

Rent Stabilization Board

MEMORANDUM

DATE: September 7, 2016

TO: Honorable Members of the Eviction/Section 8/Foreclosure Committee

FROM: Matt Brown, Staff Attorney
Matthew Siegel, Staff Attorney
Richa Pokhrel, Housing Intern

SUBJECT: Measure Y Tracking Report (July 2013 – June 2016)

BACKGROUND

In November 2000, in response to a rash of owner-move-in evictions, Berkeley voters adopted Measure Y as an amendment to the Rent Stabilization and Eviction for Good Cause Ordinance. Measure Y was subsequently codified under Berkeley Municipal Code (B.M.C.) Section 13.76.130A.9 placing restrictions and conditions on owner and/or relative occupancy evictions. Berkeley's owner-move-in law allows property owners and their qualifying relatives¹ to evict tenants and move into rental units. Property owners who evict tenant households that qualify as low income are required to pay \$4,500 relocation assistance prior to the tenants relinquishing possession of their rental units. Measure Y further requires that “. . . at least twice annually, Rent Board Staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered . . . within the prior thirty-six months.”

Attached is a report detailing Measure Y evictions from July 2013 through June 2016.

¹ B.M.C. 13.76.130A.9b. allows a landlord's spouse, child, or parent to evict a tenant for occupancy in a rental unit. The owner or relative must intend to live in the unit for 36 continuous months. Additionally, with few exceptions, property owners may not evict seniors or disabled tenants who have occupied their rental units for five years or more in buildings with four or more units.

SUMMARY OF ATTACHED REPORT

Between July 1, 2013 and June 31, 2016 there have been seventy-three² owner move-in (OMI) eviction notices filed with the Rent Board. Of these seventy-three, twenty notices were served to tenants in single family homes, twenty-seven notices were submitted to tenants occupying a unit in a duplex, thirteen to units in triplexes and ten in fourplexes. See table immediately below.

| Unit designation | Number of notices sent | Unit currently tenant-occupied³ |
|-------------------------|-------------------------------|---|
| Single family home | 20 | 0 |
| Duplex | 27 | 3 |
| Triplex | 13 | 1 |
| Fourplex | 10 | 1 |
| Five units & more | 3 | 1 |

Staff has conducted research into these seventy-three cases by focused mailing to each rental unit that received an eviction notice. The letter requested information regarding the current occupants of the unit. Additionally, staff reviewed county records, property files, and internal databases, conducted follow-up counseling with tenants, and performed on-site inspections. Of the seventy-three notices, fifty-two were for owner-move-in and twenty-one involved qualifying relative move-in evictions. Thirty tenant households (41% of the total that received OMI notices) have alleged low-income status and all but five have received the \$4,500 relocation assistance payments.

NARRATIVE DATA FROM STAFF RESEARCH

Single Family Homes – Sixteen of the twenty single family homes that received OMI notices were Costa Hawkins exempt tenancies. Two of the twenty notices were served on long-term, rent-controlled tenancies. One was served on a Section 8 tenancy and one was served on an exempt condominium.

Duplexes – Ten of the twenty-seven units in duplexes where tenants received OMI notices would now qualify for an exemption under B.M.C. 13.76.050F [“golden duplex”].

Staff verified that the owner or family member named in the notice is currently occupying the appropriate unit for seventeen of these cases.

For one case, the owner attempted to evict two tenant households from a duplex. Both notices appeared to be defective. Upon further review, staff contacted the owner and the tenants, who, at the time had moved out. After providing counseling, one of the tenants moved back in at her

² During the January 2016-June 2016 period, there were 18 notices, however, two of them were the same address. The earlier notice had problems so the landlord rescinded and filed again at a later date. That address is included once for the report for a total of 73, not 74

³ The data regarding tenant occupancy in this column only includes units where staff has determined that a unit is tenant-occupied. There are several other cases that staff continues to investigate to find out if the unit is tenant or owner-occupied.

former rent. The other tenant household is currently involved in litigation with the owner. One of these cases was a Section 8 tenancy. Staff is still reviewing eight cases.

Triplexes – Thirteen OMI notices were served on triplex units during this reporting period. Of the thirteen tenancies that received notices, two tenant households remain in possession, ten are currently occupied by the owner or qualifying relative named in the notice, and one case is still under review.

