



Housing Advisory Commission

ACTION CALENDAR
May 2, 2017

To: Honorable Mayor and Members of the City Council
 From: Housing Advisory Commission
 Submitted by: Igor Tregub, Chairperson, Housing Advisory Commission
 Subject: Safe and Affordable Housing Policy for Legalizing Certain Housing Units

RECOMMENDATION

Direct staff to develop a policy that ensure protections, including the retention of rent control if it currently exists, for tenants residing in units being legally converted to a residential use. These protections should extend to existing tenants who reside in units that an owner may be trying to legalize through the permitting process. The Housing Advisory Commission (HAC) applauds the ongoing work of the Four-by-Four Committee (City Council and Rent Stabilization Board) to address the safety, occupancy, and affordability of certain units and workspaces.

FISCAL IMPACTS OF RECOMMENDATION

Staff time.

CURRENT SITUATION AND ITS EFFECTS

At its January 5, 2017 meeting, the Housing Advisory Commission approved submitting this report. Action: M/S/C (Tregub/Johnson) to amend the memo to include protecting existing tenants in the process of the owner's legalizing units in which they reside. Tregub authorized to draft additional language on this for report. Vote: Ayes: Crandall, Gould, Johnson, Martinucci, Tregub. Noes: None. Abstain: Crandall. Absent: Harrison (unexcused)

Section 13.76.040(G) of the Berkeley Municipal Code defines a "Rental Unit" – in which rents can be "controlled" except in cases where it is exempt from rent control under Section 13.76.050 – as "*any* unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-NS)."¹ No distinction is made to "use"² in the Rent Ordinance as it governs whether the rent in a unit is "controlled."

¹<http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=9296>

²<http://www.codepublishing.com/CA/Berkeley/?Berkeley23E/Berkeley23E68/Berkeley23E68080.html&?f>, Definition of "Use"

However, an unknown but likely significant number of tenants live in units that were not properly zoned as “residential”³ uses, even if the Rent Board treats the unit as a controlled unit based on the history of occupancy and/or the unit’s registration with the Board. Prior to “legalizing” the unit, the City of Berkeley requires the unit’s owner to receive a new “Certificate of Occupancy.”⁴ However, the Costa Hawkins Act requires that units that receive a new “Certificate of Occupancy” (regardless of prior history of occupancy and registration with the Rent Board) be exempt from rent control.⁵ Thus, an occupant of an existing unit that becomes legalized may be covered under the Eviction for Good Cause Ordinance⁶ and the Relocation Ordinance⁷ (including the requirement to be provided “first right of refusal” when reoccupying the unit, but may no longer be subject to controlled rent increases upon the expiration of his/her lease. Such was the situation of a tenant in one building where an application to legalize a residential use recently came before the Zoning Adjustments Board,⁸ and there may be countless others.

BACKGROUND

In the wake of the recent Ghost Ship tragedy, there has been a renewed concern about ensuring that the inhabitants of units that are not properly zoned as residential are able to receive the benefit of life safety code upgrades while also remaining in or being able to return to the unit at rent levels that they can afford. While the HAC felt that addressing this issue should remain an important focus of the City of Berkeley’s work, it also expressed a broader concern about preserving the affordability of units which are in the process of being converted to a legal residential use and are currently occupied by a sitting tenant. In such cases, issuance of a Certificate of Occupancy is required to complete the permitting process. Once issued, however, the tenants in these units, if currently under rent control, lose their rent control protections.

³<http://www.codepublishing.com/CA/Berkeley/?Berkeley23E/Berkeley23E68/Berkeley23E68080.html&?f> , Definition of “Residential Use”

⁴“New Certificates of Occupancy are required whenever there is a change of use, or change of occupancy for a building. (I.e. Change from residential to commercial.)”
<http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=9296>

⁵“1954.52. (a) Notwithstanding any other provision of law, an owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or a unit about which any of the following is true:

(1) It has a certificate of occupancy issued after February 1, 1995.”

<http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=9516>

⁶<http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=9296>

⁷<http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=4956>

⁸http://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/3353_MLK.aspx

City of Berkeley and Berkeley Rent Board staff should work together to explore alternative frameworks that allow the use of a building to be legalized and, if necessary, brought to code without removing rent-controlled units from the market. One possibility may be an objective determination that a new Certificate of Occupancy may not be required prior to finalizing a change of use permit, so long as a unit has been brought to the applicable code.

ENVIRONMENTAL SUSTAINABILITY

Berkeley Climate Action Plan goals of reduced vehicles miles traveled and greenhouse gas emissions can be realized through the adoption of anti-displacement strategies consistent with this proposal.

RATIONALE FOR RECOMMENDATION

The HAC is concerned about the potential and actual displacement of tenants in previously described housing situations if they are unable to afford the new rents that a previously controlled rental unit can bear once they lose rent control protections.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

See companion report.

CONTACT PERSON

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