



RENT STABILIZATION BOARD
Regular Meeting and Public Hearing
Thursday, May 6, 2021
7:00 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 of Berkeley Rent Stabilization Board (Rent Board) 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/97418734828?pwd=eTBMOXBIZFd0RFNPeKtTRVBkTVZzdz09>. 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 Meeting ID: 974 1873 4828 and Passcode: 285019. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.

To submit an e-mail comment to be read aloud during public comment, email amueller@cityofberkeley.info with the Subject Line in this format: "RENT BOARD MEETING PUBLIC COMMENT ITEM." 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 5:00 p.m. on the day of the meeting in order to be included.**

Please be mindful that this meeting will be recorded, and all other rules of procedure and decorum will apply for Rent Board meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with Government Code Section 54953, 54956, 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, at (510) 981-7368. The Rent Board may take action related to any subject listed on the Agenda.

RENT STABILIZATION BOARD
Regular Meeting and Public Hearing
Thursday, May 6, 2021
7:00 p.m.

AGENDA

*Times allotted for each item are approximate and may be changed at the Board's discretion during the course of this meeting.

1. **Roll call** – 1 min.*
2. **Approval of Agenda** – 1 min.*
3. **Public Comment** – 2 min. per speaker for *non*-agendized items*
4. **CONSENT ITEMS** – 1 min.*
 - a. Approval of the April 15th regular meeting minutes
 - b. Recommendation to adopt Resolution 21-10 authorizing the Acting Executive Director to execute a contract with Kinnectics, LLC through June 30, 2022 in an amount not to exceed \$25,000 (Budget & Personnel Committee and Acting Executive Director)
 - c. Recommendation to approve the Rent Board Office closure every 2nd and 4th Wednesdays of the month and City of Berkeley Reduced Service Days (VTO) (Acting Executive Director)
 - d. Recommendation to adopt Resolution 21-11 approving the hiring of a temporary worker to assist the Registration Unit during the Registration Period from May 17 - July 17, 2021 (Budget & Personnel Committee and Acting Executive Director)
 - e. Proposal to approve staff recommendations on the following requests for waivers of late registration penalties (Acting Executive Director & Registration Unit Supervisor)

Ministerial Waivers

<u>Waiver No.</u>	<u>Property Address</u>
4971	2014 Channing Way
4972	2326 10 th Street
4973	1310 Addison Street
4979	2948 Hillegass Avenue

Discretionary Waivers

<u>Waiver No.</u>	<u>Property Address</u>
4968	1235 Carrison Street
4974	1103 Keeler Avenue
4981	2133 Parker Street

5. **APPEAL** – 7:30 p.m.**

** *This appeal will not be heard before 7:30 p.m. but may be heard any time thereafter.*

Case No. T-5883 (2030 Essex St., Unit A)

The landlords appeal a hearing examiner decision that granted the tenants' habitability claims for rent ceiling reductions and ordered the landlords to issue a refund for rent overcharges. The revised appeal alleges that the hearing examiner's decision was erroneous because the tenants delayed access to the unit for repairs. (Email sent by Hasmik Kanataryan with revised appeal from "Landlord" (signature illegible) (9/3/2020).)

There is substantial evidence to support the hearing examiner's finding that there was not sufficient evidence that the tenants effectively denied access to the unit for repairs to be made. Even if the tenants had denied access, state law explicitly allows a landlord to enter a dwelling "[t]o make necessary or agreed repairs." (Cal. Code of Civ. Proc. § 1954(a)(2).) Thus, it was always within the landlord's ability to enter the unit to make the necessary repairs.

For this reason, legal staff recommend that the decision of the hearing examiner be affirmed.

6. **PUBLIC HEARING on the Annual Registration Fee for Rent-Controlled Units and the Annual Registration Fee for rental units subject to Measure MM registration requirements for the 2021-2022 fiscal year (FY)**

- a. Public Comment on **agendized** items – 2 min. per speaker*
- b. Comments from the Board, Acting Executive Director and Committees

7. **ACTION ITEMS**

a. From Board Members, Committees, and Executive Director

- (1) Presentation and possible action regarding the *Draft Berkeley Existing Buildings Electrification Strategy* by Billi Romain, Manager, Office of Energy and Sustainable Development (OESD), and Katie Van Dyke, OESD Climate Action Program Manager/Chief Resilience Officer – 20 min.*
- (2) Recommendation to adopt Resolution 21-05 setting the Annual Registration Fee for rent-controlled units for FY 2021-2022, due on July 1, 2021; and Resolutions 21-06 and 21-07 setting the Annual Registration Fee for rental units subject to Measure MM registration requirements for FY 2021-2022, due on July 1, 2021 (Budget & Personnel Committee and Acting Executive Director) – 25 min.*
- (3) Recommendation to adopt Resolution 21-08 setting the Summer Rental Registration Fee for qualifying sororities and fraternities for FY 2020-2021 (Budget & Personnel Committee and Acting Executive Director) – 5 min.*

- (4) Recommendation to adopt Resolution 21-09 authorizing the pass-through of a portion of the FY 2021-2022 Annual Registration Fee for rent-controlled units to certain tenants (Budget & Personnel Committee and Acting Executive Director) – 5 min.*
- (5) Update and possible action regarding the Executive Director recruitment and hiring process (Chair Simon-Weisberg) – 10 min.*

8. INFORMATION, ANNOUNCEMENTS AND NEWS ARTICLES

Please Note: The Board may move Information Items to the Action Calendar.

a. Reports from Board Members/Staff

- (1) Update on Amicus Curiae brief in *Community Housing Improvement Program v. City of New York Rent Guidelines Board* (U.S. Court of Appeals, 2nd Cir., Case #20-3366) (Acting Executive Director) – 3 min.*
- (2) Commissioner attendance at Board and Committee meetings through the first quarter of 2021 (Acting Executive Director) – 2 min.*
- (3) Update on recent/upcoming Rent Board outreach events (Acting Executive Director) – 5 min.*
 - a. Wednesday, March 24, 2021 (10:00 - 11:30 AM) – Security Deposits: Rights and Responsibilities webinar
 - b. Wednesday, April 7, 2021 (10:00 - 11:30 AM) – Buying and Selling Rental Property in Berkeley webinar
 - c. Wednesday, April 14, 2021 (10:00 – 11:30 AM) – Measure MM webinar
 - d. [Wednesday, May 12, 2021 \(10:00 – 11:30 AM\) – Rent Board Registration 101/Registering your Berkeley Rental Property webinar](#)
- (4) April 17, 2021 *The New York Times* article by Ron Lieber titled “Realtors Want to Sell You a Home. Their Trade Group Backs Evicting Others.” (Chair Simon-Weisberg) – 1 min.*
<https://www.nytimes.com/2021/04/17/your-money/realtors-pandemic-eviction-ban.html>
- (5) April 19, 2021 *The Oaklandside* article by Natalie Orenstein titled “Eviction attempts plummeted during the pandemic in Oakland” (Chair Simon-Weisberg) – 1 min.*
<https://oaklandside.org/2021/04/19/eviction-attempts-plummeted-during-the-pandemic-in-oakland/>

- (6) April 19, 2021 *Science Daily.com* press release from Johns Hopkins Medicine titled, “Pandemic eviction bans found to protect entire communities from COVID-19 spread” (Chair Simon-Weisberg) – 1 min.*
<https://www.sciencedaily.com/releases/2021/04/210419110130.htm>
- (7) April 21, 2021 *The New York Times* article by Jim Tankersley titled “Biden Administration Debating How to Overhaul a Trump-Era Tax Break” (Chair Simon-Weisberg) – 1 min.*
<https://www.nytimes.com/2021/04/21/business/biden-trump-opportunity-zones.html>
- (8) April 22, 2021 *48 Hills.org* article by Zelda Bronstein titled, “Facebook’s housing echo chamber” (Chair Simon-Weisberg) – 1 min.*
<https://48hills.org/2021/04/facebooks-housing-echo-chamber/>
- (9) April 23, 2021 *Reuters* article by Michelle Conlin titled, “SPECIAL REPORT: Giant U.S. landlords pursue evictions despite CDC ban” (Chair Simon-Weisberg) – 1 min.*
<https://www.reuters.com/world/us/special-report-giant-us-landlords-pursue-evictions-despite-cdc-ban-2021-04-23/>
- (10) April 23, 2021 *The Seattle Times* article by Sydney Brownstone and Heidi Groover titled, “Washington becomes first state to guarantee lawyers for low-income tenants during evictions” (Chair Simon-Weisberg) – 1 min.*
<https://www.seattletimes.com/seattle-news/homeless/washington-becomes-first-state-to-guarantee-lawyers-for-low-income-tenants-during-evictions/>
- (11) Date to submit agenda topics/items for the June 17, 2021 Rent Board meeting:
Monday, June 7th

9. COMMITTEE/BOARD MEETING UPDATES AND ANNOUNCEMENTS

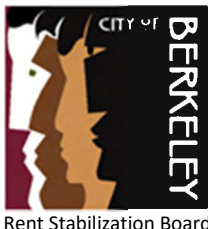
- a. Budget and Personnel Committee (Commissioner Selawsky, Chair) – 5 min.*
Next regularly-scheduled meeting: Thursday, May 27th at 5:00 p.m.
 - (1) April 22nd agenda
 - (2) April 27th agenda
- b. Eviction/Section 8/Foreclosure Committee (Commissioner Mendonca, Chair) – 3 min.*
Next regularly-scheduled meeting: Thursday, May 13th at 5:30 p.m.
- c. IRA/AGA/Registration Committee (Commissioner Kelley, Chair) – 3 min.*
Next regularly-scheduled meeting: Thursday, May 20th at 5:00 p.m.
- d. Outreach Committee (Commissioner Laverde, Chair) – 5 min.*
Next regularly-scheduled meeting: Thursday, May 19th at 5:30 p.m.