Fourplexes – For the most recent reporting period, ten notices have been served on tenants residing in fourplexes. Staff has verified owner-occupancy status for six cases, two tenant households remain in possession, and two cases are still under review.

A property was the subject of an RWN petition where the Hearing Examiner found the subject unit to be a rooming house as defined in Board Regulation 403.5. The tenants remain in possession.

Five or more units – Three OMI notices were served to buildings with 5 or more units. Staff verified owner-occupancy status for one, one tenant household is still in possession, and one case is still under review.

STAFF MONITORING

To ensure that the tenant protections incorporated into Measure Y are not violated, Rent Board staff endeavors to contact occupants living in units that have received OMI eviction notices at least once every six months. Staff sends a letter to the unit notifying the occupant of the proper rent ceiling if s/he is a tenant in the unit. Staff also researches information in our databases and county ownership information to ensure that residency information is correct. Furthermore, staff conducts site visits to attempt to ascertain who lives in these rental units when there is a question as to whether a landlord lives in the unit after an OMI notice is sent.

When staff finds that a new tenant is living in a rental unit following an OMI eviction, staff may contact the owner and/or counsel the tenant to file a petition if the landlord is charging more than the restricted rent ceiling allowed under Rent Board Regulation 1016. Additionally, staff will attempt to contact the tenant(s) who were displaced from a rental unit due to an OMI notice to explain the tenants' rights if staff determines that the landlord has violated the Ordinance, and the tenant expressed an interest in being notified of changes in the rental unit's status.

OWNERSHIP HISTORY PRIOR TO OMI FILING

Previously, the committee requested data showing how long a landlord owned⁴ the property prior to the filing of OMI notices. The table below details this history for the most recent reporting period (July 1, 2013-June 30, 2016).

Thirty-nine (53%) of the notices were served by landlords who owned the property for fewer than five years. Thirty-four (47%) landlords served notices after owning the property for five years or more.

⁴ This also includes the four intra-family title transfers that happened in the last six months. For the purpose of calculating data, we used the time between the transfer date and the notice of eviction.

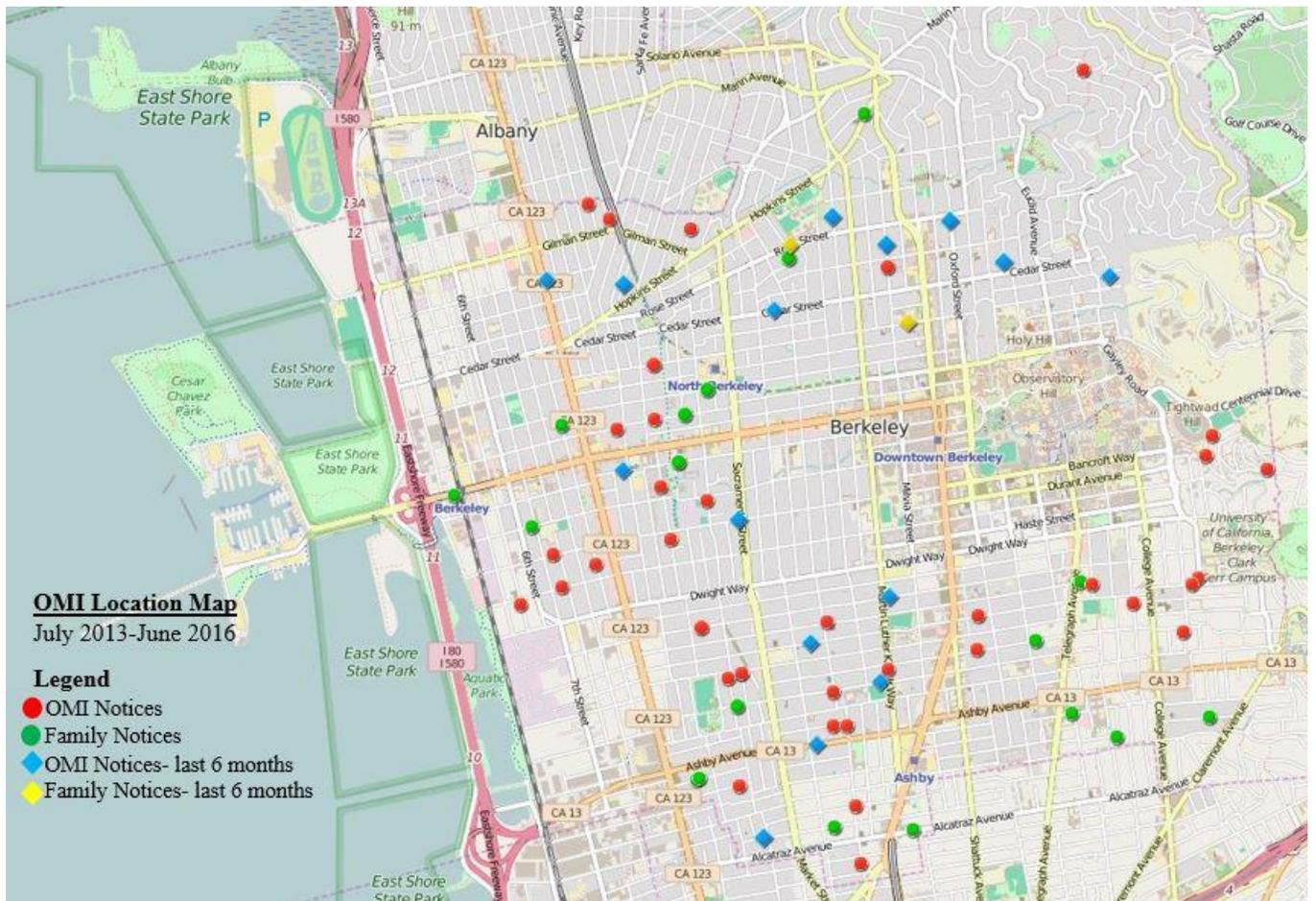
This data can be broken down further, for example:

