building is to be sited shall be known as the receiving lot.

139 D. The removal of a building from the source lot shall require be approved if it meets
140 the requirements for issuance of demolition permit under this Chapter.

141 E. The relocation of a building onto the receiving lot shall be approved if it meets the
142 requirements for construction of a new structure on the receiving lot. Nothing in this
143 Section shall be interpreted to require the Building Official to issue a certificate of
144 occupancy upon relocation of a building.

145 **23C.08.035 Private Right of Action**

146 Any affected tenant may bring a private action for injunctive and/or compensatory relief
147 against any applicant and/or owner to prevent or remedy a violation of Sections
148 23C.08.020 or 23C.08.030. In any such action a prevailing plaintiff may recover
149 reasonable attorneys' fees.

150 **23C.08.040 Imminent Hazards**

151 Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a
152 public hazard and is not securable and/or is in imminent danger of collapse so as to
153 endanger persons or property, as determined the City's Building Official, it may be
154 demolished without a Use Permit. The Building Official's determination in this matter
155 shall be governed by the standards and criteria set forth in the most recent edition of the
156 [California Building Code](#) that is in effect in the City.

157



4x4 Committee on Housing
City Council and Rent Board

4 X 4 JOINT COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Tuesday, November 24, 2020 – 3:00 p.m.

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE.

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council and Rent Stabilization Board's **4 x 4 Joint Committee on Housing** (Committee) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, **there will not be a physical meeting location available.**

To access this meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://zoom.us/j/93330024842?pwd=QVVwQ0sxU2M5cU00RzdXMnN4aytaZz09>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "Rename" to rename yourself to be anonymous. To request to speak, use the "Raise hand" icon by rolling over the bottom of the screen.

To join by phone: Dial 1-669-900-6833 and enter Webinar ID: 933 3002 4842 and Passcode: 094373. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Committee Chair.

To submit an e-mail comment to be read aloud during public comment, email btran@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM FOR 4 X 4 COMMITTEE". Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 1:00 p.m. on the day of the Committee meeting in order to be included.**

Please be mindful that this will be a public meeting and all rules of procedure and decorum will apply for meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with Government Code Section 54953 and all current state and local requirements allowing public participation in meetings of legislative bodies. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Matt Brown, Acting Executive Director of the Rent Board, at (510) 981-7368 (981-RENT). The Committee may take action related to any subject listed on the Agenda.



4x4 Committee on Housing
City Council and Rent Board

AGENDA

4 X 4 JOINT COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Tuesday, November 24, 2020 – 3:00 p.m.

1. Roll Call
2. Approval of the Agenda
3. Public Comment on Non-Agenda Matters
4. Approval of October 28, 2020 Committee Meeting Minutes
5. Presentation on Berkeley Housing Authority (BHA) and Affordable Housing Berkeley, Inc. by BHA Acting Executive Director Rachel Gonzales-Levine
6. Discussion and Possible Action on Amendments to Demolition Ordinance (Planning Department)
7. Habitability Plans Modeled After the City of Los Angeles' Practice (RBC Simon-Weisberg)
8. Update on Amendments to the Relocation Ordinance (Mayor Arreguín)
9. Quick Updates on Previously Discussed Items
 - a. UC Acquisition of 1921 Walnut Street
10. Discussion of Possible Future Agenda Items
11. Adjournment

COMMITTEE MEMBERS:

Mayor Jesse Arreguín
City Council Member Cheryl Davila
City Council Member Kate Harrison
City Council Member Rigel Robinson

Rent Board Chairperson Paola Laverde
Rent Board Vice-Chairperson Leah Simon-Weisberg
Rent Board Commissioner Mari Mendonca
Rent Board Commissioner Igor Tregub



4x4 Committee on Housing
City Council and Rent Board

Minutes - Unapproved

4 X 4 JOINT COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Wednesday, October 28, 2020 – 3:00 p.m.

1. Roll Call: Mayor Arreguín called the meeting to order at 3:04 p.m.
Present: Mayor Jesse Arreguín, CM Cheryl Davila, CM Rigel Robinson, RB Chair Paola Laverde, RBC Leah Simon-Weisberg, RBC Mari Mendonca (signed off at 4:06 p.m.), RBC Igor Tregub.
Absent: CM Kate Harrison.
Staff Present: Matt Brown, Ruscal Cayangyang, Bren Darrow, Stefan Elgstrand, Jen Fabish, Matthew Siegel, Be Tran, Kelly Wallace, Lisa Warhuus, Lynn Wu
2. Approval of the Agenda: M/S/C (Arreguín/Laverde) Approve the agenda with the following change: hear Item 6 after approval of the minutes. ***Friendly amendment by Simon-Weisberg (accepted)***: Continue Item 7 until the next meeting. Roll call vote. YES: Arreguín, Davila, Robinson, Laverde, Simon-Weisberg, Mendonca, Tregub; NO: None; ABSTAIN: None; ABSENT: Harrison. Carried: 7-0-0-1.
3. Public Comment on Non-Agenda Matters: There were no speakers. Be Tran read aloud one written comment.
4. Approval of September 23, 2020 Committee Meeting Minutes: M/S/C (Davila/Robinson) Approve the minutes as written. Roll call vote. YES: Arreguín, Davila, Robinson, Laverde, Simon-Weisberg, Mendonca, Tregub; NO: None; ABSTAIN: None; ABSENT: Harrison. Carried: 7-0-0-1.
5. Update on Amendments to the Relocation Ordinance (Mayor Arreguín or HHCS staff): Mayor Arreguín provided an update. He will set up a meeting with HHCS, the Rent Board, the City Attorney's Office and the Mayor's Office to discuss more robust policy changes, and staffing and funding needs.
6. Urgency Ordinance: Updates to the COVID-19 Emergency Response Ordinance (CM Davila): Bren Darrow reviewed changes proposed by the City Attorney's office, and the committee engaged in an extensive discussion. Three members of the public spoke, one of whom also read aloud a letter from another member of the public. Be Tran read aloud a written comment on the item.

M/S/C (Arreguín/ Laverde) Recommend to Council the revised ordinance containing the City Attorney's proposed changes that the committee received at the meeting except to strike the following language from section 13.110.050(C) "...not offering a rental agreement for a different unit or offering one on less favourable [sic] terms than they would otherwise offer, or taking action(s) or inaction(s) which hurts the tenant's or other resident credit rating or causes

other landlords to not offer them a rental agreement or to offer them a rental agreement on less favourable [sic] terms than they would otherwise offer.” **Friendly amendments by Tregub (accepted):** (1) Request that the author consult with Rent Board staff before the item goes before Council; (2) Recommend that the author provide in the staff report an analysis on how the item mirrors and exceeds the protections in Alameda County’s Urgency Ordinance; and (3) strike the language that indicates the Chapter does not apply to Ellis Act evictions. Roll call vote. YES: Arreguín, Davila, Robinson, Laverde, Simon-Weisberg, Tregub; NO: None; ABSTAIN: None; ABSENT: Harrison, Mendonca. Carried: 6-0-0-2.

CM Davila will obtain clarification on whether any modifications to section 13.110.040(B)(2) are necessary.

7. Habitability Plans modeled after the City of Los Angeles’ practice (RBC Simon-Weisberg): Continued to the next meeting by a prior vote of the committee.
8. Discussion of Possible Future Agenda Items: Habitability Plans (Simon-Weisberg), an update on the Relocation Ordinance (Mayor Arreguín), discussion on the new nonprofit housing authority and buildings not available for rent (RB Chair Laverde). On the latter item, Mayor Arreguín would also like to discuss a boarder strategy around vacant buildings, including regulatory and other tools for acquisition.
9. Adjournment: M/S/C (Davila/Tregub) Motion to adjourn the meeting. Roll call vote. YES: Arreguín, Davila, Robinson, Laverde, Simon-Weisberg, Tregub; NO: None; ABSTAIN: None; ABSENT: Harrison, Mendonca. Carried: 6-0-0-2. The meeting adjourned at 5:15 p.m.

COMMITTEE MEMBERS:

Mayor Jesse Arreguín
City Council Member Cheryl Davila
City Council Member Kate Harrison
City Council Member Rigel Robinson

Rent Board Chairperson Paola Laverde
Rent Board Vice-Chairperson Leah Simon-Weisberg
Rent Board Commissioner Mari Mendonca
Rent Board Commissioner Igor Tregub



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: November 18, 2020

TO: Members of the Planning Commission

FROM: Steve Buckley, Land Use Manager
Alene Pearson, Principal Planner

SUBJECT: Zoning Ordinance Amendments to Berkeley Municipal Code Chapter 23C.08 [Demolition and Dwelling Unit Controls]

BACKGROUND

Berkeley Municipal Code (BMC) Chapter 23C.08 [Demolition and Dwelling Unit Controls] is often referred to as the “Demolition Ordinance.” Although this ordinance does regulate demolitions, Chapter 23C.08 also establishes rental unit protections and regulates elimination of units that occurs through modifications to existing housing stock (e.g. removing kitchens, combining units).

Over the past decade, State legislation and court cases have influenced the City’s ability to require inclusionary housing or in lieu fees for new housing projects. These laws have also affected the City’s ability to administer Chapter 23C.08. Some of this history is provided below:

The Neighborhood Preservation Ordinance (1973): In response to unchecked demolition of single family homes and construction of “ticky-tacky” apartment buildings in the 1950s through the early 1970s, Berkeley residents voted into law restrictions on housing demolition. The Neighborhood Preservation Ordinance (NPO) only allows demolition of housing when replacement housing is included in new projects.

Rent Control (1980): Berkeley voters passed the Rent Stabilization and Eviction for Good Cause Ordinance in 1980, which instituted rent control. This ordinance established baseline rents and guidelines for rent increases necessary to cover operating expenses, property maintenance, and landlord profit. This ordinance provided vacancy control rent stabilization -- meaning that rent levels stayed the same even after tenants moved out. Note that the applicability of the ordinance was modified by the Costa Hawkins Rental Housing Act (see below) in 1995.

Demolition Ordinance

Rental Removal Ordinance (1984): To prevent demolition of rent stabilized housing, the Rental Removal Ordinance was enacted in Berkeley in 1984. This ordinance prohibited demolitions of rental units if an applicant was able to make a fair return on their property without demolishing.

Costa Hawkins: The Costa Hawkins Rental Housing Act (Costa Hawkins), passed in 1995, allows local governments to enact and use rent control, except on (a) housing that was first occupied after February 1, 1995, and (b) certain classes of housing units, such as condominiums, townhouses, and single-family homes. Costa Hawkins allows landlords to increase rent to market rates when a tenant vacates a unit. This is called vacancy decontrol.