- (1) April 21st agenda
- e. 2 x 2 Committee on Housing: Rent Board/Berkeley Unified School District – 3 min.*
Chair: TBD
Next regularly-scheduled meeting: TBD
- f. 4 x 4 Joint Committee on Housing: City Council/Rent Board – 10 min.*
Committee Co-Chairs: Mayor Arreguín and Chair Simon-Weisberg
Next regularly-scheduled meeting: Tuesday, May 4th at 3:00 p.m.
- (1) May 4th agenda packet
- g. Ad Hoc Committee on RSB Technology Issues (Chair TBD) – 3 min.*
Next meeting date: TBD
- h. Updates and Announcements – 3 min.*
- i. Discussion of items for possible placement on future agenda – 3 min.*

10. ADJOURNMENT

COMMUNICATIONS DISCLAIMER:

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.



RENT STABILIZATION BOARD
Regular Meeting
Thursday, April 15, 2021
7:00 p.m.

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RENT STABILIZATION BOARD
Regular Meeting
Thursday, April 15, 2021
7:00 p.m.

Regular Meeting Minutes - *Unapproved*

1. **Roll call** – Chair Simon-Weisberg called the meeting to order at 7:02 p.m.
Aimee Mueller called roll.
Commissioners present: Alpert (logged off after Closed Session), Chang (logged on at 8:55 p.m.), Johnson, Kelley (logged on at 7:25 p.m.), Laverde, Mendonca, Selawsky, Walker, Simon-Weisberg.
Commissioners absent: None.
Staff present: Brown, Mueller, Siegel, Wu.
2. **Approval of Agenda** – M/S/C (Laverde/Johnson) MOTION TO APPROVE THE AGENDA WITH THE FOLLOWING CHANGES: MOVE WAIVER NOS. 4964 AND 4969 TO CONSENT; ADJOURN IN HONOR AND MEMORY OF KAYLA MOORE, DAUNTE WRIGHT, AND ADAM TOLEDO. Roll call vote. YES: Alpert, Johnson, Laverde, Mendonca, Selawsky, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Chang, Kelley. Carried: 7-0-0-2.
3. **Public Comment** – for *non*-agendized items: There was one speaker. Matthew Lewis spoke about Council’s “up-zone” proposal and Penal Code 396.
4. **CONSENT ITEMS**

Waiver Nos. 4964 and 4969 were moved to Consent by a prior vote of the Board. In the motion on the Consent items, the Board moved item 4.d. to Action.

- a. Approval of the March 18th regular meeting minutes:
- b. Recommendation to adopt proposed amendments to Regulation 1013 – *Second reading* (IRA/AGA/Registration Committee and Acting Executive Director)
- c. Recommendation to adopt Resolution 21-04 revising the Rent Board’s Regular Meeting Schedule for 2021 (Chair Simon-Weisberg and Acting Executive Director)
- d. Recommendation that the Chair disband the Habitable and Sustainable Housing Committee (HASH) (Chair Simon-Weisberg and Acting Executive Director) – *This item was heard on the action calendar.*

M/S/C (Chang/Selawsky) MOTION TO DISBAND THE HASH COMMITTEE.
Roll call vote. YES: Alpert, Chang, Johnson, Kelley, Laverde, Mendonca, Selawsky, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: None.
Carried: 9-0-0-0.

- e. Proposal to approve staff recommendations on the following requests for waivers of late registration penalties (Acting Executive Director and Registration Unit Supervisor)

Administrative Waiver

<u>Waiver No.</u>	<u>Property Address</u>
4966	2149 Russell Street

Ministerial Waivers

<u>Waiver No.</u>	<u>Property Address</u>
4940	1604 Derby Street
4943	2441 McKinley Avenue
4958	1437 Oxford Street
4959	1737 San Pablo Avenue
4960	1312 Carleton Street
4961	2214 Martin Luther King Jr. Way
4963	1269 Alcatraz Avenue

Discretionary Waivers

<u>Waiver No.</u>	<u>Property Address</u>
4944	2057 Emerson Street
4952	515 Colusa Avenue
4964	2001 Allston Way
4965	1115 Ward Street
4967	2035 Parker Street
4969	2610 College Avenue

M/S/C (Alpert/Johnson) MOTION TO APPROVE CONSENT ITEMS 4.a., 4.b., 4.c., AND 4.e EXCEPT WAIVER NOS. 4964 AND 4969. ***Friendly amendment by Laverde (accepted):*** MOVE CONSENT ITEM 4.d. TO ACTION. Roll call vote. YES: Alpert, Johnson, Laverde, Mendonca, Selawsky, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Chang, Kelley. Carried: 7-0-0-2.

Waiver Nos. 4964 and 4969 were heard on the action calendar.

M/S/C (Simon-Weisberg/Alpert) MOTION ON WAIVER NO. 4964 TO WAIVE 100% OF THE PENALTIES. YES: Alpert, Chang, Johnson, Kelley, Laverde, Mendonca, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: None; RECUSED: Selawsky*. Carried: 8-0-0-0-1.

*Commissioner Selawsky recused himself as a former employee of the organization that owns the property.

M/S/C (Simon-Weisberg/Chang) MOTION ON WAIVER NO. 4969 TO IMPOSE THE FULL PENALTY OF \$4,500. Roll call vote. YES: Alpert, Chang, Johnson, Kelley, Laverde, Mendonca, Selawsky, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: None. Carried: 9-0-0-0.

5. Public Comment – for **agendized** items: There were no speakers.

6. **Special Presentation:** Rent Board Resolution 21-03 in honor of Dorothy King, Everett & Jones owner and long-time tenant advocate for the unhoused

Commissioner Walker read the resolution aloud.

a. Recommendation to adopt Resolution 21-03 in honor of Dorothy King

M/S/C (Walker/Mendonca) ADOPT RESOLUTION 21-03 AS WRITTEN. Roll call vote. YES: Alpert, Johnson, Laverde, Mendonca, Selawsky, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Chang, Kelley. Carried: 7-0-0-2.

7. **ACTION ITEMS**

Waiver Nos. 4964 and 4969 were moved to Action by a prior vote of the Board. In the motion on the Consent items, the Board moved item 4.d. to Action.

a. From Board Members, Committees, and Executive Director

(1) Presentation on Housing Legislation by Rent Board Legislative Advocate, Brian Augusta

- a. State Legislative Report – Mr. Augusta presented to and took questions from the Board.
- b. Recommendation that the Board take a position on Assembly Bill (AB) 1199 [Homes for Families and Corporate Monopoly Transparency Excise Tax: qualified property: reporting requirements]
- c. Recommendation that the Board take a position on AB 854 [Residential real property: withdrawal of accommodations]
- d. Recommendation that the Board take a position on AB 1188 [Rental registry online portal]

M/S/C (Alpert/Selawsky) SUPPORT AB 1199, BUT URGE THE AUTHOR TO INCLUDE AN APPROPRIATE ENFORCEMENT MECHANISM FOR THE PROHIBITION ON PASSING THE TAX ON TO TENANTS; SUPPORT AB 854; AND DEFER AB 1188 TO THE NEXT MEETING . Roll call vote. YES: Alpert, Johnson, Kelley, Laverde, Mendonca, Selawsky, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Chang. Carried: 8-0-0-1.

- (2) Proposed next steps for Rent Board Executive Director Recruitment and Hiring Process (Chair Simon-Weisberg and Vice-Chair Soli Alpert) – After extensive discussion, the chair proposed that this item be carried over to the next meeting without objection.