| Ownership Prior to notice | # props. |
|---------------------------|----------|
| less than 1 year | 27 |
| Between 1 and 2 years | 5 |
| 2 to 5 years | 7 |
| 5 to 10 years | 9 |
| More than 10 years | 25 |

Just a little less than half (44%) of the notices were served by landlords who owned the property fewer than two years.

LOCATION OF OMI PROPERTIES

Eight out of seventeen OMI notices filed during the last six months of the reporting period were located in North Berkeley.



For this reporting period, the Measure Y cases were disbursed relatively evenly throughout

Berkeley, except that there were no notices given to units in or around downtown Berkeley or in the south side of campus area.

At its August 3, 2016 meeting the Committee requested that staff also include the street name and geographic location of each OMI eviction notice served. The chart below incorporates this information:

Housing Tracts by Area:

Area 1, tract nos. 11, 12, 13, 14, 15, 16, 17, 38

Area 2, tract nos. 18, 19, 22, 23, 30, 31

Area 3, tract nos. 24, 25, 27, 28, 29, 36, 37

Area 4, tract nos. 20, 21, 32

Area 5, tract nos. 33, 34, 35, 39, 40



| Date filed | Street | Market Area |
|------------|-----------------|-------------------------------------|
| 7/12/2013 | MLK Jr. Way | South Berkeley (Area 5) |
| 11/25/2013 | Virginia St. | Central Berkeley (Area 2) |
| 12/17/2013 | McGee Ave. | South Berkeley (Area 5) |
| 1/10/2014 | Bonar St. | Central Berkeley (Area 2) |
| 1/29/2014 | Bonar St. | Central Berkeley (Area 2) |
| 1/30/2014 | King St. | South Berkeley (Area 5) |
| 2/4/2014 | Hearst Ave. | Central Berkeley (Area 2) |
| 2/25/2014 | Milvia St. | North Berkeley (Area 1) |
| 3/21/2014 | Benvenue Ave. | University Area (Area 3) |
| 3/25/2014 | Warring St. | University Area (Area 3) |
| 3/31/2014 | Channing Way | West Berkeley (Area 4) |
| 4/9/2014 | 10th St. | West Berkeley (Area 4) |
| 4/18/2014 | University Ave. | West Berkeley (Area 4) |
| 4/21/2014 | Canyon Rd. | Panoramic Hill (Not in Market Area) |
| 4/28/2014 | Evelyn Ave. | Albany Border (Not in Market Area) |