Ellis Act and Measure Y: The Ellis Act is a state law which gives landlords the right to evict tenants if they need to "go out of business." For an Ellis eviction, the landlord must remove all of the units in the building from the rental market. When a landlord invokes the Ellis Act, the apartments cannot be re-rented, except at the same rent the evicted tenant was paying, for five years following evictions. While there are restrictions on ever re-renting the units, there are no restrictions on conversion to ownership units (e.g., tenancies in common or condos).

In response to an increased number of owner-move-in evictions, Berkeley voters adopted Measure Y as an amendment to the Rent Stabilization and Eviction for Good Cause Ordinance in 2000. Measure Y allowed property owners to evict tenants if the owner or a qualifying relative intended to move in¹. Property owners who evicted low income tenants were required to pay relocation assistance and required to reset the cost of the rental to the previous rent-control rate when/if the unit were to come back onto the market. Furthermore, evicted tenants would have the opportunity move back into the unit if it came back onto the market.

Palmer Decision: The 2009 Palmer Decision (*Palmer/Sixth Street Properties vs City of Los Angeles*) invalidated ordinances that imposed inclusionary affordable housing requirements on residential projects due to conflict with Costa Hawkins' vacancy decontrol provisions (e.g. limiting a landlord's ability to establish the initial rental rate of a unit).

Berkeley's Ordinance: In March 2016, the City Council adopted an ordinance which modified BMC Chapter 23C.08 to account for the loss of rent-stabilized housing that can occur with building demolition. That ordinance established the City's authority to set and collect a fee for each rent-stabilized unit that would be demolished. It also allowed for projects to provide one-for-one replacement units in lieu of fee payment as long as the units were restricted in perpetuity as below market rate. Unfortunately, a fee was never established by resolution, so no fees were ever collected.

The "Palmer Fix": In 2017, the California legislature passed Assembly Bill (AB) 1505 in response to the Palmer Decision. AB 1505 authorizes cities to adopt

¹ An owner could evict a tenant so that the owner, or his/her spouse, child, or parent could move in; however, the owner-relative must live in the unit for 36 continuous months. Additionally, with few exceptions, property owners could not evict seniors or disabled tenants who have occupied their rental units for five years or more in buildings with four or more units.

Demolition Ordinance

inclusionary housing ordinances that require development to include a certain percentage of affordable residential rental units. AB 1505 also requires cities provide an alternate means of compliance, such as in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

Senate Bill 330: Senate Bill (SB) 330, passed in 2019, requires that cities only approve housing projects that include demolition of residential units if the project replaces existing units. Furthermore, if the project involves demolition of rent-controlled or below market rate units, the project will only be approved if the following criteria are met:

1. The project will replace all existing or demolished protected units (which would also count towards meeting inclusionary housing requirements).
2. The project will include at least as many residential dwelling units as the greatest number of residential dwelling units that existed on the project site within the last five years.
3. Existing residents, if any, are allowed to occupy their units until six months before the start of construction.
4. The developer agrees to provide relocation benefits and a right of first refusal for units available in the new housing development at an affordable rent for the household.

The City’s Rent Stabilization Board (RSB) provides an annual summary of rental housing stock which includes the total number of units registered in the City and the number of new tenancies. The table below summarizes this information at three points over the last twenty years:

	1999			2009			2019		
	all units	new tenancies	percent turnover	all units	new tenancies	percent turnover	all units	new tenancies	percent turnover
studio	3,840	1,145	29.8%	3,740	1,081	28.9%	4,145	956	23.1%
1 BR	8,145	1,927	23.7%	7,945	1,887	23.8%	8,044	1,520	18.9%
2 BR	5,659	1,245	22.0%	5,721	1,406	24.6%	6,045	1,101	18.2%
3 BR	831	172	20.7%	887	254	28.6%	1,047	198	18.9%
TOTAL	18,475	4,489	24.3%	18,293	4,628	25.3%	19,281	3,775	19.6%

In 2013, the RSB published a report that summarized the benefits of Berkeley’s rent stabilization program². At that time, affordability was provided to approximately 3,300 pre-1999 tenants whose apartments have never qualified for a vacancy decontrol increase. Approximately 2,200 of those tenants were low income, and 1,200 were elderly or disabled. Since 2013, the number of pre-1999 tenants has declined to 1,903 (as of October 1, 2020) as tenants have aged and/or moved out. Additional support of

² Rent Stabilization and the Berkeley Housing Market 15 Years after Vacancy Decontrol (January 28, 2013) https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/Summary%20of%20Economic%20Studies%20Part%20I.pdf

Demolition Ordinance

housing affordability is provided through deed restricted, below market rate inclusionary and density bonus units, subsidized housing developments and monthly rental assistance (Housing Vouchers and Shelter + Care). The demolition and dwelling unit controls regulated in BMC Chapter 23C.08 are integral to the preservation of affordable housing in the City of Berkeley – especially as the number of pre-1999 tenants declines.

PROPOSED AMENDMENTS

The goal of updating BMC Chapter 23C.08 is to protect existing housing stock and ensure that Berkeley's Zoning Ordinance leverages and complies with State regulations. As illustrated above, State law and case law have and will continue to evolve over time. The proposed amendments, explained below, will reference State law where possible, as opposed to restating State law, so that the City can maintain compliance over time and the ordinance will be more straightforward to understand and enforce.

Draft Zoning Ordinance amendments can be found in Attachment 1. Amendments strike current regulations that are no longer enforceable due to the information presented above. More specifically, the proposed amendments do the following:

1. Reference State Law

New code directly references Government Code sections in order to comply with new regulations and avoid conflicts as State legislation evolves.

2. Ensure Compliance with the BMC

Amendments explicitly require compliance with other BMC chapters in order to preserve and protect affordable housing in Berkeley. Issuance of Demolition Permits must be contingent upon the following:

- Chapter 22.20 [Mitigation and Fees - Conditions for Approval of Development Projects]
- Chapter 23C.12 [Inclusionary Housing Requirements]
- Section 23E.20.080 [Low Income Inclusionary Live / Work Units]
- Chapter 13.76 [Rent Stabilization]

Rationale: Proposed amendments will cross-reference other sections of the BMC. These references are necessary to clearly list regulations required for administering demolition and unit controls. The ordinances listed above are currently under review and will update related topics such as fee structures and inclusionary housing requirements. The overall goal of these dual efforts is to protect and preserve affordable housing in the City.

3. Clarify Use Permit Conditions that Pertain to Tenants

Applicant responsibilities to tenants in terms of noticing, relocation assistance and right of first refusal for new replacement units are provided in Section 23C.08.010.E [Demolition or Elimination of Residential Units] and refer to BMC Chapters 13.76 [Rent Stabilization and Eviction dor Good Cause Program] and BMC 13.84 [Relocation Services and Payments for Residential Tenant Households] and applicable Government Code Sections.

Demolition Ordinance

4. Extend the definition of “dwelling unit”

Government Code Section 66300 applies to “dwelling units.” The proposed amendment clarifies the definition of “dwelling unit” to reflect definitions within the California Building Code, including shared and independent living, sleeping, eating, cooking and sanitation facilities. This includes, but is not limited to, Group Living Accommodations (GLAs), Live/Work Units, and Residential Hotel Rooms.

Rationale: Dwelling Unit under the existing ordinance is narrowly defined and inconsistent with State law and other sections of the BMC. Using a broadly established definition of “dwelling unit” will provide internal and external consistency and will also accommodate the City’s unique household characteristics and diversity of housing models and living situations.

5. Clarify Permit Thresholds for Demolition of Non-residential Buildings

New code would clearly outlines permits required for demolition of non-residential buildings, when zoning district-specific regulations do not apply (e.g. protected uses in the MU-LI district). The table below summarizes the proposed regulations:

Non-residential Building Type	Size Threshold	Demolition Permit Required
Main Building	<5,000 ft ²	ZC
	>=5,000 ft ²	AUP
Accessory Building	<300 ft ²	AUP
	>=300 ft ²	UP(PH)

Rationale: Existing code did not clearly state general thresholds and permits requirement for the demolition of non-residential buildings. The new code provides greater clarity and consistency, although some zoning districts have additional requirements for compliance.

NEXT STEPS

Staff recommends that the Planning Commission hold a Public Hearing, take public comment, discuss draft Ordinance amendments, provide direction, and forward a recommendation to City Council, with any changes identified through a vote of the Planning Commission.

ATTACHMENTS

1. Ordinance
2. Public Hearing Notice

1 **Clean Copy**

2
3 **BMC Chapter 23C.08**
4 **Demolition and Dwelling Unit Controls**

5 Sections:

6 [23C.08.010](#) Demolition or Elimination of Residential Units

7 [23C.08.020](#) Demolition of Accessory Buildings and Buildings Used for
8 Commercial, Manufacturing, Community, Institutional or Other
9 Non-Residential Uses

10 [23C.08.030](#) Building Relocations

11 [23C.08.040](#) Imminent Hazards

12 **23C.08.010 Demolition or Elimination of Residential Units**

13 A. No residential unit may be eliminated or demolished except as authorized by the
14 provisions of the chapter and State law, including but not limited to Government Code
15 section 66300 *et seq.* For purposes of this Chapter, “residential unit” includes any
16 Dwelling Unit, bedroom or sleeping quarters in a Group Living Accommodation,
17 Live/Work Unit, or Residential Hotel Room.