8. INFORMATION, ANNOUNCEMENTS AND NEWS ARTICLES

**ALL ITEMS BELOW WERE EACH MENTIONED OR BRIEFLY DISCUSSED.
UNDERLINED ITEMS HAVE ADDITIONAL COMMENTS.**

a. Reports from Board Members/Staff

- (1) Copy of April 6, 2021 Apparent Lawful Rent Ceiling mailing to Berkeley property owners (Acting Executive Director)
- (2) Updated Market Medians report through the fourth quarter of 2020 (Acting Executive Director)
- (3) Update on recent/upcoming Rent Board outreach events (Acting Executive Director)
 - a. Tuesday, March 9, 2021 (10:00 - 11:30 AM) – Rent Control Basics, Eviction Moratorium, COVID-19, and Measure MM webinar presented to Red Oak Realty:
 - b. Wednesday, March 24, 2021 (10:00 - 11:30 AM) – Security Deposits: Rights and Responsibilities webinar
 - c. Wednesday, April 7, 2021 (10:00 - 11:30 AM) – Buying and Selling Rental Property in Berkeley webinar
 - d. Wednesday, April 14, 2021 (10:00 – 11:30 AM) – Measure MM webinar
- (4) Copy of March 18, 2021 letter to the Mayor, Council and the Planning Commission conveying the Rent Board’s recommended amendments to the proposed “Inclusive Neighborhood Zoning” proposal (Acting Executive Director)
- (5) Date to submit agenda topics/items for the May 6, 2021 Rent Board meeting:
Monday, April 26th

9. COMMITTEE/BOARD MEETING UPDATES AND ANNOUNCEMENTS

- a. Budget and Personnel Committee (Commissioner Selawsky, Chair)
Next regularly-scheduled meeting: Thursday, April 22nd at 5:00 p.m.
 - (1) March 25th agenda
- b. Eviction/Section 8/Foreclosure Committee (Commissioner Mendonca, Chair)
Next regularly-scheduled meeting: Thursday, May 13th at 5:30 p.m.
- c. Habitable & Sustainable Housing (HASH) Committee

- d. IRA/AGA/Registration Committee (Commissioner Kelley, Chair)
Next regularly-scheduled meeting: Thursday, May 20th at 5:00 p.m.
- (1) April 6th
- e. Outreach Committee (Commissioner Laverde, Chair) – Commissioner Laverde reported that the Committee will recommend hiring Dr. Stephen Barton to consult on moving a tenant survey forward, and contracting with a firm to do the survey early next year.
- Next regularly-scheduled meeting:
- (1) March 24th agenda
- f. 2 x 2 Committee on Housing: Rent Board/Berkeley Unified School District
Chair: TBD
Next regularly-scheduled meeting: TBD
- g. 4 x 4 Joint Committee on Housing: City Council/Rent Board
Committee Co-Chairs: Mayor Arreguín and Chair Simon-Weisberg
Next regularly-scheduled meeting: Wednesday, April 28th at 3:00 p.m.
- h. Ad Hoc Committee on RSB Technology Issues (Chair TBD)
Next meeting date: TBD
- i. Updates and Announcements
- j. Discussion of items for possible placement on future agenda

At this point, the Board adjourned to reconvene in Closed Session.

10. CLOSED SESSION – Pursuant to California Government Code Section 54956.9(d)(1), the Board will convene in closed session for an update on litigation as follows:

- *Community Housing Improvement Program v. City of New York Rent Guidelines Board* (U.S. Court of Appeal, 2nd Cir., Case #20-3366)
- *Magganas v. City of Berkeley Rent Board* (Alameda County Superior Court Case # RG20092970)

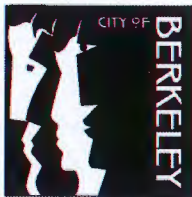
Following their return to open session, the Chair announced the following: The Board made a decision to support amicus efforts by the Rent Board on *Community Housing Improvement Program v. City of New York Rent Guidelines Board* (U.S. Court of Appeal, 2nd Cir., Case #20-3366)

- 11. ACTION ITEM:** Discussion and possible action regarding RWN-1649 (*Knighon v. Magganas*) (Acting Executive Director and Legal Staff)

M/S/C (Johnson/Laverde) MOTION TO SET ASIDE THE BOARD'S PREVIOUS DECISION ON APPEAL IN RWN-1649 AND HEAR THE CASE AGAIN. Roll call vote. YES: Chang, Johnson, Kelley, Laverde, Mendonca, Selawsky, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Alpert. Carried: 8-0-0-1.


- 12. ADJOURNMENT** – M/S/C (Johnson/Selawsky) MOTION TO ADJOURN THE MEETING IN HONOR AND MEMORY OF KAYLA MOORE, DAUNTE WRIGHT, AND ADAM TOLEDO. Roll call vote. YES: Chang, Johnson, Kelley, Laverde, Mendonca, Selawsky, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Alpert. Carried: 8-0-0-1.

The meeting adjourned at 11:11 p.m.


Rent Stabilization Board

DATE: May 6, 2021

TO: Honorable Members of the Rent Stabilization Board

FROM: Budget & Personnel Committee
 By: Matt Brown, Acting Executive Director 
 Lief Bursell, Senior Planner

SUBJECT: Recommendation to adopt Resolution 21-10 authorizing the Executive Director to enter into a contract with Kinnectics, LLC in an amount not to exceed \$25,000.

Recommendation

That the Board adopt a resolution authorizing the Executive Director to execute a contract with Kinnectics, LLC in an additional amount not to exceed \$25,000. The Budget & Personnel Committee reviewed this proposal at its April 22, 2021 meeting and recommended that the full Board support it.

Background and Need for Rent Stabilization Board Action

On September 17, 2020, the Rent Stabilization Board authorized the Executive Director to execute a contract with the Centre for Organization Effectiveness (the Centre) to facilitate strategic support for the upcoming executive leadership transition for a total amount not to exceed \$16,000. Keren Stashower, former consultant for the Centre, completed an executive transition assessment and presented her findings to staff on March 17, 2021 and to the Board at its regular, March 21, 2021 meeting for both comment and input.

The Centre's initial contract amount of \$16,000 was based on an estimate that it would take 50 hours of consultant time to complete an executive transition assessment. The actual work to complete the assessment has taken the Ms. Stashower almost 75 hours, and she has requested an additional \$5,000 in payment to account for these extra hours and that the Board contract directly with her business, Kinnectics, LLC.

The executive transition assessment presented to the Board identified six areas of focus for the hiring of a new, permanent Executive Director. The following three areas were identified as existing agency strengths: 1) Board development and support; 2) Protection and implementation of the Rent Stabilization Ordinance; and 3) Rent Stabilization Board advocacy. The final three areas were identified for potential agency growth/improvement: 1) Internal structure and processes; 2) Strategy and direction; and 3) People engagement and development. While these areas were identified for purposes of informing the recruitment of a new Executive Director, staff have already begun discussing a plan to begin addressing them before the executive

transition is complete.

Staff have consulted with Ms. Stashower¹ on how to best move forward given these findings. Staff have been pleased with the high quality of Ms. Stashower's work and recommend that the Board authorize the Executive Director to enter into a contract directly with Ms. Stashower's business, Kinnectics, LLC, so she can continue to support the agency as it looks to build on its current strengths and work on the areas for growth identified in the executive transition assessment. Staff propose that the agency address these growth opportunities through an agency wide strategic planning effort, the prioritization of organizational trainings, and the creation of processes to improve portfolio and project management.

Ms. Stashower estimates that she will need to spend an additional 80 hours with the Rent Board to complete these next steps. At an hourly rate of \$250, this will cost the agency an additional \$20,000. This additional scope plus the hours of work needed to complete the executive transition assessment require a total of \$25,000. Staff envision this work would start immediately and extend well into Fiscal Year 2021/22. Moreover, staff may come back to the Board to request additional funding should there exist a need to further consult with Ms. Stashower regarding this critical work.

Financial Impact

The Board has sufficient funds in its FY 2020/21 uncommitted reserve to allocate \$25,000 for a new contract with Kinnectics, LLC.

Name and Telephone Number of Contact Person

Matt Brown, Acting Executive Director (510) 981-7368

¹ Staff and the Board have only communicated with Ms. Stashower throughout the work on this project. Since the initial ratification of the contract with the Centre for Organization Effectiveness, Ms. Stashower has left the Centre and is now working independently. She has agreed to provide the Board and staff with additional work on this and similar projects pending the Board's authorization. Her new company is called Kinnectics, LLC.