| Date filed | Street | Market Area |
|------------|----------------|---------------------------|
| 5/6/2014 | Stuart St. | University Area (Area 3) |
| 5/7/2014 | Carleton St. | South Berkeley (Area 5) |
| 5/12/2014 | Hearst Ave. | Central Berkeley (Area 2) |
| 5/21/2014 | Cypress St. | Central Berkeley (Area 2) |
| 5/22/2014 | Webster St. | South Berkeley (Area 5) |
| 6/10/2014 | Carleton St. | University Area (Area 3) |
| 6/12/2014 | Haskell St. | South Berkeley (Area 5) |
| 7/9/2014 | Acton St. | Central Berkeley (Area 2) |
| 7/16/2014 | Bateman St. | South Berkeley (Area 5) |
| 8/19/2014 | Harmon St. | South Berkeley (Area 5) |
| 9/2/2014 | Twain Ave | North Berkeley (Area 1) |
| 10/2/2014 | Derby St | University Area (Area 3) |
| 11/20/2014 | Piedmont Ave. | University Area (Area 3) |
| 11/20/2014 | 10th St. | West Berkeley (Area 4) |
| 12/31/2014 | Hopkins St. | North Berkeley (Area 1) |
| 2/9/2015 | Acton St. | Central Berkeley (Area 2) |
| 3/4/2015 | Parker St. | South Berkeley (Area 5) |
| 3/11/2015 | Regent St. | University Area (Area 3) |
| 3/23/2015 | Dohr St. | South Berkeley (Area 5) |
| 4/6/2015 | Hearst Ave. | Central Berkeley (Area 2) |
| 4/7/2015 | Panoramic Way | University Area (Area 3) |
| 4/9/2015 | Addison St. | Central Berkeley (Area 2) |
| 4/9/2015 | Addison St. | Central Berkeley (Area 2) |
| 4/16/2015 | Stuart St. | South Berkeley (Area 5) |
| 4/23/2015 | Dohr St. | South Berkeley (Area 5) |
| 5/14/2015 | Delaware St. | Central Berkeley (Area 2) |
| 5/15/2015 | Carrison St. | South Berkeley (Area 5) |
| 5/15/2015 | Carrison St. | South Berkeley (Area 5) |
| 6/1/2015 | Bancroft Way | West Berkeley (Area 4) |
| 6/2/2015 | Oregon St. | South Berkeley (Area 5) |
| 6/22/2015 | Alcatraz Ave. | South Berkeley (Area 5) |
| 7/13/2015 | Fairview St. | South Berkeley (Area 5) |
| 7/20/2015 | Derby St. | South Berkeley (Area 5) |
| 8/3/2015 | Prince St | North Berkeley (Area 1) |
| 8/7/2015 | Panoramic Way | University Area (Area 3) |
| 8/27/2015 | Allston Way | West Berkeley (Area 4) |
| 10/9/2015 | Julia St. | South Berkeley (Area 5) |
| 10/15/2015 | King St. | South Berkeley (Area 5) |
| 11/12/2015 | 5th St. | West Berkeley (Area 4) |
| 11/30/2015 | Acton St. | South Berkeley (Area 5) |
| 11/30/2015 | Santa Fe Ave. | Central Berkeley (Area 2) |
| 1/21/2016 | Northside Ave. | Central Berkeley (Area 2) |
| 1/25/2016 | Oregon St. | South Berkeley (Area 5) |

| Date filed | Street | Market Area |
|------------|---------------|---------------------------|
| 2/3/2016 | Harmon St. | South Berkeley (Area 5) |
| 2/17/2016 | Ashby Ave | South Berkeley (Area 5) |
| 2/19/2016 | Bancroft Way | Central Berkeley (Area 2) |
| 3/22/2016 | Camelia St. | Central Berkeley (Area 2) |
| 3/23/2016 | Josephine St. | Central Berkeley (Area 2) |
| 3/29/2016 | Cedar St. | Central Berkeley (Area 2) |
| 4/4/2016 | Oxford St. | North Berkeley (Area 1) |
| 4/4/2016 | Derby St. | South Berkeley (Area 5) |
| 4/8/2016 | Milvia St. | North Berkeley (Area 1) |
| 4/20/2016 | La Vereda Rd. | University Area (Area 3) |
| 5/17/2016 | Rose St. | Central Berkeley (Area 2) |
| 5/24/2016 | Scenice Ave. | North Berkeley (Area 1) |
| 6/6/2016 | Virginia St. | University Area (Area 3) |
| 6/13/2016 | Addison St. | Central Berkeley (Area 2) |
| 6/24/2016 | Parker St. | South Berkeley (Area 5) |

CREATION OF MULTI-GENERATIONAL FAMILY OCCUPANCIES

The committee previously expressed interest in receiving information regarding the number of Measure Y cases that involved an owner or a qualified family member moving into a unit where there is another unit on the property that is already occupied by either the owner or another family member.