18 B. A Use Permit for the demolition of one or more residential units in connection with a
19 housing development project shall be issued only if the project complies with the
20 requirements of Government Code section 66300(d), as applicable. In addition, the
21 Board may in its discretion choose from one of the following requirements:

22 1. That the replacement units comply with Chapter 22.20 and/or Chapter
23 23C.12 and/or Section 23E.20.080; and/or

24 2. That the demolition and replacement units comply with the requirements
25 of the Rent Stabilization Ordinance, Chapter 13.76 *et seq.*

26 C. A Use Permit for the demolition of one or more residential units that is not subject
27 to Section 23C.08.010.B shall issue if the Board makes the findings required by Section
28 23B.32.040.A, and:

- 29 1. The building containing the unit(s) is hazardous or unusable and is
30 infeasible to repair as determined by the Chief Building Official and Zoning
31 Officer;
- 32 2. The demolition will result in no net loss in protected units, as defined in
33 Government Code section 66300(d)(2)(E)(ii);
- 34 3. The demolition would not be materially detrimental to the public interest of
35 the affected neighborhood and the City, taking into the account the housing
36 needs of the neighborhood, the City, and the region; or
- 37 4. Denial of the demolition permit would conflict with state law applicable to
38 the City of Berkeley, as a charter city, including but not limited to the Ellis Act
39 (Government Code section 7060 *et seq.*).
- 40 D A Use Permit issued pursuant to this Section must comply with Chapter 3.24,
41 except where enforcement of that Chapter would conflict with state law.
- 42 E. A Use Permit issued pursuant to this Section shall require the applicant to comply
43 with the following conditions:
- 44 1. The applicant shall provide all tenants with notice of the application to
45 demolish the building no later than the date it is submitted to the City, including
46 notice of their rights under Chapter [13.76](#). Any existing residents must be allowed
47 to occupy their units until six months before the start of construction activities.
- 48 2. The applicant shall provide assistance with moving and relocation
49 assistance equivalent to the requirements set forth in Chapter [13.84](#) or
50 Government Code section 66300(d)(2)(D)(i), whichever requires greater
51 relocation assistance to displaced households; provided, however, that any
52 project that is carried out or funded by the state or federal government shall be
53 subject to applicable provisions of the California Relocation Act (Government
54 Code section 7260 *et seq.*) and/or the Uniform Relocation Assistance and Real
55 Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-
56 4655).
- 57 3. Any tenant of a protected unit that is demolished shall have the right of
58 first refusal to rent any new protected units designated to replace the units that
59 were demolished, consistent with the requirements of Government Code section
60 66300(d)(2)(D)(ii), if applicable, and subject to any applicable eligibility
61 requirements for affordable units.

62 **23C.08.020 Demolition of Accessory Buildings and Buildings Used for**
63 **Commercial, Manufacturing, Community, Institutional, or Other Non-Residential**
64 **Uses**

65 A. Notwithstanding any other provision of Title 23, a Main Building used for non-
66 residential purposes containing less than 5,000 square feet of floor area may be
67 demolished subject to issuance of an AUP; a Main Building containing 5,000 square
68 feet or more of floor area may be demolished subject to issuance of Use Permit.

69 B. A demolition of an Accessory Building other than an Accessory Dwelling Unit
70 containing less than 300 square feet of floor area is permitted subject to the issuance of
71 a Zoning Certificate; an Accessory Building other than an Accessory Dwelling Unit
72 containing 300 square feet or more of floor area may be demolished subject to the
73 issuance of an AUP.

74 C. Any application for a Use Permit or AUP to demolish a non-residential building or
75 structure which is 40 or more years old shall be forwarded to the Landmarks
76 Preservation Commission (LPC) for review prior to consideration of the Use Permit or
77 AUP. The LPC may initiate a landmark or structure-of-merit designation or may choose
78 solely to forward to the Board or Zoning Officer its comments on the application. The
79 Board or Zoning Officer shall consider the recommendations of the LPC in considering
80 its action on the application.

81 D. A Use Permit or an AUP for demolition of an Accessory Building other than an
82 Accessory Dwelling Unit or for the demolition of a non-residential building or structure
83 shall issue if the Board or Zoning Officer if the application complies with the
84 requirements of Chapter 3.24, and one of the following findings is made:

85 1. The demolition is required to allow the construction of a new building or other
86 new Use approved by the Board or Zoning Officer;

87 2. The demolition will remove a building that is unusable for activities
88 compatible with the purposes of the District in which it is located or that is
89 infeasible to modify for such uses;

90 3. The demolition will remove a structure which represents an unabatable
91 nuisance; or

92 4. The demolition is required for the furtherance of specific plans or projects
93 sponsored by the City or other local district or authority. In such cases, it shall be
94 demonstrated that it is infeasible to obtain prior or concurrent approval for the

95 new construction or new use which is contemplated by such specific plans or
96 projects and that adhering to such a requirement would threaten the viability of
97 the plan or project.

98 **23C.08.030 Building Relocations**

99 A. The relocation of a building from a lot is considered a demolition for purposes of
100 this Ordinance.

101 B. The relocation of a building to a lot is considered new construction and shall be
102 subject to all requirements applicable to new construction.

103 C. When a building is relocated to a different lot within the City, the lot from which the
104 building is being removed shall be known as the source lot and the lot on which the
105 building is to be sited shall be known as the receiving lot.

106 D. The removal of a building from the source lot shall require be approved if it meets
107 the requirements for issuance of demolition permit under this Chapter.

108 E. The relocation of a building onto the receiving lot shall be approved if it meets the
109 requirements for construction of a new structure on the receiving lot.

110 **23C.08.040 Imminent Hazards**

111 Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a
112 public hazard and is not securable and/or is in imminent danger of collapse so as to
113 endanger persons or property, as determined the City’s Building Official, it may be
114 demolished without a Use Permit. The Building Official’s determination in this matter
115 shall be governed by the standards and criteria set forth in the most recent edition of the
116 [California Building Code](#) that is in effect in the City.

117

118

Red-Lined Version

119

120

121

122

**BMC Chapter 23C.08
Demolition and Dwelling Unit Controls**

123 Sections:

124

23C.08.010 Demolition or Elimination of ~~Dwelling Residential~~ Units

125

~~General Requirement~~

126

~~23C.08.020 Elimination of Dwelling Units through Demolition~~

127

~~23C.08.030 Elimination of Dwelling Units and Accessory Dwelling Units
through Conversion and Change of Use~~

128

129

~~23C.08.035 Private Right of Action~~

130

~~23C.08.040 Elimination of Residential Hotel Rooms~~

131

~~23C.08.050 23C.08.020 Demolitions of Accessory Buildings and Buildings~~

132

~~Used for Commercial, Manufacturing, or Community, Institutional
or Other Non-residential Residential Uses~~

133

134

~~23C.08.060 23C.08.030 Building Relocations~~

135

~~23C.08.070 23C.08.040 Limitations Imminent Hazards~~

136

23C.08.010 Demolition or Elimination of ~~Dwelling Residential~~ Units--General

137

Requirement

138

~~A. A. No Dwelling Unit or units residential unit may be eliminated or demolished~~

139

~~except as authorized by the provisions of the chapter and State law, including but not~~

140

~~limited to Government Code section 66300 et seq. For purposes of this Chapter,~~

141

~~“residential unit” includes any Dwelling Unit, bedroom or sleeping quarters in a Group~~

142

~~Living Accommodation, Live/Work Unit, or Residential Hotel Room.~~

143

~~B. The Board may approve a Use Permit for the elimination or demolition of dwelling~~

144

~~units only if, in addition to any other findings required by this Ordinance, it finds that the~~

145

~~elimination of the dwelling units would not be materially detrimental to the housing~~

146 ~~needs and public interest of the affected neighborhood and the City.~~ A Use Permit for
147 the demolition of one or more residential units in connection with a housing
148 development project shall be issued only if the project complies with the requirements of
149 Government Code section 66300(d), as applicable. In addition, the Board may in its
150 discretion choose from one of the following requirements:

151 1. That the replacement units comply with Chapter 22.20 and/or Chapter
152 23C.12 and/or Section 23E.20.080; and/or

153 2. That the demolition and replacement units comply with the requirements
154 of the Rent Stabilization Ordinance, Chapter 13.76 et seq.

155 C. A Use Permit for the demolition of one or more residential units that is not subject
156 to Section 23C.08.010.B shall issue if the Board makes the findings required by Section
157 23B.32.040.A, and:

158 ~~C.—Demolition of buildings containing a single dwelling unit and buildings constructed~~
159 ~~after June 1980 shall not be subject to the findings set forth in Section 23C.08.020.A but~~
160 ~~shall be subject to subdivisions B, C, and D of Section 23C.08.020. (Ord. 7458-NS § 1,~~
161 ~~2016)~~

162 ~~**23C.08.020 Elimination of Dwelling Units through Demolition**~~

163 ~~A.—The Board may approve a Use Permit to demolish a building constructed prior to~~
164 ~~June 1980 on a property containing two or more dwelling units if it makes the findings~~
165 ~~required by the foregoing section, and either:~~

166 ~~1. The building containing the unit(s) is hazardous or unusable and is~~
167 ~~infeasible to repair as determined by the Chief Building Official and Zoning~~
168 ~~Officer; or~~

169
170 ~~2. The building containing the unit(s) will be moved to a different location~~
171 ~~within the City of Berkeley with no net loss of units and no change in the~~
172 ~~affordability levels of the units The demolition will result in no net loss in protected~~
173 ~~units, as defined in Government Code section 66300(d)(2)(E)(ii);~~

174 ~~3. The demolition would not be materially detrimental to the public interest of~~
175 ~~the affected neighborhood and the City, taking into the account the housing~~
176 ~~needs of the neighborhood, the City, and the region; or~~

177 4. Denial of the demolition permit would conflict with state law applicable to
178 the City of Berkeley, as a charter city, including but not limited to the Ellis Act
179 (Government Code section 7060 et seq.); or

180 ~~3. The demolition is necessary to permit construction of special housing needs~~
181 ~~facilities such as, but not limited to, childcare centers and affordable housing~~
182 ~~developments that serve the greater good of the entire community; or~~

183 ~~4. The demolition is necessary to permit construction approved pursuant to this~~
184 ~~Chapter of at least the same number of dwelling units. No such demolition shall~~
185 ~~occur prior to the issuance of a building permit for the replacement units.~~

186 D A Use Permit issued pursuant to this Section must comply with Chapter 3.24,
187 except where enforcement of that Chapter would conflict with state law.