RESOLUTION 21-10

AUTHORIZING ACTING EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH KINNECTICS, LLC THROUGH JUNE 30, 2022 IN AN AMOUNT NOT TO EXCEED \$25,000

BE IT RESOLVED by the Rent Stabilization Board of the City of Berkeley as follows:

WHEREAS, the previous executive director, who had held that position since 2002, retired from the Berkeley Rent Board in April 2020; and

WHEREAS, the Board and staff alike have expressed an interest in reviewing the Board's workplace culture to determine what type of leader the Board ultimately hires; and

WHEREAS, the Board wishes to involve staff in this process, so that there is a shared understanding between staff and the elected Commissioners regarding what is expected from the new executive director; and

WHEREAS, the Centre for Organization Effectiveness ("Contractor") has long provided training and support services for a number of City and Board staff for many years; and

WHEREAS, Board staff have been very impressed with Contractor's ability to increase organizational capacity in a wide variety of leadership and management areas; and

WHEREAS, the Board would like to engage in a process with Contractor in an effort to assess the key components of the executive transition to ensure that the new executive director possesses the competencies and attributes necessary to lead the agency into the future; and

WHEREAS, the Board wishes to involve staff as much as possible in the executive transition process to ensure that staff is given sufficient space to voice what they wish to see from a new executive director; and

WHEREAS, the Board, on September 17, 2020, authorized the Executive Director to enter into a contract with the Contractor to complete an executive transition assessment for a total amount not to exceed \$16,000; and

RESOLUTION 21-10

AUTHORIZING ACTING EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH KINNECTICS, LLC THROUGH JUNE 30, 2022 IN AN AMOUNT NOT TO EXCEED \$25,000 (Page 2)

WHEREAS, the Board entered into a contract with the Centre for Organization Effectiveness on October 15, 2020; and

WHEREAS, Keren Stashower, formerly a consultant with the Centre for Organization Effectiveness, completed an executive transition assessment and presented findings to staff on March 17, 2021 and to the Board at its March 21, 2021 meeting for both comment and input; and

WHEREAS, additional funding of \$5,000 is needed to complete work related to the organizational assessment; and

WHEREAS, the Rent Stabilization Board is pleased with Keren Stashower's work and wishes to hire Ms. Stashower directly through her business Kinnectics, LLC to complete work related to the organizational assessment; and

WHEREAS, the Rent Stabilization Board wish to hire Kinnectic's LLC to assist the agency with the additional organizational improvement efforts, strategic planning and addressing growth opportunities identified in the executive transition assessment through Fiscal Year (FY) 2021/22; and

WHEREAS, the Kinnectics LLC estimates the additional work required to support this effort will cost a total of \$20,000.

NOW, THEREFORE, BE IT RESOLVED that the City of Berkeley Rent Stabilization Board hereby authorizes the acting executive director to execute a contract with Kinnectics, LLC through June 30, 2022, in an amount not to exceed \$25,000.

RESOLUTION 21-10

AUTHORIZING ACTING EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH KINNECTICS, LLC THROUGH JUNE 30, 2022 IN AN AMOUNT NOT TO EXCEED \$25,000 (Page 3)

Dated: May 6, 2021

Adopted by the Rent Stabilization Board of the City of Berkeley by the following vote:

YES:

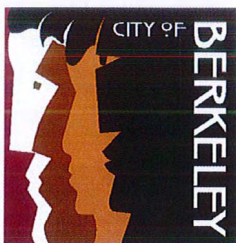
NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chair
Rent Stabilization Board


Attest: _____
Matt Brown, Acting Executive Director



Rent Stabilization Board
Office of the Executive Director

DATE: May 6, 2021

TO: Honorable Members of Berkeley Rent Stabilization Board

FROM: Matt Brown, Acting Executive Director 

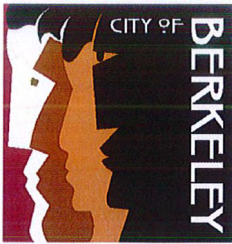
SUBJECT: Proposed Office Closure Every 2nd and 4th Wednesday of the Month and VTO days

The Board recently received results from an internal survey conducted by Keren Stashower in preparation for hiring a new permanent executive director. One of the primary findings was that all too often Board staff have dealt with important issues at the last minute and that this frenzy of activity creates uncertainty and discomfort among staff – particularly those that serve the public on a regular basis. Staff have expressed that it would be helpful to work in a more structured environment where there is a focus on strategic planning and a more cohesive framework for teamwork across all units at the Rent Board.

Approximately half the staff have positions that require daily contact with members of the public. Given the demands of these positions, many of these employees are unable to engage in any serious planning or other functions that allow them to connect on a regular basis with employees from other units. Board staff is currently engaged in a review of all agency protocols with an equity and inclusion lens. In order to promote fairness and involve all staff members, it is imperative to dedicate time to these planning and coordination activities in such a way that allows all staff members to participate.

Staff has proposed to close the office to the public every second and fourth Wednesday of each month and Voluntary Time Off (VTO) days. I have discussed this with the Board Chair who supports the proposal. A regular schedule that incorporates this structure will allow all staff the opportunity to meet across the agency's various units and dedicate considerably more time to necessary strategic planning. Additionally, other City departments are closed to the public on VTO days. There is at least one VTO day per month as well as the days between Christmas and New Year's Day.

This proposal ensures that all staff have the opportunity to meet internally at least two days a month. It also would preserve our late schedule (we are open from noon to 6:30 p.m.) on all other Wednesdays. Staff will devise a system to ensure that we attend to emergencies should any arise. Additionally, we may remain partially open to the public to accommodate owners between the time registration fee bills are mailed and their due date (July 1st of each year), so that property owners have increased access to our services.



Rent Stabilization Board
Office of the Executive Director

DATE: May 6, 2021

TO: Honorable Members of the Berkeley Rent Stabilization Board

FROM: Honorable Members of the Budget & Personnel Committee
By: Matt Brown, Acting Executive Director *MB*

SUBJECT: Proposal to Hire Temporary Worker to Assist Registration Unit during the Registration Period (May 17 – July 17, 2021)

The Board will be billing rental units pursuant to the mandate of Measure MM (passed at the General Election in November 2020). The Registration Unit has been hard at work to ascertain the universe of rental units subject to the requirements of the law.

This year is all the more challenging given that the agency is in the process of replacing our Rent Tracking System (RTS) database. For this registration period, all of the Measure MM units will be in the new database but none of the existing rent-controlled units will be. As a result, Registration staff will have to use two separate databases to collect fees and register properties – the new database for all Measure MM rental units, and the existing RTS for the rent-controlled units.

Staff recommended to the Budget & Personnel Committee that we hire a temporary worker to assist the Registration Unit with extra customer service and data entry work associated with registration this fiscal year. The committee unanimously approved this request. The agency will hire a temporary worker from May 17 – July 17, 2021. Staff will return to the Board with further requests if more help is needed.

RESOLUTION 21-11

AUTHORIZING THE ACTING EXECUTIVE DIRECTOR TO HIRE A TEMPORARY WORKER TO ASSIST THE REGISTRATION UNIT DURING THE REGISTRATION PERIOD FROM MAY 17, 2021 THROUGH JULY 17, 2021

BE IT RESOLVED by the Rent Stabilization Board of the City of Berkeley as follows:

WHEREAS, Measure MM, which was placed on the general election ballot by the Berkeley City Council on July 30, 2020, and subsequently passed by the voters on November 3, 2020, now requires the Board to register certain partially-covered rental units, including: rented single-family homes, condominiums, and newly-constructed units; and

WHEREAS, on December 17, 2020, by Resolution 20-17, the Rent Stabilization Board, approved the implementation of registration for partially-exempt units due to the amendments to the Rent Stabilization Ordinance mandated by Measure MM; and

WHEREAS, the implementation of Measure MM necessitates that the Rent Board's Registration Unit, for the first time, perform two distinct registration processes on two unique database platforms that will require additional staff time to develop and maintain; and

WHEREAS, the Registration Unit will need assistance during the registration period from May 17, 2021 through July 17, 2021; and

WHEREAS, the City of Berkeley currently utilizes ACRO Services Corporation to provide temporary personnel when needed;

NOW, THEREFORE, BE IT RESOLVED that the City of Berkeley Rent Stabilization Board hereby authorizes the Acting Executive Director to execute a purchase order with ACRO Services Corporation in order to hire a temporary worker to support the Registration Unit during the registration period from May 17, 2021 through July 17, 2021.

Dated: May 6, 2021

Adopted by the Rent Stabilization Board of the City of Berkeley by the following vote:

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chair
Rent Stabilization Board

Attest: _____
Matt Brown, Acting Executive Director



Rent Stabilization Board

RENT STABILIZATION BOARD

DATE: May 6, 2021

TO: Honorable Members of the Rent Stabilization Board

FROM: Matt Brown, Acting Executive Director

BY: Allison Pretto, Senior Management Analyst

SUBJECT: Request for waiver of late registration penalties

Recommendation:

That the Board approve the attached recommendations.

Background and Need For Rent Stabilization Board Action:

The Board's penalty waiver process is governed by Regulations 883, 884 and 885. Regulation 883 lists the grounds for administrative waivers. In accordance with Regulation 884, the Executive Director reviews waiver requests that do not meet the criteria for an administrative waiver. Regulation 884 lists 12 categories, which will require a review of the totality of the circumstances by the full Board prior to granting any waiver request. Waivers that require a review of the totality of the circumstances are listed below as "Discretionary Waiver." If none of the 12 listed categories apply to the property, the waiver shall be granted/denied in a ministerial manner, based upon the formula outlined in Regulation 884(C). The Board may only alter these ministerial waivers if staff has incorrectly applied the criteria listed in Regulation 884 (B)(1-12).