Staff found five cases where a qualified family member moved into a property that was already occupied by an owner of record. Two of the properties were duplexes, two were in in triplexes, and one was a fourplex. In these five cases, four involved an adult child moving into the property and one involved the parent of the owner moving into the property. There were no cases within the previous thirty-sixth months where an owner evicted a tenant to move into a property where a family member was already residing.

Additionally, one duplex had two eviction cases that resulted in two adult children moving into separate units on the same property.

PROPOSED INCREASE IN OMI RELOCATION EXPENSES AND OTHER CHANGES

While a significant percentage of tenants receive the relocation assistance, the level of assistance provided by the \$4,500 payment has decreased over time due to inflation and higher rents. The Consumer Price Index (for All Urban Consumers in the San Francisco-Oakland- San Jose area) increased by 43.5% between 2000 and 2015, and the median rent for a three bedroom unit in Berkeley (subject to Rent Stabilization) increased almost 67% from \$1,980 in 2000 to \$3,300 as of the first quarter of 2016. The increases to both CPI and Berkeley rents since the passage of Measure Y suggest that the relocation payment would need to increase significantly in order to provide the same level of assistance that low-income tenants received when the requirement was established. A voter approved amendment to the Rent Stabilization and Eviction for Good Cause Ordinance is required to make any changes to the level of low-income relocation assistance.

At its December 14, 2015 regular monthly meeting, the Board voted unanimously to send a request to City Council that it place a Measure on the 2016 ballot to increase relocation fees for tenants who receive OMI eviction notices. On June 14, 2016, City Council voted to place Measure AA on the November 2016 ballot. The measure, if passed will amend the ordinance as follows:

1. The relocation fee would be increased to \$15,000 for all tenant households where at least one occupant has resided in the unit for one year or more is evicted who receive OMI evictions. Additionally, qualifying low-income, disabled, elderly, families with minor children, or those tenancies that began prior to 1999 would receive an additional \$5,000. The maximum total that a tenant household could receive would be \$20,000. The relocation fee is currently \$4,500 and *only* available to low-income tenants. This fee was established in November 2000 when Measure Y passed and mirrored the Ellis relocation fee in effect at that time.⁵ Given what other cities require property owners to pay tenants displaced by OMI, a relocation fee between \$15,000 and \$20,000 should withstand judicial scrutiny.
2. Families with minor children would be protected from being evicted during the school year. Given the disruption it causes children when they are displaced mid-year, San Francisco passed a law several years ago prohibiting evictions of families with children during the school year. Landlords are still entitled to recover possession of their residential rental units; they just must wait until the school year is over. Berkeley would craft a similar protection in the Ordinance.
3. A City or Rent Board hearing examiner would be able to adjudicate disputes regarding a tenant's entitlement to increased relocation fees based on their alleged status as disabled, low-income, elderly, families with minor children, or those tenancies that began prior to 1999. Currently, the Board has no jurisdiction to determine whether a tenant is entitled to relocation fees, and deposited funds often remain in escrow for months while the parties remain in disagreement. Allowing the Board to adjudicate these claims and make determinations regarding a tenant household's eligibility to receive these funds would make it easier for the Board to more efficiently and effectively administer the Ordinance and give parties more streamlined relief when there are disputes of this manner.
4. It would change the term "residential rental units" to "residential units" in Section 13.76.130A.9.k.(i) to protect seniors and disabled tenants who have occupied their units for five or more years from OMI evictions if their landlord owns three or more total residential units in Berkeley.

CONCLUSION

During this reporting period (July 2013 – June 2016) the Board received a total of 73 Measure Y eviction notices. During the initial three-year monitoring period (December 2000 – December

⁵ It should be noted that the relocation assistance that passed in 2000 was actually an amount that was established in 1986 for the original Ellis Implementation Ordinance, so the amount was outdated even at the inception of Measure Y's passage.

2003), the Board received 110 eviction notices. Historically, after the passage of Measure Y, the number of evictions reported for each three-year period was significantly less than the initial period between 2000 and 2003. The number of OMI evictions, however, have increased in recent years. In reviewing the number of notices in three-year increments we note there have been more than double the number of filed notices from July 2013 – June 2016 compared to the period from July 2010 – June 2013; 73 notices for the current reporting period compared to 31 notices for the prior three years.