188 ~~—When a project is approved under this paragraph, the project applicant shall be~~
189 ~~required to pay a fee for each unit demolished to mitigate the impact of the loss of~~
190 ~~affordable housing in the City of Berkeley. The amount of the fee shall be set by~~
191 ~~resolution of the City Council.~~

192 ~~—In the case of a unit with a tenant at the time of demolition, the provisions of Section~~
193 ~~23C.08.020.C apply and the impact fee is due when that tenant vacates the unit.~~

194 ~~—In lieu of paying the impact fee, the project applicant may provide a designated unit in~~
195 ~~the new project at a below market rate to a qualifying household in perpetuity. The~~
196 ~~affordability level of the below market rent and the income level of the qualifying~~
197 ~~household shall be set by resolution of the City Council. The project applicant shall~~
198 ~~enter a regulatory agreement with the City of Berkeley to provide for the provision of any~~
199 ~~such in lieu units.~~

200 ~~B. Notwithstanding Subdivision (A), demolition will not be allowed if the~~
201 ~~building was removed from the rental market under the Ellis Act during the~~
202 ~~preceding five (5) years or there have been verified cases of harassment or~~
203 ~~threatened or actual illegal eviction during the immediately preceding three years.~~

204 ~~—Where allegations of harassment or threatened or actual illegal eviction are in~~
205 ~~dispute, either party may request a hearing before a Rent Board Hearing Examiner, who~~
206 ~~will provide an assessment of the evidence and all available documentation to the~~
207 ~~Zoning Adjustments Board, which shall determine whether harassment or threatened or~~
208 ~~actual illegal eviction occurred.~~

209 ~~GE.~~ ~~If the units in a building to be demolished under subdivision (A) are occupied, the~~
210 ~~following requirements shall apply. A -Use Permit issued pursuant to this Section shall~~
211 ~~require the applicant to comply with the following conditions:~~

212 ~~1.—Except as set forth in paragraph (2) below: 1. _____~~

213 ~~a.—The applicant shall provide all sitting tenants with notice of the application to~~
214 ~~demolish the building no later than the date it is submitted to the City, including~~
215 ~~notice of their rights under Chapter 13.76. Any existing residents must be allowed~~
216 ~~to occupy their units until six months before the start of construction activities.~~

217
218 ~~2. _____ b.—The applicant shall provide assistance with moving expenses and~~
219 ~~relocation assistance equivalent to those the requirements set forth in Chapter~~
220 ~~13.84 or Government Code section 66300(d)(2)(D)(i), whichever requires~~
221 ~~greater relocation assistance to displaced households; provided, however, that~~
222 ~~any project that is carried out or funded by the state or federal government shall~~
223 ~~be subject to applicable provisions of the California Relocation Act (Government~~
224 ~~Code section 7260 et seq.) and/or the Uniform Relocation Assistance and Real~~
225 ~~Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-~~
226 ~~4655).~~

227 ~~c.—The applicant shall subsidize the rent differential for a comparable replacement unit,~~
228 ~~in the same neighborhood if feasible, until new units are ready for occupancy. Funding~~
229 ~~for the rent differential shall be guaranteed in a manner approved by the City.~~

230 ~~2.—An applicant under this Chapter who proposes to construct a 100% affordable~~
231 ~~housing project shall provide relocation benefits that conform to the Uniform Relocation~~
232 ~~Assistance and Real Property Acquisition Policies Act of 1970, as amended and the~~
233 ~~California Relocation Act (Government Code sections 7260 et seq.).~~

234
235 ~~3. Except as set forth in paragraph (4) below, sitting tenants who are~~
236 ~~displaced as a result of demolition shall be provided the right of refusal to move~~
237 ~~into the new building; Any and tenants of a protected units that are is demolished~~
238 ~~shall have the right of first refusal to rent any new below market rate protected~~
239 ~~units designated to replace the units that were demolished, at the rent that would~~
240 ~~have applied if they had remained in place, as long as their tenancy continues.~~
241 ~~Income restrictions shall not apply to displaced tenants, consistent with the~~

242 requirements of Government Code section 66300(d)(2)(D)(ii), if applicable, and
243 subject to any applicable eligibility requirements for affordable units.

244
245 ~~4.—In cases where an applicant under this Chapter has constructed a 100% affordable~~
246 ~~housing project, sitting tenants who are displaced as a result of demolition and who~~
247 ~~desire to return to the newly constructed building will be granted a right of first refusal~~
248 ~~subject to their ability to meet income qualifications and other applicable eligibility~~
249 ~~requirements when the new units are ready for occupancy.~~

250 ~~5.—The provisions of this section shall not apply to tenants who move in after the~~
251 ~~application for demolition is submitted to the City provided that the owner informs each~~
252 ~~prospective tenant about the proposed demolition and that demolition constitutes good~~
253 ~~cause for eviction.~~

254 ~~D.—Notwithstanding anything in Title 23 to the contrary, but subject to any applicable~~
255 ~~requirements of the Landmarks Preservation Ordinance (BMC Chapter 3.24), accessory~~
256 ~~buildings of any size, including, but not limited to, garages, carports and sheds, but not~~
257 ~~including any structure containing a lawfully established dwelling unit, which serves and~~
258 ~~is located on the same lot as a lawful residential use, may be demolished by right. (Ord.~~
259 ~~7458 NS § 2, 2016)~~

260 ~~**23C.08.030 Elimination of Dwelling Units and Accessory Dwelling Units through**~~
261 ~~**Conversion and Change of Use**~~

262 ~~A.—The Board may approve a Use Permit for the elimination of a dwelling unit through~~
263 ~~combination with another dwelling unit for purposes of occupancy by a single household~~
264 ~~if it finds that:~~

265 ~~1.—The existing number of dwelling units exceeds the number permitted by the~~
266 ~~maximum residential density applicable to the District where the subject building is~~
267 ~~located; and~~

268 ~~2.—One of the affected dwelling units has been occupied by the applicant's household~~
269 ~~as its principal place of residence for no less than two years prior to the date of the~~
270 ~~application and none of the affected units is currently occupied by a tenant, or all~~
271 ~~dwelling units that would be affected by the elimination are being sold by an estate and~~
272 ~~the decedent occupied the units as their principal residence for no less than two years~~
273 ~~prior to the date of their death.~~

274 ~~B.—Notwithstanding Subdivision (A), demolition will not be allowed if the building was~~
275 ~~removed from the rental market under the Ellis Act during the preceding five (5) years or~~
276 ~~there have been verified cases of harassment or threatened or actual illegal eviction~~
277 ~~during the immediately preceding three years. Where allegations of harassment or~~
278 ~~threatened or actual illegal eviction are in dispute, either party may request a hearing~~
279 ~~before a Rent Board Hearing Examiner, who will provide an assessment of the evidence~~
280 ~~and all available documentation to the Zoning Officer or Zoning Adjustments Board,~~
281 ~~which shall determine whether harassment or threatened or actual illegal eviction~~
282 ~~occurred.~~

283 ~~C.—In the event a unit eliminated pursuant to subdivision (A) is not occupied by the~~
284 ~~applicant's household for at least two consecutive years from the date of elimination, the~~
285 ~~affected unit must be restored to separate status. This requirement shall be~~
286 ~~implemented by a condition of approval and a notice of limitation on the property,~~
287 ~~acceptable to the City, which provides that if the owner's household does not occupy~~
288 ~~the unit for at least two years from the date of elimination the affected units must either~~
289 ~~be restored as separate dwelling units and the vacant unit(s) offered for rent within six~~
290 ~~months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each~~
291 ~~year according to the Consumer Price Index for the San Francisco Bay Area, which~~
292 ~~shall be deposited into the City's Housing Trust Fund. The City may exempt an~~
293 ~~applicant from the two year residency requirement in the event of an unforeseeable life~~
294 ~~change that requires relocation.~~

295 ~~D.—In cases where elimination of a dwelling unit reduces the number of units in a~~
296 ~~building to four (4), the applicant shall record a notice of limitation against the subject~~
297 ~~property that the limitation on eviction of tenants under Section 13.76.130.A.9.i(iii) shall~~
298 ~~continue to apply until such time as the building is demolished or sufficient units are~~
299 ~~added or restored such that the building contains at least five (5) units.~~

300 ~~E.—Alternatively, the Zoning Officer may issue an AUP for a conversion which~~
301 ~~eliminates a dwelling unit if they find that the conversion of the building will restore or~~
302 ~~brings the building closer to the original number of dwelling units that was present at the~~
303 ~~time it was first constructed, provided the conversion meets the requirements of A.2., B.,~~
304 ~~C. and D. of this section.~~

305 ~~F.—The Board may approve a Use Permit for a change of use to a community care or a~~
306 ~~child care facility which eliminates a dwelling unit if it finds that such use is in~~
307 ~~conformance with the regulations of the District in which it is located.~~

308 ~~G.—The Board may approve a Use Permit for the elimination of a dwelling unit through~~
309 ~~combination with another dwelling unit for the purpose of providing private bathrooms,~~
310 ~~kitchenettes, accessibility upgrades, and/or seismic safety upgrades to Single-~~
311 ~~Residential Occupancy (SRO) Rooms in residential developments undergoing a~~
312 ~~publicly-funded rehabilitation.~~

313 ~~H.—Notwithstanding the general Use Permit requirement under 23C.08.010, a~~
314 ~~lawfully established accessory dwelling unit that is not a controlled rental unit~~
315 ~~may be eliminated subject to the issuance of a Zoning Certificate when the re-~~
316 ~~conversion restores the original single family use of the main building or lot,~~
317 ~~provided that no tenant is evicted. (Ord. 7458 NS § 3, 2016)~~

318 **~~23C.08.035 Private Right of Action~~**

319 ~~Any affected tenant may bring a private action for injunctive and/or compensatory relief~~
320 ~~against any applicant and/or owner to prevent or remedy a violation of Sections~~
321 ~~23C.08.020 or 23C.08.030. In any such action a prevailing plaintiff may recover~~
322 ~~reasonable attorney's fees. (Ord. 7458 NS § 4, 2016)~~

323 **~~23C.08.040 Elimination of Residential Hotel Rooms~~**

324 ~~A.—The Board may approve a Use Permit to remove a Residential Hotel Room if it~~
325 ~~finds that, prior to the removal of any Residential Hotel Rooms, the Residential Hotel~~
326 ~~owner will provide or cause to be provided standard housing of at least comparable size~~
327 ~~and quality, at comparable rents and total monthly or weekly charges to each affected~~
328 ~~tenant; and~~

329 ~~1.—The Residential Hotel Rooms being removed are replaced by a~~
330 ~~common use facility, including, but not limited to, a shared kitchen, lounge~~
331 ~~or recreation room, that will be available to and primarily of benefit to the~~
332 ~~existing residents of the Residential Hotel and that a majority of existing~~
333 ~~residents give their consent to the removal of the rooms;~~

334 ~~2.—Prior to the date on which the Residential Hotel Rooms are removed,~~
335 ~~one-for-one replacement of each room to be removed is made, with a~~
336 ~~comparable room, in one of the methods set forth in this section; or~~

337 ~~3.—Residential Hotel Rooms being removed because of building alterations~~
338 ~~related to seismic upgrade to the building or to improve access to meet the~~
339 ~~requirements of the American Disabilities Act (ADA).~~

340 ~~B.— For purposes of this section, replacement rooms must be substantially comparable~~
341 ~~in size, location, quality and amenities, and available at comparable rents and total~~
342 ~~monthly or weekly charges to those being removed. The replacement rooms must also~~
343 ~~be subject to rent and eviction controls substantially equivalent to those provided by the~~
344 ~~Rent Stabilization Ordinance or those that applied to the original rooms which are being~~
345 ~~replaced. Comparable rooms may be provided by:~~