Ministerial Waivers

In accordance with Regulation 884, the Executive Director reviews waiver requests that do not meet the criteria enumerated in Regulation 883. The following waiver request will be decided ministerially, unless the Board has reason to believe the underlying basis of the recommended assessment is inappropriate.

Waiver	Property Address	Owner	Penalty Assessed	Penalty Waived	Penalty Imposed
4971	2014 Channing Way	Gardens Gate LLC	\$3,000	\$3,000	\$0
4972	2326 10th Street	Stanley Hunt	\$500	\$400	\$100
4973	1310 Addison Street	Alexandra Vondeling	\$500	\$500	\$0
4979	2948 Hillegass Avenue	Ettefagh Family Trust	\$626	\$626	\$0
TOTAL			\$4,626	\$4,526	\$100

Financial Impact: Ministerial Waivers

Approval of Acting Executive Director’s recommendations will decrease the Board’s current accounts receivable by **\$4,526**.

Discretionary Waivers

For the waiver requests listed below, staff recommendations are attached and presented to the full Board for its approval. With respect to these cases, the determination of good cause to waive some or all of the penalties depends on the totality of the circumstances.

Waiver	Property Address	Owner	Penalty Assessed	Penalty Waived	Penalty Imposed
4968	1235 Carrison Street	Chester Huie	\$1,500	\$750	\$750
4974	1103 Keeler Avenue	Patricia Hibbard	\$3,500	\$2,500	\$1,000
4981	2133 Parker Street	Ali Eslami	\$720	\$720	\$0
TOTAL			\$5,720	\$3,970	\$1,750

Financial Impact: Discretionary Waivers

Approval of Acting Executive Director's recommendations will decrease the Board's current accounts receivable by **\$3,970**.

Name and Telephone Number of Contact Person:

Matt Brown, Acting Executive Director
Rent Stabilization Board
2125 Milvia Street, Berkeley, CA 94704
(510) 981-7368

**City Of Berkeley
Rent Stabilization Board**

Recommendation on Requested Waiver of Registration Penalties

Waiver No: 4968	Property address: 1235 CARRISON ST	Transferred: 09/14/2020
# of Units: 4	Exempt units (as of April 2021): Unit #3 - Owner Occupied	
Owner(s): HUIE C K LIM 1999 FAM TRUST		Waiver filed by: Chester Huie
Other Berkeley rental property owned: None		

Late payment/penalty history: The property comprises four units, three of which are rented, and one of which was occupied by the former owner and is currently off the rental market. The person requesting the waiver is Chester Huie, who obtained the property on September 14, 2020. The previous owner had failed to pay the 2020/2021 registration fee of \$750. The Rent Board did not learn of the change in ownership until March 2021, when staff started reaching out to owners of delinquent accounts in preparation for collections actions. At this time, staff informed Mr. Huie of the outstanding fee balance, as well as the penalties of \$1500 that had accrued. Mr. Huie filed registration forms to correct the ownership information, paid the \$750 in fees, and filed a waiver request.

Penalties Currently Under Consideration

Reason for Penalties: Late Payment of 2020/2021 Annual Registration Fee

Registration Date or Year	Unit(s) registered late at this time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Due
2020/2021	3	\$750.00	03/16/2021	\$1500.00	\$0.00	\$1500.00
Totals				\$1500.00	\$0.00	\$1500.00

Grounds under Regulation 884(B): (7) The landlord requesting the waiver was not the owner of the property when the penalty first accrued.

Good cause claimed by owner: The owner states that he "didn't realize the prior owner didn't pay the Rent Stabilization Program. I never received a copy of the Rent Stabilization Program billing form." He concludes that the current fee of \$750 is paid "and will be paid on time in the future."

Recommendation: Staff recommends waiving 50% of the penalty, or \$750, and imposing 50%, or \$750.

Staff Analysis: It is always difficult when a new owner inherits the debts of the previous owner. Upon purchase of the property, the new owner had to pay not only the outstanding fee, but also the penalty that was automatically incurred when the previous owner did not pay the fee. However, Mr. Huie did buy a multiunit apartment building in a city that has a well-known Rent Ordinance. Mr. Huie could have reached out to the Rent Board sooner, and could have avoided incurring the additional, January 1, penalty. Staff thus recommends waiving 50% of the penalty, which holds this new owner responsible for the second penalty, and waiving the initial July 2 penalty.

RECEIVED

MAR 16 2021

CITY OF BERKELEY
RENT STABILIZATION PROGRAM
2125 Milvia Street, Berkeley, CA 94704
PHONE: (510) 981-7368 • FAX: (510) 981-4910
WEB: <https://www.cityofberkeley.info/rent/>

W-4964

Initial: _____
Berkeley Rent Board

Request for Waiver of Late Registration Penalties
Please Read Important Information on Page 2

Property Address: 1235 CARRISON ST. BERKELEY CA 94702

Owner: CHESTER HUIE

Date of acquisition, if new owner: SEPT 14, 2020

Name & relationship of person filing request, if not owner: _____

If, after reading the information on Page 2, you believe that you are entitled to a waiver of some or all of your late registration penalties, use the space below to explain why. Attach evidence, where possible, to document an extenuating circumstance that prevented timely payment, such as hospitalization or death in the family. It is your responsibility to convince the Board that your waiver should be granted, so state all facts and circumstances that support your case. **Please print or type clearly.** Attach an additional sheet of paper if needed.

As the new owner of 1235 Carrison St, I
(CHESTER HUIE) didn't realize the prior owner
didn't pay the Rent Stabilization Program.
I never recieved a copy of the rent stabilization
program billing form. The rent stabilization
is paid for current dues of \$750.00 and
will be paid timely in the future.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Date: 3-11-2021 Signature: Chester Huiue

The information entered below **must be clearly printed or typed** in order to receive the Executive Director's recommendation to the Rent Board on your penalty waiver request one week prior to the Board's consideration of your request at its monthly meeting. The recommendation will also include the date, time and location of the meeting should you choose to attend and address the Commissioners.

Email Address: Chhuiue@aol.com

Mailing Address: 25 Rossmoor Drive, San Francisco CA 94132

Phone Number: 415-377-8488 Fax Number: _____

Please see Communications Disclaimer on Page 2 that applies to any personal information you provide.

**City Of Berkeley
Rent Stabilization Board**

Recommendation on Requested Waiver of Registration Penalties

Waiver No: 4974	Property address: 1103 KEELER AVE	Transferred: 06/23/1993
# of Units: 3	Exempt units (as of April 2021): 0	
Owner(s): PATRICIA HIBBARD		Waiver filed by: Patricia Hibbard
Other Berkeley rental property owned: 1101 KEELER AVE		

Late payment/penalty history: The property is a triplex, which for many years had been claimed exempt with the Berkeley Rent Board as an owner-occupied exempt duplex. The owner, Patricia Hibbard, lives next door at 1101 Keeler Avenue. In February 2021, Ms. Hibbard received a Measure MM notification for a unit at 1103 Keeler Avenue. Confused, she contacted the Rent Board's Registration Unit. In the course of her conversation with the staff member, she revealed that 1103 Keeler Avenue is not a single-family home, but instead comprises two units. In addition, she revealed, there is a third unit on the property at 1105 Keeler, and that all three units have been rented for decades. One had been rented by the same tenant since the late 1970s. As there were three rented units, all are subject to the Rent Ordinance and registration requirement. The owner submitted registration forms for all three units. Staff updated the property with the tenancy information and charged the owner in accordance with the policy to limit registration fees for current and previous two registration years, and to limit penalties to two per registration period.

The owner has paid the \$1750 in registration fees for the three years, and has requested a waiver of the penalties.

Penalties Currently Under Consideration

Reason for Penalties: Late Payment of 2018/2019, 2019/2020, & 2020/2021 Annual Registration Fee

Registration Date or Year	Unit(s) registered late at this time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Due
2020/2021	3	\$750.00	04/19/2021	\$1500.00	\$0.00	\$1500.00
2019/2020	3	\$750.00	04/19/2021	\$3000.00	\$1500.00	\$1500.00
2018/2019	3	\$750.00	04/19/2021	\$4500.00	\$3000.00	\$1500.00
Totals				\$9000.00	\$4500.00	\$4500.00

Grounds under Regulation 884(B): (8) The penalty has accrued because registration fees have not been paid for three or more fiscal years.

Good cause claimed by owner: The owner states that she has lived on the property since 1969, and has owned it since 1988. She describes the layout of the property, which comprises three units at both 1103 Keeler and 1105 Keeler. She states that "my goal has always been to keep the rents low and to respond quickly when maintenance or repairs are needed." Consequently, she continues, "the tenants (all seniors on limited income) are very happy to live here and tend to stay for many years." In fact, she states that one tenant has been there since 1978.