As housing prices and rents have continued to dramatically increase, OMI evictions are increasing as well. While OMI evictions have not yet hit the high water mark of the initial three-year period (110 notices), we will soon approach that figure if this trend continues. Although OMI evictions have increased recently, it is clear that the passage and diligent implementation of Measure Y has significantly reduced the displacement of long-term tenants, which was commonplace after Costa Hawkins mandated vacancy decontrol.

Measure Y requires that the owner provide a \$4,500 relocation assistance payment to any displaced low-income tenant household that has resided in the unit for one year or more. Since passage of Measure Y roughly 34% of those households receiving eviction notices for owner occupancy have qualified for and benefited from the low-income relocation assistance provisions of the ordinance.⁶ This number is particularly noteworthy given that historically between 25-30% of Measure Y eviction notices are later rescinded, and the tenants remain in the unit. When we back out these rescinded units, the percentage of Measure Y tenants receiving low-income relocation is closer to 45% of those households being displaced.

The chart below breaks down (in six-month blocks) the number of Measure Y eviction notices the Board has received since September 2000. The first reporting period on the table below only reflects a four-month period. As noted above, 47 of the 56 evictions occurred during the three months prior to the adoption of Measure Y. While we did not track the number of OMI notices received prior to September 2000, it has been reported that the number of notices issued during the period from December 1997 to December 2000 was similar to or greater than the four-month period from September – December 2000, before Measure Y became law.

Attachment 1: Table of Measure Y notices filed with the Rent Board for the period between September 2000 through June 2016.

Attachment 2: Sample of letter sent to all rental units that received an owner-move-in eviction notice between July 2013 and June 2016.

⁶ Twenty-five households that received OMI eviction notices during the three year period reviewed in this report qualified for and received the \$4,500 relocation assistance required by the Ordinance.

Measure Y Eviction Notices Filed With Berkeley Rent Board

| Date of Eviction Notice | Number of Notices Received |
|--|-----------------------------------|
| September – December 2000 *(only four months) | 56 |
| January – June 2001 | 32 |
| July – December 2001 | 21 |
| January – June 2002 | 17 |
| July – December 2002 | 9 |
| January – June 2003 | 13 |
| July – December 2003 | 10 |
| January – June 2004 | 14 |
| July – December 2004 | 5 |
| January – June 2005 | 16 |
| July – December 2005 | 6 |
| January – June 2006 | 10 |
| July – December 2006 | 1 |
| January – June 2007 | 7 |
| July – December 2007 | 2 |
| January – June 2008 | 1 |
| July – December 2008 | 7 |
| January – June 2009 | 7 |
| July – December 2009 | 7 |
| January – June 2010 | 6 |
| July – December 2010 | 3 |
| January – June 2011 | 6 |
| July – December 2011 | 2 |
| January – June 2012 | 5 |
| July – December 2012 | 5 |
| January – June 2013 | 10 |
| July – December 2013 | 3 |
| January-June 2014 | 19 |
| July – December 2014 | 8 |
| January – June 2015 | 16 |
| July – December 2015 | 10 |
| January- June 2016 | 17 |
| Total Notices Filed 10/2000- 6/2016 | 351 |



Rent Stabilization Board

September 6, 2016

[REDACTED]

[REDACTED]

Berkeley, CA 94702

RE: Owner Move-in eviction at [REDACTED]

Dear occupant:

Our records indicate that a prior tenant in your unit was evicted so that the unit could be occupied by the owner or a close relative of the owner. Berkeley Municipal Code section 13.76.130.A(9)(p) requires the Rent Board to monitor your unit for three years to ensure that the unit is, in fact, occupied by the owner or a relative of the owner. Therefore, you will receive a letter like this once every six months during this three year period. If you are the owner or a **non-rent** paying parent, spouse, domestic partner, or child of the owner, it is not necessary for you to respond to this letter.

If you are not the owner and are paying rent, your rent should not exceed:

\$667.84

If you are paying rent in excess of this amount, you should contact me at (510) 981-4903. Also, Rent Board Counselors are available to explain your rights and options, including the procedure for recovering any rent overcharges you have paid. An explanation of your rights may also be found on the Rent Board's web site: www.ci.berkeley.ca.us/rent.

Sincerely

Matthew Siegel
Staff Attorney
Berkeley Rent Stabilization Board