346 ~~1.— Offering the existing tenants of the affected rooms the right of first-~~
347 ~~refusal to occupy the replacement rooms;~~

348 ~~2.— Making available comparable rooms, which are not already classified~~
349 ~~as Residential Hotel Rooms to replace each of the rooms to be removed; or~~

350 ~~3.— Paying to the City's Housing Trust Fund an amount sufficient to provide~~
351 ~~replacement rooms. The amount to be paid to the City shall be the~~
352 ~~difference between the replacement cost, including land cost, for the rooms~~
353 ~~and the amount which the City can obtain by getting a mortgage on the~~
354 ~~anticipated rents from the newly constructed rooms. The calculations shall~~
355 ~~assume that rents in the newly constructed rooms shall not exceed the~~
356 ~~greater of either a level comparable to the weekly or monthly charges for~~
357 ~~the replaced rooms or the level which would be charged if no current tenant~~
358 ~~paid more than 30% of such tenant's gross income for rent.~~

359 ~~C.— In a Residential Hotel owned and operated by a non-profit organization,~~
360 ~~recognized as tax-exempt by either the Franchise Tax Board and/or the~~
361 ~~Internal Revenue Service, Residential Hotel Rooms may be changed to~~
362 ~~non-residential hotel room uses providing that the average number of~~
363 ~~Residential Hotel Rooms per day in each calendar year is at least 95% of~~
364 ~~Residential Hotel Rooms established for that particular Residential Hotel.~~
365 ~~(Ord. 6478-NS § 4 (part), 1999)~~

366 **23C.08.050-020 Demolitions of Accessory Buildings and Buildings Used for**
367 **Commercial, Manufacturing, ~~or~~ Community, Institutional, ~~or~~ Other Non-**
368 **Residential Uses**

369 A. Notwithstanding any other provision of Title 23, Aa Mmain Bbuilding used for non-
370 residential purposes containing less than 5,000 square feet of floor area may be
371 demolished subject to issuance of an AUPUse

372 Permit; a Mmain Bbuilding containing 5,000 square feet or more of floor area may be
373 demolished subject to issuance of Use Permit.-

374 B. A demolition of an ~~accessory~~Accessory Building other than an Accessory
375 Dwelling Unit containing less than 300 square feet of floor area is permitted ~~as of right~~
376 subject to the issuance of a Zoning Certificate; an ~~A~~Accessory Building other than an
377 Accessory Dwelling Unit containing 300 square feet or more of floor area may be
378 demolished subject to the issuance of an AUP.

379 C. Any application for a Use Permit or AUP to demolish a non-residential building or
380 structure which is 40 or more years old shall be forwarded to the Landmarks
381 Preservation Commission (LPC) for review prior to consideration of the Use Permit or
382 AUP. The LPC may initiate a landmark or structure-of-merit designation or may choose
383 solely to forward to the Board or Zoning Officer its comments on the application. The
384 Board or Zoning Officer shall consider the recommendations of the LPC in considering
385 its action on the application.

386 D. A Use Permit or an AUP for demolition of an Accessory Building other than an
387 Accessory Dwelling Unit or for the demolition of a non-residential building or structure
388 ~~may be approved only shall issue~~ if the Board or Zoning Officer ~~finds that the demolition~~
389 ~~will not be materially detrimental to the commercial needs and public interest of any~~
390 ~~affected neighborhood or the City, and one of the following findings that the demolition if~~
391 the application complies with the requirements of Chapter 3.24, and one of the following
392 findings is made:

- 393 1. ~~Is The demolition is~~ required to allow ~~a proposed the construction of a~~ new
394 building or other ~~proposed~~ new Use approved by the Board or Zoning Officer; ~~or~~
- 395 2. The demolition will ~~Will~~ remove a building ~~which that~~ is unusable for activities
396 ~~which are~~ compatible with the purposes of the District in which it is located or
397 ~~which that~~ is infeasible to modify for such uses; ~~or~~
- 398 3. ~~Will~~ The demolition will remove a structure which represents an unabatable
399 ~~attractive nuisance to the public~~; or
- 400 4. ~~Is The demolition is~~ required for the furtherance of specific plans or projects
401 sponsored by the City or other local district or authority. In such cases, it shall be
402 demonstrated that it is infeasible to obtain prior or concurrent approval for the
403 new construction or new use which is contemplated by such specific plans or
404 projects and that adhering to such a requirement would threaten the viability of
405 the plan or project. ~~(Ord. 6478 NS § 4 (part), 1999)~~

406 **23C.08.~~060~~030 Building Relocations**

407 A. The relocation of a building from a lot is considered a demolition for purposes of
408 this Ordinance.

409 B. The relocation of a building to a lot is considered new construction and shall be
410 subject to all requirements applicable to new construction.

411 C. When a building is relocated to a different lot within the City, the lot from which the
412 building is being removed shall be known as the source lot and the lot on which the
413 building is to be sited shall be known as the receiving lot. ~~In such cases all notification~~
414 ~~requirements apply to both the source and receiving lots.~~

415 D. The removal of a building from the source lot shall require be approved if it meets
416 the requirements for issuance of demolition permit under this Chapter.

417 E. The relocation of a building onto the receiving lot shall be approved if it meets the
418 requirements for construction of a new structure on the receiving lot.

419 ~~The Board may approve a Use Permit for relocation to a lot if it finds that the building at~~
420 ~~proposed to be relocated is not in conflict with the architectural character, or the building~~
421 ~~scale of the neighborhood or area in which such building is to be located, and the~~
422 ~~receiving lot provides adequate separation of buildings, privacy, yards and Usable Open~~
423 ~~Space. (Ord. 6478-NS § 4 (part), 1999)~~

424 **23C.08.~~070~~040 Limitations~~Imminent Hazards~~**

425 ~~A.~~—Notwithstanding anything to the contrary, if a building or structure is unsafe,
426 presents a public hazard and is not securable and/or is in imminent danger of collapse
427 so as to endanger persons or property, as determined the City's Building Official, it may
428 be demolished without a Use Permit. The Building Official's determination in this matter
429 shall be governed by the standards and criteria set forth in the most recent edition of the
430 California Building Code that is in effect in the City.

431 ~~B.~~—~~This chapter shall be applied only to the extent permitted by state law as to~~
432 ~~buildings which have been entirely withdrawn from the rental market pursuant to the~~
433 ~~state statute known as the Ellis Act. (Ord. 6478-NS § 4 (part), 1999)~~



PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

NOVEMBER 18, 2020

Amendment to Berkeley Municipal Code Chapter 23C.08 Demolition and Dwelling Unit Controls

The Planning Commission of the City of Berkeley will hold a Public Hearing on the above matter, pursuant to Zoning Ordinance Section 23A.20.30, on **Wednesday, November 18, 2020**, beginning at 7:00 PM. **The hearing will be conducted via Zoom** – see the Agenda for details, which can be found here: <https://www.cityofberkeley.info/PC/>

PUBLIC ADVISORY: This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

AMENDMENT DESCRIPTION: Amend Berkeley Municipal Code (BMC) Chapter 23C.08 to ensure Berkeley's regulations pertaining to Demolitions and Dwelling Unit Controls are enforceable, comply with State regulations, correctly provide cross-references to other chapters of the BMC, and are written clearly and concisely.

LOCATION: Citywide.

ENVIRONMENTAL REVIEW STATUS: The proposed Zoning Ordinance amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), in that the proposed amendment does not have the potential for causing a significant effect on the environment and is not subject to CEQA review.

PUBLIC COMMENT

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Commission may limit the time granted to each speaker.

Written comments must be directed to the Planning Commission Secretary at the Land Use Planning Division (Attn: Planning Commission Secretary), 1947 Center Street, Second Floor, Berkeley CA 94704, or via e-mail to: apearson@cityofberkeley.info. All materials will be made available via the Planning Commission agenda page online at this address: <https://www.cityofberkeley.info/PC/>

Correspondence received by 12 noon, eight days before this public hearing, will be included as a Communication in the agenda packet.

Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by 12 noon two days before this public hearing, will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication one day before the public hearing.
- Correspondence received by 5pm one day before this public hearing, will be included in a second Supplemental Packet, which will be posted to the online agenda as a Late Communication by 5pm on the day of the public hearing.
- Correspondence received after 5pm one day before this public hearing will be saved as part of the public record.

Note: It will not be possible to submit written comments at the meeting.

COMMUNICATION ACCESS

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability.

FURTHER INFORMATION

Questions should be directed to Alene Pearson, at 510-981-7489, or apearson@cityofberkeley.info

Current and past agendas are available on the City of Berkeley website at: <https://www.cityofberkeley.info/PC/>

ATTACHMENT 4 - EXISTING DEMOLITION ORDINANCE

[RECODIFIED IN THE BASELINE ZONING ORDINANCE AS SECTION 23.326]

Sections:

23C.08.010 Demolition or Elimination of Dwelling Units--General Requirement

23C.08.020 Elimination of Dwelling Units through Demolition

23C.08.030 Elimination of Dwelling Units and Accessory Dwelling Units through Conversion and Change of Use

23C.08.035 Private Right of Action

23C.08.040 Elimination of Residential Hotel Rooms

23C.08.050 Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses

23C.08.060 Building Relocations

23C.08.070 Limitations Section

23C.08.010 Demolition or Elimination of Dwelling Units--General Requirement

A. No Dwelling Unit or units may be eliminated or demolished except as authorized by the provisions of the chapter.

B. The Board may approve a Use Permit for the elimination or demolition of dwelling units only if, in addition to any other findings required by this Ordinance, it finds that the elimination of the dwelling units would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.

C. Demolition of buildings containing a single dwelling unit and buildings constructed after June 1980 shall not be subject to the findings set forth in Section 23C.08.020.A but shall be subject to subdivisions B, C, and D of Section 23C.08.020.

Section 23C.08.020 Elimination of Dwelling Units through Demolition

A. The Board may approve a Use Permit to demolish a building constructed prior to June 1980 on a property containing two or more dwelling units if it makes the findings required by the foregoing section, and either:

1. The building containing the units is hazardous or unusable and is infeasible to repair; or

2. The building containing the units will be moved to a different location within the City of Berkeley with no net loss of units and no change in the affordability levels of the units; or

3. The demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers and affordable housing developments that serve the greater good of the entire community; or

4. The demolition is necessary to permit construction approved pursuant to this Chapter of at least the same number of dwelling units. When a project is approved under this paragraph, the project applicant shall be required to pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in the City of Berkeley. The amount of the fee shall be set by resolution of the City Council. In the case of a unit with a tenant at the time of demolition, the provisions of Section 23C.08.020.C apply and the impact fee is due when that tenant vacates the unit. In lieu of paying the impact fee, the project applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity. The affordability level of the below market rent and the income level of the qualifying household shall be set by resolution of the City Council. The project applicant shall enter a regulatory agreement with the City of Berkeley to provide for the provision of any such in lieu units.