Her explanation for not registering the property earlier is that "I did not know that I was required to do so. The first contact I had with the Rent Board was a few weeks ago when I got a letter asking about my rental at 1103 Keeler." She describes how she contacted the Rent Board and "volunteered the information that I also had a rental house on the same property at 1105 Keeler." After receiving the registration forms, "I filled them out and sent them right back."

She asks for a waiver of the penalties, indicating that she is 74 years old and on a pension. She states that "the rents collected barely cover the expenses incurred... Such a penalty fee would truly be a hardship for me." She concludes: "In future, I will be diligent in paying all required fees, as I am made aware of them."

Recommendation: Staff recommends waiving approximately 70% of the penalty, or \$2,500, and imposing 30%, or \$1,000.

Staff Analysis: The owner's explanation that she has never been contacted by the Berkeley Rent Board is a bit confusing. Although the property has long been claimed exempt as an owner-occupied duplex, a review of the property file reveals that Ms. Hibbard has responded to a few notifications from the Rent Board over the years, with the most recent one being her confirmation of the owner-occupied exempt status in 2006. Still, this owner seemed genuinely shocked to discover that the current status of the property deems it to be covered by registration requirements, and she has complied with all requirements promptly. As she references in her waiver request, the rents on the property are reasonable. The owner does bear some responsibility for not registering the property earlier, and has already had a significant amount of the penalties forgiven through the statute of limitations assessment. Balancing this owner's attempt to provide reasonably priced housing against her late registration, staff recommends a waiver of 70% of the penalty.

W-4974

RECEIVED

APR 19 2021

Initial:
Berkeley Rent Board

Request for Waiver of Late Registration Penalties
Please Read Important Information on Page 2

Property Address: 1103 Keeler / 1105 Keeler Ave. (located on one property)

Owner: Patricia Hibbard

Date of acquisition, if new owner: _____

Name & relationship of person filing request, if not owner: _____

If, after reading the information on Page 2, you believe that you are entitled to a waiver of some or all of your late registration penalties, use the space below to explain why. Attach evidence, where possible, to document an extenuating circumstance that prevented timely payment, such as hospitalization or death in the family. It is your responsibility to convince the Board that your waiver should be granted, so state all facts and circumstances that support your case. **Please print or type clearly.** Attach an additional sheet of paper if needed.

Please see attached.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Date: April 14, 2021 Signature: Pat Hibbard

The information entered below **must be clearly printed or typed** in order to receive the Executive Director's recommendation to the Rent Board on your penalty waiver request one week prior to the Board's consideration of your request at its monthly meeting. The recommendation will also include the date, time and location of the meeting should you choose to attend and address the Commissioners.

Email Address: oshahibbard@yahoo.com

Mailing Address: 1101 Keeler Ave. Berkeley, Ca. 94708

Phone Number: 510.387.4106 Fax Number: _____

Please see Communications Disclaimer on Page 2 that applies to any personal information you provide.

Request for Waiver of Penalties Fees

April 14,2021

Dear Rent Board,

I am writing to ask that you please consider forgiving the penalty fees on my rental properties.

My background: I have lived on the property since 1969, and owned it since 1988. During that time I cannot recall ever being contacted by the rent board. The limited contact I have with the city of Berkeley is to pay my taxes or to call them for missed garbage pick up. Because I live in a wooded canyon with my tenants, we are very close as neighbors and friends. The two rental houses were built in the 1930's, making them close to ninety years old and showing their age in problems with rotten wood, faulty heaters, crumbling brick paths, and cracked foundations. I have, over the years, taken out loans to repair and replace all these problems. As the property owner and landlady, my goal has always been to keep the rents low and to respond quickly when maintenance or repairs are needed. Consequently, the tenants (all seniors on limited income) are very happy to live here and tend to stay for many years. My tenant at 1105 Keeler has been here since 1978, long before I took possession of the property. I, myself, as well as various family members have lived at 1103 Keeler since I have owned the property. Before renting it, I sometimes used it as a guest house, family artist studio, and occasionally for storage.

My explanation for why I did not send in the annual fees is that I did not know that I was required to do so. The first contact I had with the rent board was a few weeks ago when I got a letter asking about my rental at 1103 Keeler. I immediately called to ask what I was needed from me. I volunteered the information that I also had a rental house on the same property at 1105 Keeler, something the rent board had no record of. I talked with Allison Pretto who sent me the forms I needed. I filled them out and sent them right back.

Today I received the bill. I am sending a check for the annual fees due on my rentals: \$1,750, as requested in today's bill.

I ask again, if you could please take pity on me, in consideration of my age, long time residency on this property, limited income, and ignorance of the rent board's rules and regulations. Please forgive the \$3,500 penalty fees.

I am a retiree, age 74, and living on a teacher's pension. (The rents collected barely cover the expenses incurred, ie: taxes, property insurance, fire safety clearing, maintenance, repair, path lighting, new appliances, plumbing problems, tree trimming, and, now, rent board fees.) Such a penalty fee would truly be a hardship for me. In future, I will be diligent in paying all required fees, as I am made aware of them.

Thank you for your time and attention to this matter,

Patricia Hibbard
Patricia Hibbard
Property owner

**City Of Berkeley
Rent Stabilization Board**

Recommendation on Requested Waiver of Registration Penalties

Waiver No: 4981	Property address: 2133 PARKER ST	Transferred: 01/01/2009
# of Units: 3	Exempt units (as of April 2021): 0	
Owner(s): ALI ESLAMI		Waiver filed by: Ali Eslami
Other Berkeley rental property owned: 2532 BENVENUE AVE, 2032 CEDAR ST, 2205 HASTE ST, 1917 MLK JR WAY, 2517 PIEDMONT AVE, 2600 SAN PABLO AVE, 1609 WALNUT ST, 2444 CARLETON ST, 2415 FULTON ST, 2333 FULTON ST, 1423 KAINS AVE #1, 1423 KAINS AVE #2, 1423 KAINS AVE #3, 1423 KAINS AVE #4, 2161 DWIGHT WAY		

Late payment/penalty history: The property comprises three units, all of which are rented and subject to registration. This waiver is before the Board because the owner, Ali Eslami, owns 34 rental units in Berkeley. His payment history on all of his other properties is excellent; he received a 100% administrative waiver of penalties on all of his other properties because the late payment of the 2020/2021 was the first in the previous six years. He did not receive a 100% waiver on the Parker Street property because of an E petition that he filed for a unit subject to registration under Measure AA; the petition process spanned two registration years, thus incurring penalties. Once the E petition was denied, Mr. Eslami paid the outstanding fee immediately.

Registration Date or Year	Units requiring registration at that time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Paid
2017/2018	ALL	\$390.00	06/28/2018	780.00	780.00	0.00
Totals (penalties previously assessed)				\$780.00	\$780.00	\$0.00

Penalties Currently Under Consideration

Reason for Penalties: Late Payment of 2020/2021 Annual Registration Fee

Registration Date or Year	Unit(s) registered late at this time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Due
2020/2021	3	\$720.00	07/28/2020	\$720.00	\$0.00	\$720.00
Totals				\$720.00	\$0.00	\$720.00

Grounds under Regulation 884(B): (6) The landlord requesting the waiver owns or manages 11 or more rental units in Berkeley.

Good cause claimed by owner: The owner admits that payment for all twelve of his properties was paid weeks after the July 1, 2020, deadline. He says that this was "due to the COVID-19 induced staffing related issues at the office." He goes on to say that "our office staff was reduced from 5 people to 1.5 due to the shelter in place order." He says that "full payment was made on July 20, 2020, once it was discovered that none of the scheduled June 2020 account payable payments were completed."

Recommendation: Staff recommends waiving the penalty in full.

Staff Analysis: This owner owns a large number of units in Berkeley and again, he has an excellent payment history for all of them. Staff is understanding of the confusion that the Shelter in Place caused for businesses, especially during the first few months. Staff has full confidence that this owner will pay the fees timely in the future, and sees little benefit in imposing the penalty. The recommendation is for a full waiver.

CITY OF BERKELEY
RENT STABILIZATION PROGRAM
2125 Milvia Street, Berkeley, CA 94704
PHONE: (510) 981-7368 • FAX: (510) 981-4910
WEB: <https://www.cityofberkeley.info/rent/>

W-4941

RECEIVED
APR 05 2021
Initial: *AE*
Berkeley Rent Board

Request for Waiver of Late Registration Penalties

Please Read Important Information on Page 2

Property Address: 2133 Parker Street, Berkeley, CA 94704 - (3 Units)

Owner: A. Ali Eslami

Date of acquisition, if new owner: _____

Name & relationship of person filing request, if not owner: _____

If, after reading the information on Page 2, you believe that you are entitled to a waiver of some or all of your late registration penalties, use the space below to explain why. Attach evidence, where possible, to document an extenuating circumstance that prevented timely payment, such as hospitalization or death in the family. It is your responsibility to convince the Board that your waiver should be granted, so state all facts and circumstances that support your case. **Please print or type clearly.** Attach an additional sheet of paper if needed.