B. Notwithstanding Subdivision (A), demolition will not be allowed if the building was removed from the rental market under the Ellis Act during the preceding five (5) years or there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner, who will provide an assessment of the evidence and all available documentation to the Zoning Adjustments Board, which shall determine whether harassment or threatened or actual illegal eviction occurred.

C. If the units in a building to be demolished under subdivision (A) are occupied, the following requirements shall apply.

1. Except as set forth in paragraph (2) below:

a. The applicant shall provide all sitting tenants notice of the application to demolish the building no later than the date it is submitted to the City, including notice of their rights under Chapter 13.76.

b. The applicant shall provide assistance with moving expenses equivalent to those set forth in Chapter 13.84.

c. The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City.

2. An applicant under this Chapter who proposes to construct a 100% affordable housing project shall provide relocation benefits that conform to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended and the California Relocation Act (Government Code sections 7260 et seq.).

3. Except as set forth in paragraph (4) below, sitting tenants who are displaced as a result of demolition shall be provided the right of refusal to move into the new building; and tenants of units that are demolished shall have the right of first refusal to rent new below-market rate units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues. Income restrictions shall not apply to displaced tenants.

4. In cases where an applicant under this Chapter has constructed a 100% affordable housing project, sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed building will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements when the new units are ready for occupancy.

5. The provisions of this section shall not apply to tenants who move in after the application for demolition is submitted to the City provided that the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.

D. Notwithstanding anything in Title 23 to the contrary, but subject to any applicable requirements of the Landmarks Preservation Ordinance (BMC Chapter 3.24), accessory buildings of any size, including, but not limited to, garages, carports and sheds, but not including any structure containing a lawfully established dwelling unit, which serves and is located on the same lot as a lawful residential use, may be demolished by right.

Section 23C.08.030 Elimination of Dwelling Units and Accessory Dwelling Units through Conversion and Change of Use

A. The Board may approve a Use Permit for the elimination of a dwelling unit through combination with another dwelling unit for purposes of occupancy by a single household if it finds that:

1. The existing number of dwelling units exceeds the number permitted by the maximum residential density applicable to the District where the subject building is located; and

2. One of the affected dwelling units has been occupied by the applicant's household as its principal place of residence for no less than two years prior to the date of the application and none of the affected units is currently occupied by a tenant, or all dwelling units that would be affected by the elimination are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years prior to the date of their death.

B. Notwithstanding Subdivision (A), demolition will not be allowed if the building was removed from the rental market under the Ellis Act during the preceding five (5) years or there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner, who will provide an assessment of the evidence and all available documentation to the Zoning Officer or Zoning Adjustments Board, which shall determine whether harassment or threatened or actual illegal eviction occurred.

C. In the event a unit eliminated pursuant to subdivision (A) is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City, which provides that if the owner's household does not occupy the unit for at least two years from the date of elimination the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area, which shall be deposited into the City's Housing Trust Fund. The City may exempt an applicant from the two year residency requirement in the event of an unforeseeable life change that requires relocation.

D. In cases where elimination of a dwelling unit reduces the number of units in a building to four (4), the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Section 13.76.130.A.9.i(iii) shall continue to apply until such time as the building is demolished or sufficient units are added or restored such that the building contains at least five (5) units.

E. Alternatively, the Zoning Officer may issue an AUP for a conversion which eliminates a dwelling unit if they find that the conversion of the building will restore or brings the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements of A.2., B., C. and D. of this section.

F. The Board may approve a Use Permit for a change of use to a community care or a child care facility which eliminates a dwelling unit if it finds that such use is in conformance with the regulations of the District in which it is located.

G. The Board may approve a Use Permit for the elimination of a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to Single-Residential Occupancy (SRO) Rooms in residential developments undergoing a publicly-funded rehabilitation.

H. Notwithstanding the general Use Permit requirement under 23C.08.010, a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated subject to the issuance of a Zoning Certificate when the re-conversion restores the original single family use of the main building or lot, provided that no tenant is evicted.

Section 23C.08.035 Private Right of Action

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections 23C.08.020 or 23C.08.030. In any such action a prevailing plaintiff may recover reasonable attorney's fees.

Section 23C.08.040 Elimination of Residential Hotel Rooms

A. The Board may approve a Use Permit to remove a Residential Hotel Room if it finds that, prior to the removal of any Residential Hotel Rooms, the Residential Hotel owner will provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant; and

1. The Residential Hotel Rooms being removed are replaced by a common use facility, including, but not limited to, a shared kitchen, lounge or recreation room, that will be available to and primarily of benefit to the existing residents of the Residential Hotel and that a majority of existing residents give their consent to the removal of the rooms;

2. Prior to the date on which the Residential Hotel Rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section; or

3. Residential Hotel Rooms being removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).

B. For purposes of this section, replacement rooms must be substantially comparable in size, location, quality and amenities, and available at comparable rents and total monthly or weekly charges to those being removed. The replacement rooms must also be subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are being replaced. Comparable rooms may be provided by:

1. Offering the existing tenants of the affected rooms the right-of-first-refusal to occupy the replacement rooms;

2. Making available comparable rooms, which are not already classified as Residential Hotel Rooms to replace each of the rooms to be removed; or

3. Paying to the City's Housing Trust Fund an amount sufficient to provide replacement rooms. The amount to be paid to the City shall be the difference between

the replacement cost, including land cost, for the rooms and the amount which the City can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30% of such tenant's gross income for rent.

C. In a Residential Hotel owned and operated by a non-profit organization, recognized as tax-exempt by either the Franchise Tax Board and/or the Internal Revenue Service, Residential Hotel Rooms may be changed to non-residential hotel room uses providing that the average number of Residential Hotel Rooms per day in each calendar year is at least 95% of Residential Hotel Rooms established for that particular Residential Hotel.

Section 23C.08.050 Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses

A. A main building used for non-residential purposes may be demolished subject to issuance of a Use Permit.

B. A demolition of an accessory building containing less than 300 square feet of floor area is permitted as of right; an accessory building containing 300 square feet or more of floor area may be demolished subject to an AUP.

C. Any application for a Use Permit or AUP to demolish a non-residential building or structure which is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review prior to consideration of the Use Permit or AUP. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the Board its comments on the application. The Board shall consider the recommendations of the LPC in considering its action on the application.

D. A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the Board or Zoning Officer finds that the demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and one of the following findings that the demolition:

1. Is required to allow a proposed new building or other proposed new Use;
2. Will remove a building which is unusable for activities which are compatible with the purposes of the District in which it is located or which is infeasible to modify for such uses;
3. Will remove a structure which represents an unabatable attractive nuisance to the public; or
4. Is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority. In such cases, it shall be demonstrated that it is infeasible to obtain prior or concurrent approval for the new construction or new use

which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

Section 23C.08.060 Building Relocations

A. The relocation of a building from a lot is considered a demolition for purposes of this Ordinance.

B. The relocation of a building to a lot is considered new construction and shall be subject to all requirements applicable to new construction.

C. When a building is relocated to a different lot within the City, the lot from which the building is being removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. In such cases all notification requirements apply to both the source and receiving lots.

D. The Board may approve a Use Permit for relocation to a lot if it finds that the building proposed to be relocated is not in conflict with the architectural character, or the building scale of the neighborhood or area in which such building is to be located, and the receiving lot provides adequate separation of buildings, privacy, yards and Usable Open Space.

Section 23C.08.070 Limitations

A. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined the City's Building Official, it may be demolished without a Use Permit. The Building Official's determination in this matter shall be governed by the standards and criteria set forth in the most recent edition of the California Building Code that is in effect in the City.

B. This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the state statute known as the Ellis Act.

ORDINANCE NO.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23.326, DEMOLITION AND DWELLING UNIT CONTROLS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 23.326 is hereby amended to read as follows:

Chapter 23.326 DEMOLITION AND DWELLING UNIT CONTROLS

Sections:

- 23.326.010 Chapter Purpose.
- 23.326.020 General Requirements.
- 23.326.030 Eliminating Dwelling Units through Demolition.
- 23.326.040 Eliminating Dwelling Units through Conversion and Change of Use.
- 23.326.050 Private Right of Action.
- 23.326.060 Elimination of Residential Hotel Rooms.
- 23.326.070 Demolitions of Non-Residential Buildings.
- 23.326.080 Building Relocations.
- 23.326.090 Limitations.

23.326.010 Chapter Purpose.

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing, aesthetic, and safety goals of the City. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.326.020 General Requirements.

A. *Applicability.* No dwelling unit or units may be eliminated or demolished except as authorized by this chapter and State law, including but not limited to Government Code section 66300 *et seq.* For purposes of this Chapter, “residential unit” includes any

Dwelling Unit, bedroom or sleeping quarters in a Group Living Accommodation, or Live/Work Unit.

B. *Findings*. In addition to the requirements below, the Zoning Adjustments Board (ZAB) may approve a Use Permit to eliminate or demolish a dwelling unit only upon finding that eliminating the dwelling unit would not be materially detrimental to the housing needs and public interest of the affected neighborhood and Berkeley.

23.326.030 Eliminating Dwelling Units through Demolition.

A. *Buildings with Two or More Units Constructed Before June 1980.*

1. *Applicability*. This subsection only applies to building with two or more units constructed before June 1980.

2. *Limitation*.

(a) Demolition is not allowed if:

- i. The building was removed from the rental market under the Ellis Act during the preceding five years; or
- ii. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

(b) Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.

3. *Findings*. The ZAB may approve a Use Permit to demolish a building constructed before June 1980 on a property containing two or more dwelling units if any of the following are true:

- (a) The building containing the units is hazardous or unusable and is infeasible to repair.
- (b) The building containing the units will be moved to a different location within Berkeley with no net loss of units and no change in the affordability levels of the units.

(c) The demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers and affordable housing developments that serve the greater good of the entire community.

(d) The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

4. *Replacement Units*

A Use Permit for the demolition of one or more residential units in connection with a housing development project shall be issued **only if the project complies with the requirements of Government Code sections 65915(c)(3) and 66300(d), as applicable,** and the Board makes the findings required under Section 23B.32.040.A. Any protected units shall be replaced with units of equivalent size **that comply with applicable affordability requirements in Chapter 22.20, Chapter 23C.12, and Section 23E.20.080.**


[Alternative B]

B. A Use Permit for the demolition of one or more residential units in connection with a housing development project shall be issued only if the project complies with the requirements of Government Code sections 65915(c)(3) and 66300(d), as applicable, and the Board makes the findings required under Section 23B.32.040.A. Any protected units shall be replaced with units of equivalent size that comply with applicable affordability requirements in Chapter 22.20, Chapter 23C.12, and Section 23E.20.080; provided, **however, the applicant may request that any protected unit occupied at the time the application is filed by a tenant who is not eligible to occupy an affordable unit under Chapter 22.20, Chapter 23C.12, or Section 23E.20.080 be replaced with a unit that complies with the requirements of the Rent Stabilization Ordinance, Chapter 13.76 et seq.** The Board shall condition the approval on the requirements that (1) the rent for the replacement unit may not exceed the rent that would what have been charged if the tenancy had continued uninterrupted, and (2) a written restriction requiring compliance with the Rent Stabilization Ordinance be recorded against the title to the property.

5. *Occupied Units.*

(a) *Applicability.*

- i. The requirements in this subsection apply if units to be demolished are occupied.

ii. These requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction. 

(b) *Notice.* The applicant shall provide all sitting tenants notice of the application to demolish the building no later than the date it is submitted to the City, including notice of their rights under Municipal Code Section [13.76](#) (Rent Stabilization and Eviction for Good Cause Program).

(c) *General Requirements.*

i. The applicant shall provide assistance with moving and relocation assistance equivalent to the requirements set forth in Chapter [13.84](#) or Government Code section 66300(d)(2)(D)(i), **whichever requires greater relocation assistance to displaced households**. Notwithstanding the requirements of Chapter 13.84, the applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. **Funding for the rent differential shall be guaranteed in a manner approved by the City by Resolution**; provided, however, that any project that is carried out or funded by the state or federal government shall be subject to applicable provisions of the California Relocation Act (Government Code section 7260 *et seq.*) and/or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-4655). **[Need an objective formula for determining rent differential]**

ii. The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City.

iii. *Exception.* An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with this subsection but must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the California Relocation Act (Government Code sections [7260](#) *et seq.*).

(d) *Sitting Tenants Rights.*

i. Any tenant of a protected unit that is demolished shall have the right of first refusal to rent any new protected units designated to replace the units that were demolished, **consistent with the requirements of Government Code section 66300(d)(2)(D)(ii), if applicable**, and subject to any applicable eligibility requirements for affordable units.

iii. Income restrictions do not apply to displaced tenants.

iv. *Exception.*

(1) An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with [23.326.030.A.4.a](#), [b](#), and [c](#), but must comply with the following requirement.

(2) Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed building will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements when the new units are ready for occupancy.

6. The provisions of Government Code section 66300 incorporated herein shall remain effective and enforceable under this Chapter to the maximum extent permitted by law, notwithstanding the subsequent repeal of those provisions under Government Code section 66301 or otherwise.

5

B. *Accessory Buildings.* Notwithstanding anything in Municipal Code Title [23](#) (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section [3.24](#) (Landmarks Preservation Ordinance), accessory buildings of any size, including, but not limited to, garages, carports, and sheds, but not including any structure containing a lawfully established dwelling unit, which serves and is located on the same lot as a lawful residential use, may be demolished by right. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.326.040 Eliminating Dwelling Units through Conversion and Change of Use.

A. *General.* The ZAB may approve a Use Permit for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy by a single household if it finds that:

1. The existing number of dwelling units exceeds maximum residential density in the district where the building is located; and

2. One of the following is true:

(a) One of the affected dwelling units has been occupied by the applicant's household as its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.

(b) All of the affected dwelling units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.

B. *Limitations.*

1. Demolition is not allowed if:

(a) The building was removed from the rental market under the Ellis Act during the preceding five years; or

(b) There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

2. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.

C. *Effect of Noncompliance with the Two-Year Requirement.*

1. If a unit eliminated under Subsection [A](#) (General) is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.

2. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.

3. The condition and notice will provide that if the owner's household does not occupy the unit for at least two years from the date of elimination the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.

4. The City of Berkeley may exempt an applicant from the two-year residency requirement if of an unforeseeable life change that requires relocation.

D. Effect of Eliminating a Dwelling Unit.

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter [13](#) (Public Peace, Morals and Welfare) shall continue to apply until:

(a) The building is demolished; or

(b) Sufficient units are added or restored such that the building contains at least five units.

2. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements [23.326.040.A.1](#) and [2](#) and [23.326.040.B](#) and [C](#).

E. Exceptions.

1. The ZAB may approve a Use Permit for a change of use to a community care or a child care facility which eliminates a dwelling unit if it finds that such use is in conformance with the regulations of the district in which it is located.

2. The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private

bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-residential occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

3. Notwithstanding the general Use Permit requirement under [23.326.020](#) (General Requirements), a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated with a Zoning Certificate if:

(a) The re-conversion restores the original single-family use of the main building or lot; and

(b) No tenant is evicted. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.326.050 Private Right of Action.

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections [23.326.030](#) (Eliminating Dwelling Units through Demolition) and [23.326.040](#) (Eliminating Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff may recover reasonable attorney's fees. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.326.060 Elimination of Residential Hotel Rooms.

A. *General Requirements.* Before removal, the following requirements must be met for the ZAB to approve a Use Permit for the elimination of residential hotel rooms:

1. The residential hotel owner shall provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant.

2. One of the following three requirements shall be met:

(a) The residential hotel rooms being removed are replaced by a common use facility, including, but not limited to, a shared kitchen, lounge, or recreation room, that will be available to and primarily of benefit to the existing residents of the residential hotel and that a majority of existing residents give their consent to the removal of the rooms.

(b) Before the date on which the residential hotel rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section.

(c) Residential hotel rooms are removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).

B. *Criteria for Replacement Rooms.* For purposes of this section, replacement rooms must be:

1. Substantially comparable in size, location, quality, and amenities;
2. Subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are being replaced; and
3. Available at comparable rents and total monthly or weekly charges to those being removed. Comparable rooms may be provided by:

(a) Offering the existing tenants of the affected rooms the right of first refusal to occupy the replacement rooms;

(b) Making available comparable rooms, which are not already classified as residential hotel rooms to replace each of the rooms to be removed; or

(c) Paying to the City of Berkeley's Housing Trust Fund an amount sufficient to provide replacement rooms.

i. The amount to be paid to the City of Berkeley shall be the difference between the replacement cost, including land cost, for the rooms and the amount which the City of Berkeley can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms.

ii. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30 percent of such tenant's gross income for rent.

C. *Exception for Non-Profit Ownership.* In a residential hotel owned and operated by a non-profit organization, recognized as tax-exempt by either the Franchise Tax Board and/or the Internal Revenue Service, residential hotel rooms may be changed to non-residential hotel room uses if the average number of residential hotel rooms per day in each calendar year is at least 95 percent of residential hotel rooms established for that particular residential hotel. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.326.070 Demolitions of Non-Residential Buildings.

A. *Main Non-Residential Buildings.* A main building used for non-residential purposes may be demolished with a Use Permit.

B. *Accessory Buildings.*

1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. *Landmarks Preservation Commission Review.*

1. Any application for a Use Permit or AUP to demolish a non-residential building or structure which is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review before consideration of the Use Permit or AUP.
2. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the ZAB its comments on the application.
3. The ZAB shall consider the recommendations of the LPC in when acting on the application.

D. *Findings.* A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the ZAB or the Zoning Officer finds that:

1. The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and

2. The demolition:

(a) Is required to allow a proposed new building or other proposed new use;

(b) Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;

(c) Will remove a structure which represents an inhabitable attractive nuisance to the public; or

(d) Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.326.080 Building Relocations.

A. *Treatment of Building Relocation.*

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.

2. Relocating a building to a lot is considered new construction and is subject to all requirements applicable to new construction.

3. When a building is relocated to a different lot within in Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. In such cases all notification requirements apply to both the source and receiving lots.

B. *Findings.* The ZAB may approve a Use Permit to relocate a building upon finding that:

1. The building to be relocated is not in conflict with the architectural character, or the building scale of the neighborhood or area to which it will be relocated; and

2. The receiving lot provides adequate separation of buildings, privacy, yards, and usable open space. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.326.090 Limitations.

A. *Unsafe, Hazard, or Danger.*

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.

2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

B. *Ellis Act.* This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter [12.75](#)).

MEMORANDUM

DATE: April 18, 2022

TO: Honorable Members of the 4x4 Joint Task Force Committee on Housing:
City Council and Rent Board

FROM: Rent Board Vice-Chairperson Soli Alpert

SUBJECT: Generating New Rent Controlled Housing in the Context of Costa-Hawkins
and the Upcoming Housing Element Update

Rent control protections are an essential part of ensuring stability for tenants. The ability for California cities to enact and enforce rent control protections, however, has been significantly undermined by restrictive state laws. Foremost among these is the Costa-Hawkins Rental Housing Act. One of Costa-Hawkins three primary prohibitions is an exemption of the application of rent control to “new construction.” In the context of the City of Berkeley, “new construction” is defined as being built after June 30, 1980. By using a fixed date rather than a rolling age window, the new construction exemption increasingly undermines our local protections over time, as a smaller and smaller portion of the City’s housing stock fall under rent control protections.

There are three exemptions to this prohibition that the City can use to generate new rent-controlled units: the remodeling of existing residential space, SB 330, and Section 1954.52(b) of Costa-Hawkins itself. However, Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Program) currently does not permit the Board to regulate units under the second two of these, even though they are not exempt under Costa-Hawkins. The Ordinance should be amended to allow units under all three to be directly regulated by the Rent Board.

Remodel of Existing Structures

Numerous court rulings have confirmed that the letter and intention of Costa-Hawkins is to exempt truly new housing, not preexisting housing that is rearranged, converted, or otherwise modified but not created from scratch. Under this principle, when existing habitable space that is older than June 30, 1980 but exempt under a different provision undergoes remodeling, it can become covered by rent control as a result of that work. For example, if a large single-family home built before 1980 is retrofit to become a fourplex, any of the four units consisting entirely of space already habitable before the retrofit would not be considered new construction for the purposes of Costa-Hawkins’ new construction exemption.

This is an important but restricted way to generate new rent-controlled units. As the City considers allowing 2, 3, and 4 unit developments more broadly, incentivizing the use of existing

space and disincentivizing demolition can help projects to fit into this model. Additionally, the Rent Board already has the authority to regulate this type of unit, so no amendment to the Ordinance is necessary.