Payment was made about 3 weeks late due to the COVID-19 induced staffing related issues at the office. Our office staff was reduced from 5 people to 1.5 due to the shelter in place order.

Full payment was made on July 20, 20 once it was discovered that none of the scheduled June 2020 account payable payments were completed.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Date: 04-02-2021 Signature: *A. Ali Eslami*

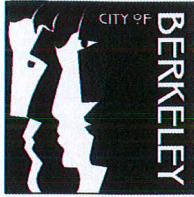
The information entered below **must be clearly printed or typed** in order to receive the Executive Director's recommendation to the Rent Board on your penalty waiver request one week prior to the Board's consideration of your request at its monthly meeting. The recommendation will also include the date, time and location of the meeting should you choose to attend and address the Commissioners.

Email Address: a.ali.eslami@outlook.com


Mailing Address: P. O. Box 4623, Berkeley, CA 94704

Phone Number: 510-774-8387 Fax Number: _____

Please see Communications Disclaimer on Page 2 that applies to any personal information you provide.



Rent Stabilization Board

DATE: May 6, 2021
TO: Honorable Members of the Rent Stabilization Board
FROM: Matt Brown, Acting Executive Director 
Lief Bursell, Senior Planner
SUBJECT: Recommendation to set the Fiscal Year 2021/22 Annual Registration Fee Including the Setting of an Initial Fee for Measure MM Units and to Authorize Pass-through of a Portion of the Registration Fee for Fully-controlled Units to Certain Tenants.

Recommendation

That the Board adopt four resolutions concerning the Fiscal Year (FY) 2021/22 annual registration fees:

Proposed Resolution 21-05 – adopting the annual registration fee, due July 1, 2021, at \$250 per unit for fully- covered units. This fee is calculated based on revenue necessary to cover costs of recurring operational and capital expenses for the services the program provides to fully controlled rental units.

Proposed Resolution 21-06 – adopting the annual registration fee, due July 1, 2021, at \$150 per unit for partially-covered Measure MM units. This fee is calculated based on the additional costs associated with implementing Measure MM registration and providing expanded services to the units in FY 2021/22 (\$100 per unit), and on the revenue required to cover the additional expenses associated with registering and providing services for partially covered units during FY 2020/21 (\$50 per unit).

Proposed Resolution 21-07 – adopting a lower \$37 per unit annual registration fee, due July 1, 2021, for Measure MM units in affordable housing projects that are managed by a non-profit and have an operative regulatory agreement with the City of Berkeley through its Housing Trust Fund program.

Proposed Resolution 21-09 –authorizes, with proper notice, the pass-through of up to \$10.00 per month to tenants where the tenancy began prior to January 1, 1999. The pass-through may be taken for 12 consecutive months. It cannot begin prior to July 1, 2020, and must terminate no later than December 31, 2022, unless extended by future Board action. The increase shall not result in a pass-through of greater than \$10.00 per month to any tenant. The Resolution also directs staff to continue a program/mechanism that allows low-income tenants with a household income of 50% or less of the Area Median Income (AMI) as calculated by HUD for the Oakland-Fremont, CA HUD FMR Area, or otherwise demonstrating proof of qualification as

low-income, to be reimbursed for the pass-through. Funds, totaling \$13,000, for the reimbursement would come from the AEPHI tenant overcharge settlement, which, pursuant to Board Regulation 1271(B), must be used for the benefit of low-income tenants.

Background and Need for Rent Stabilization Board Action

Legally, the Board has through the end of June to adopt a line-item budget and expenditure authorization level for FY 2021/22. In order to provide enough time to allow staff to print and mail the annual bill prior to the last week of May, however, the Board traditionally sets the fee at a meeting no later than early to mid-May. State law requires the Board to set a Public Hearing to get public input before it can increase the existing fee level.¹ The setting of the Measure MM fee² for FY 2021/22 is technically an increase because the Board has not yet set the fee level for these units.

The Budget & Personnel Committee has met five times in calendar year 2021 to review various aspects of the agency's budget and staffing model, and to formulate the appropriate recommendation for the FY 2021/22 registration fee levels. At their March 25, 2021 meeting, the Budget & Personnel Committee voted unanimously to recommend the Board set the FY 2021/22 registration fee at \$250 per unit for controlled rental units and at \$150 per unit fee for Measure MM units. Due to the added complications of implementing new registration processes for Measure MM units, the Budget & Personnel Committee recommend that the Board pass the FY 2021/22 registration fee as soon as possible in order to give staff additional time to prepare for the registration of this new universe of units.

At the Budget & Personnel Committee's April 27, 2021 meeting, the committee discussed the Measure MM fee requirements for rental units in various affordable housing projects that are subject to the new registration requirements of Measure MM. After discussion, the committee voted unanimously to recommend that the Board set a lower \$37 per unit fee for certain affordable housing projects funded by the City of Berkeley Housing Trust Fund.

Board members and Committees are also encouraged to submit any requests or suggestions for next year's budget over the next two weeks so that they may be reviewed by staff and the Budget and Personnel Committee in time for inclusion in the final FY 2021/22 budget recommendation.

Mid-Fiscal Year 2020/21 Budget Update

The Board's adopted budget anticipated collecting \$4,850,000 for the current fiscal year. As of March 31, 2021, the agency has collected \$4,912,831 and staff now project that annual revenue will come in closer to \$4,950,000. Additionally, actual mid-year expenditures were significantly lower than anticipated by the adopted budget.

¹ California Government Code Section 66016

² Adopted by Berkeley voters in the general election of November 2020, Measure MM requires the Board to set and collect a registration fee for a new subset of partially covered residential rental units – namely, rented single family homes, condominiums, and units that qualify as new construction under the Rent Ordinance. These units, particularly since the adoption of the Costa-Hawkins Rental Housing Act, have typically been exempt from the registration requirements of the Ordinance.

Decreases in actual expenditure levels are due to savings in several areas, most significantly from salary savings due to the unfilled permanent Executive Director position and the vacant Deputy Director position. Staff also project savings in capital expenditures related to the Rent Tracking System (RTS) replacement project because 3Di, the vendor developing the agency's new database and payment portal, agreed to delay and spread-out payments for the RTS replacement project over two fiscal years. Due to these savings, staff now project that total FY 2020/21 expenditures will be around \$800,000 less than what the Board authorized in the adopted budget.

The attached February 18, 2021 Mid-Fiscal year 2020/21 Budget Report provides more detail on the status of the Board's budget. Staff will prepare a 3rd Quarter budget update for review by the Budget & Personnel Committee at their May 27, 2021 meeting. The 3rd Quarter budget update will be provided to the Board at its next meeting, scheduled for June 17, 2021.

Measure MM Fee Level

Measure MM requires that the Board set a registration fee and imposes registration requirements on certain partially covered, rented single-family homes, condominiums, and units defined as new construction under B.M.C. Sections 13.76.040Q and 13.76.050I. Measure MM did not impose any local rent regulations on these units; they remain exempt from Berkeley's rent control provisions.

On December 17, 2020, the Board adopted Resolution 20-23, which defined the additional services the agency would provide to landlords and tenants of Measure MM units and established that there would be no charge for a registration fee for these rental units in FY 2020/21. The resolution further stated that any additional expenses associated with registering or providing services for Measure MM units during this fiscal year would be considered and potentially increase the registration fee for Measure MM units in FY 2021/22.

Considerations for Setting the FY 2021/22 Registration Fee

The Board will again have to balance the agency's need for revenue with the economic uncertainty faced by both property owners and tenants who are recovering from the COVID-19 pandemic. The Board may take the following information into consideration when deciding upon the appropriate levels for the FY 2021/22 registration fees.

Status of Uncommitted Reserve

Due to both increased revenue and reduced expenditures staff anticipate the Board will likely end the year with over \$700,000 in uncommitted reserve. This represents a 12% reserve and is sufficient to cover between 1-2 months of the program's projected expenditures.

Projected FY 2021/22 Expenditures

Assuming all positions in the current staffing model are filled, staff project the program will need about \$5,700,000 in revenue to cover expenditures in FY 2021/22. This is an increase of \$400,000 from the total projected expenditures in FY 2020/21. The need to increase expenditures is primarily to cover the added salary costs for the currently vacant permanent Executive Director and Deputy Director positions.