SB 330

One of the provisions of SB 330, the Housing Crisis Act of 2019, requires that cities cannot approve a housing development project that will require the demolition of protected units unless the project replaces all demolished protected units. Protected units include both rent controlled units and inclusionary affordable housing or other deed restricted affordable housing. Cities are granted the discretion as to which kind of protections the replacement units provide, with regard to rent control and deed restricted affordability. It is possible that replacement units could be required to comply with both, though that requires further, separate analysis.

Regardless of whether the City decides to require replacement units be rent controlled, in general or for a specific project, the Ordinance should be amended to allow the Board to directly regulate such units should they come to exist. That allows the City the flexibility to make those determinations based on the best interest of the City and the facts of a given project. This is especially important as the City considers amendments to the Demolition Ordinance and increased density standards that may incentivize demolition. Such an amendment has already been drafted by Rent Board legal staff and is included in the packet.

Section 1954.52(b)

The final exception to the new construction exemption is found in Costa-Hawkins itself and would appear to be the most broad. Section 1954.52(b) of Costa-Hawkins reads:

(b) Subdivision (a) does not apply where the owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

The referenced Subdivision (a) is the provision of Costa-Hawkins containing both the new construction exemption and the single-family-home/condo exemption. Chapter 4.3 contains the State Density Bonus law. A straightforward reading of this section indicates that the City can require a developer or owner to agree to rent control in exchange for greater density, zoning waivers, or a direct financial contribution. While the City may not be able to blanketly require this on all new development, many new developments, especially large developments that make up a significant proportion of new units, often require zoning exemptions and density bonuses. As the City moves forward with the housing element update, it should evaluate when and how it could take advantage of this provision to increase tenant protections in new construction. Regardless of how the City incorporates Section 1954.52(b), the Ordinance should be amended to allow the potential units to come under Rent Board oversight. Rent Board staff

are working on further legal analysis of this section and relevant case law in the process of preparing that amendment.

This is especially important because the City, specifically the Zoning Adjustments Board, has already required a form of rent control in exchange for granting zoning waivers. Because the Ordinance was not written contemplating such units, the ZAB couldn't directly subject the units to Board Oversight. Instead, they are subject to a sort of ad-hoc rent control, without the benefits of Board enforcement, oversight, and regulation.



Rent Stabilization Board
Legal Unit

MEMORANDUM

DATE: April 18, 2022

TO: Honorable Members of the 4 x 4 Joint Committee on Housing

FROM: Honorable Members of the Berkeley Rent Stabilization Board
By: Matt Brown, General Counsel
Matthew Siegel, Staff Attorney

SUBJECT: Proposed Amendments to Rent Stabilization and Eviction for Good Cause Ordinance to be Placed on November 2022 Ballot

Summary

The Legislation, IRA/AGA & Registration Committee has discussed potential amendments to the Rent Stabilization and Eviction for Good Cause Ordinance to propose to the full Board at each meeting since October 13, 2020. At its March 9, 2022 meeting, the Committee recommended the amendments articulated in this memorandum. The amendments 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 continuing 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.

At its March 17, 2022 meeting the Board voted to support these amendments and requested that staff forward them to the 4 x 4 Committee for review prior to Council considering these changes. Should they support these proposed amendments, Council will have to place these items on the ballot for the November general election.

The proposed amendments include an amendment to allow for rent control protections to attach to new units that were built as the result of demolition of pre-existing residential structures now allowed by Senate Bill 330 (SB 330); an amendment to expand eviction protections for tenant

households that exceed the number of occupants allowed at the inception of the tenancy; and an elimination of City Council's ability to exempt rent control from units when the vacancy rate reaches a certain level. Each proposed amendment is discussed separately below.

1. Allowance for rent control protections on new units covered by SB 330

Background and Need for Rent Stabilization Board Action:

SB 330 specifically allows cities to impose rent control protections on units that are built as the result of demolition of previously-controlled units. The Housing Crisis Act of 2019 requires all housing projects that demolish existing residential units to create as least as many residential units as are being demolished. Projects that contain "protected units," which include residential units that have been subject to a local rent control program within the previous five years, are required to provide replacement units at an affordable rent (or sales price) with the same number of bedrooms as the demolished unit. The affordability level of a replacement unit is based on the income level of the last household occupying the demolished unit and must be rented (or sold) at a rate that is affordable to occupants of the same income category or lower. If a "protected unit" was last occupied by persons or families above the low-income category, the affected city has the option to require that the housing project provide: 1) a replacement unit affordable to low-income households for a period of at least 55 years, or 2) a replacement unit that complies with the jurisdiction's rent or price control ordinance.

Currently, the law expressly exempts newly constructed units from Chapters 10 (Establishment of Base Rent Ceiling and Posting), 11 (Annual General Adjustment of Rent Ceilings) and 12 (Individual Adjustments of Rent Ceilings) of the Rent Ordinance. These residential units are subject to the registration requirements of Measure MM, are covered by good cause for eviction, and are entitled to annual security deposit interest, but they are not subject to local rent controls. SB 330 would allow for these new units created as the result of demolished units to be fully covered by the rent control provisions of the ordinance should the City choose that option when approving new construction that was the result of demolition of existing qualifying units.

The Legislation, IRA/AGA & Registration Committee has directed staff to draft language that would amend the Rent Ordinance to allow these units to be fully rent-controlled. To that end, we have added a section to Chapter 4 of the ordinance that distinguishes this type of new construction to that described in BMC Section 13.76.040Q. We also proposed specific reference to paragraph Q in Chapter 5 of the ordinance to distinguish it from newly constructed units that remain exempt from local rent controls.

Proposed Language:

Chapter 13.76 is amended as follows:

Section 13.76.040

DEFINITIONS

R. Notwithstanding any other provision in this ordinance and to the extent that state or local law permits, any residential rental units created as a result of demolition or replacement where such demolition or replacement is affected via the creation of a "housing development project" as

defined in the Housing Crisis Act of 2019 (Senate Bill 330), shall not be exempt as “newly constructed units” and, unless otherwise exempt, shall be covered by all provisions of this chapter.

Section 13.76.050

APPLICABILITY

I. Newly constructed rental units, as defined in Section 13.76.040Q. However, the exemption of such newly constructed 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. 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.

2. Allow for increased occupancy of rental units without threat of eviction

Background and Need for Rent Stabilization Board Action:

The Board also recommended that the Ordinance be amended to prohibit evictions based on the addition of occupants if the landlord has unreasonably refused the tenant’s written request, including a refusal based on the number of occupants allowed by the rental agreement or lease. The Legislation, IRA/AGA & Registration Committee also expressed strong interest in adopting changes to Regulation 1270 to be more permissive in allowing an increase in the number of tenants occupying a unit without a corresponding rent increase should such amendments to the eviction protections be adopted by the voters.

Tenants’ ability to add additional occupants to their household can be a precarious proposition given that a good cause for eviction lies when a tenant household substantially violates a material term of the rental agreement. While tenants are currently protected from eviction when there is one-for-one replacement of tenants, the Ordinance specifically provides a ground for eviction when any subletting by the tenant household results in an increase above the base occupancy level (B.M.C. 13.76.130A.2.(c)). For this reason, the Board recommended amendments be made to the Ordinance prior to the adoption or amendment of any regulations that intend to expand a tenant’s right to increase the size of their household.

The Board already has express authority to regulate the manner and grounds for which rents may be increased or decreased,¹ but the grounds for eviction are hard-coded in the Ordinance (B.M.C. 13.76.130.). One such basis for eviction is when the “...tenant has continued...to substantially violate any of the material terms of the rental agreement...”(B.M.C. 13.76.130A.2.). Thus, while Board Regulation 1270 can be amended to allow for an increase in the base occupancy level of a unit without a corresponding rent increase, the regulation cannot override the good cause for eviction based on a lease violation, such as when a household has more occupants than those

¹ See B.M.C. Section 13.76.120C.

allowed pursuant to the initial agreement between the landlord and tenant.

The Board elected to put the proposed changes to the good cause for eviction section of the ordinance before the voters to protect tenants from displacement prior to adopting amendments to the ordinance that would disallow rent increases for increases in occupancy.

Proposed Language:

Section 13.76.130

GOOD CAUSE REQUIRED FOR EVICTION

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~~ the maximum number of occupants legally allowed under Section 503(b)(2) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922, except where prohibited by law.
- 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~~ tenant has made a written request to the landlord to either sublet the unit and/or add additional occupants, and the landlord has failed to respond in writing within fourteen (14) days of the tenant's request;
or

(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 the proposed new subtenant or additional occupant 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 or

~~(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. A landlord's reasonable denial may not be based on the proposed occupant's lack of credit worthiness or income if that occupant will not be legally obligated to pay some or all of the rent to the landlord.

e. Where a landlord can establish that the proposed additional occupant presents a direct threat to the health, safety, or security of other residents of the property, the landlord shall have the right to deny the proposed tenant's occupancy.

f. Before initiating an action to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with a minimum of fourteen (14) days to cure the violation. The notice must also inform the tenant(s) of their right to add subtenants and/or add additional occupants pursuant to this section.

3. Eliminating "Decontrol" clause from ordinance

Background and Need for Rent Stabilization Action:

The Rent Ordinance has a section that allows the Berkeley City Council to exempt units from rent control should vacancy rates reach 5% over a six-month period.² While Council has the discretion to eliminate rent controls for units (it is not mandatory), this clause is inconsistent with

² BMC Section 13.76.060Q.

the Charter and most all of the Rent Ordinance which establishes the Board's independent authority to regulate rents and administer the law independent of any other elected or appointed body. Moreover, given that both the Charter and Rent Ordinance are voter-adopted initiatives, it certainly makes more sense to put the issue of decontrol before the voters in the event that the community decides to eliminate local rent control. Council has no other authority to interfere either substantively or procedurally in the Board's administration, so removing this clause will be consistent with the overall operation of the rent program and the law the Board and staff administer.

The proposal would be to simply eliminate this section of the Rent Ordinance.

Proposed Language:

Section 13.76.060

RENT STABILIZATION BOARD

~~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.~~

CONCLUSION

The Board unanimously proposed that the 4 x 4 Committee review these amendments and request that they be forwarded to Council for further consideration at a later date. After the 4 x 4 Committee discusses them and decides what it wishes to propose, the City Council will have to vote to place the matters it supports on the ballot for the November general election.

These are the initial matters the Board has discussed, but this memo is not meant to be an exhaustive list of items the Board wishes to have Council consider placing on the November ballot. The Legislation, IRA/AGA & Registration Committee has informed legal staff that there may be other items they will request that the Board and Council support. 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 this Committee's instruction on how it wishes to proceed.