Number of Qualifying Measure MM Units

Rent Board staff initially identified around 5,000 units, mostly in newer, multi-family rental housing that are most likely to qualify for registration under Measure MM. The Measure MM registration process has thus far resulted in the approval of over 250 exemption requests and staff, through communications with property owners, have identified over 100 units from this group that do not qualify for registration under Measure MM. Given that there are still more exemption requests under review, it appears there will be closer to 4,000 rental units that qualify for Measure MM registration.

Staff has sent letters to an additional 4,400 properties (mostly single-family homes) that would qualify for registration if rented, but response rate has been slow, so the number of units from this group that will be required to register is still somewhat unknown. Given the present uncertainty around the number of qualifying units, staff recommends the Board base the Measure MM fee on the conservative assumption that just 4,000 units will meet the criteria for Measure MM registration in FY 2021/22.

Measure MM Unit Registration Compliance Rates

The Board will also adopt the registration fee and its operational budget for FY 2021/22 before it knows the overall compliance rate for the new Measure MM registration requirements. Staff anticipate a higher compliance rate for the larger multi-family properties. There are currently over 3,200 units in larger rental properties with 10 or more units that staff believe are subject the Measure MM registration requirements. For reference, the City of Richmond Rent Program's initial compliance rate for both partially covered and fully covered rental units was 61% in its first year of existence. Richmond's compliance rates then improved to 78% during its second year and all the way up to 93% in its third year.

Fee Calculation Options and Recommendation for Measure MM Units

In November of 2020, staff presented the City of Richmond Rent Program's fee structure as a possible model for calculating separate fee levels for both fully covered units and Measure MM units. Richmond's Rent Program calculates its fee structure by dividing the costs of their program into three distinct components: a general "program" component (55% of program costs), a "just cause" component (20% of program costs), and a "rent control" (25% of program costs).

Staff considered using an adapted version of this fee structure to calculate Berkeley's registration fees but ultimately concluded that there were still too many unknowns and that calculating a fee in this manner would require too much guess work. Once the Board knows the number of qualifying Measure MM units that register during the FY 2021/22 registration season, and has data points that will allow staff to breakdown the exact services the agency provides for Measure MM units, it will have the necessary inputs to make this type of fee calculation. Towards this purpose, staff has begun and will continue to track the number and types of services provided to measure MM units. At this time, staff recommends the Board adopt the Measure MM fee based only on the known costs for implementing the requirements and services associated with Measure MM units thus far.

Staff have been tracking both the hours and expenditures required for Measure MM implementation and the time dedicated to providing services to Measure MM units. Staff

calculate that the total cost of these efforts will be \$200,000 by the end of the current fiscal year. Since the bulk of Measure MM implementation work began in January of 2021, this \$200,000 only represents six months of costs. Assuming 4,000 qualifying Measure MM units, the Board would have had to set the Measure MM at \$100 per unit to cover these costs prorated over a full fiscal year. A \$100 per unit is 40% of the current \$250 fee for fully-covered units and staff believe that is an appropriate baseline for the Measure MM fee. The Board should note that Measure MM implementation is not complete and will continue throughout FY 2021/22.

Rent Board Resolution 20-23 states that any additional expenses associated with registering or providing services for partially covered units during this fiscal year shall be considered and potentially increase the registration fee for partially exempt units. In order to recover the total \$200,000 cost that the agency will spend on Measure MM implementation during FY 2020/21, the Measure MM fee would have to increase by an additional \$50 per unit (under the assumption that this fee will apply to a universe of 4,000 units). A base fee of \$100 per unit, and an additional \$50 fee to recover FY 2020/21 implementation costs, result in a recommendation to set the Measure MM fee at \$150 per unit for FY 2021/22.

Measure MM Fee for 100% Affordable Housing Projects

TW affordable housing service providers, Resources for Community Development (RCD) and Satellite Affordable Housing Associates (SAHA) submitted written letters to the Budget & Personnel Committee requesting an exemption from the Measure MM registration requirements for certain 100% affordable housing projects that they manage. Rent Stabilization Ordinance section 19.76.050.K exempts residential units owned by a non-profit organization that are rented to low income tenants and subject to a regulatory agreement with a governmental agency that controls their rent levels. While some of RCD's and SAHA's properties meet the criteria for this exemption, they also have hundreds of units in affordable housing projects that do not meet these criteria because they are *owned* by limited partnerships and *managed* by a non-profit.

For the properties in question, RCD and SAHA serve as the managing general partner and they claim they are otherwise similar to the affordable housing projects that qualify for exemption under the Ordinance. RCD and SAHA informed the Budget & Personnel Committee that this ownership structure this is the standard structure used for the Federal Low-Income Housing Tax Credit (LIHTC) program.

The Budget & Personnel Committee considered this issue at its April 27, 2021 meeting. The Committee heard testimony from both SAHA, RCD, the Berkeley Property Owner's Association, the Eviction Defense Center and the East Bay Community Law Center, and asked questions of staff related to the kinds of services the Rent Board provides to tenants in affordable housing projects. After discussion, the Budget & Personnel Committee ultimately decided that the agency provides valuable services to tenants of affordable housing units, including housing counseling and mediation, and that there should be a small fee to help pay for the costs associated with providing services to these units.

The Budget & Personnel Committee voted unanimously to recommend that the Board set a \$37 per unit registration fee for affordable housing projects that receive housing trust fund money. Similar to the Measure MM fee, the \$37 fee combines a \$25 per unit base fee to cover expenses in FY 2021/22, with an additional \$12 per unit fee to recover implementation costs incurred this

fiscal year.

Registration Unit staff estimate they are a total of approximately 500 affordable housing units that would qualify for the lower fee. Since these units are not part of the 4,000-unit universe that staff anticipate will qualify for full Measure MM unit registration, staff do not recommend making any adjustments to the full Measure MM fee if the Board decides to adopt a lower fee level for these affordable housing project units.

After consulting with staff in the Health, Housing and Community Service Department, Rent Board staff suggest that these units be defined as units in affordable housing projects that are managed by a non-profit and are within the regulatory period established by a regulatory agreement with the City of Berkeley through its Housing Trust Fund program.

The Budget & Personnel Committee requested that staff provide the Board with additional information on the number of client contacts and evictions notices received for units in these affordable housing projects. Staff will review agency records and endeavor to present this information to the Board during the meeting.

Balancing Available Reserve Against Economic Uncertainty

In prior years, the Board had committed to a strategy of increasing the registration fee in a “pay as you go” manner, raising it enough to meet budget commitments outlined for the upcoming fiscal year, while at the same time endeavoring to maintain a reserve of approximately 5%-8% of the operating budget. This strategy was adopted largely in response to property owners’ stated desire to accommodate operational inflation in smaller, real-time adjustments and avoiding exceptionally large registration fee increases in any given year.

In the previous year, however, the Board deviated from this plan in response to the COVID-19 pandemic. Last year, the Board elected to utilize a portion of the uncommitted reserve to cover anticipated expenses that would not be covered by revenue generated by the \$250 annual registration fee. The Board did this both because it anticipated decreased registration revenue due to the state of the rental housing market and in order to avoid raising the fee in a time of crisis and economic uncertainty. Utilizing the uncommitted reserve allowed the Board to maintain the annual registration at \$250 per unit even though it anticipated expenditures to exceed revenues last fiscal year. Since the uncommitted reserve is projected to be well above the historic 5%-8% level at the end of FY 2020/21, the Board has the ability to again use its existing surplus to avoid raising the annual registration fee at time when the economy, and the Berkeley rental housing market in particular, continues to recover from the impacts of the COVID-19 pandemic.

Registration fee revenue, somewhat surprisingly, was not significantly impacted by the COVID-19 pandemic during the FY 2020/21 registration period and the Board does not have any reason to anticipate a decline in the number of units paying the full registration fee in FY 2021/22. The proposal to use the Board’s reserve is therefore aimed at avoiding an increase to fees while the economy continues to recover. At this time next year, Berkeley’s rental housing market should be in a better position and the agency will have more information on Measure MM’s impact to both revenues and expenditures.

The Board has traditionally requested analysis of the impact of fee-based revenue when compared to increasing rents and changes in the Consumer Price Index (CPI) since 2009. May 2009 was selected as a comparison because the Board went several years without increasing the fees before adjusting it in four consecutive years between 2015 and 2018.

The following table shows the registration fee as a percentage of rent, which is probably the most relevant measure of the impact of any fee. The shaded area reflects a pre-vacancy decontrol program, while 1998 was a transition year from full rent control to decontrol. If the Board maintains the fee at \$250, it will be the lowest percentage of the average (mean) annual rent since the voters began electing Board members in 1984 and it is the first time the fee has ever been less than 1% of the annual average rent for controlled rental units.

Fees as a percentage of rent			
<u>Year</u>	<u>Fee</u>	<u>Mean Monthly Rent</u>	<u>% Annual Rent</u>
1984	\$60	\$267	1.87%
1987	\$80	\$293	2.28%
1989	\$100	\$328	2.54%
1991	\$136	\$361	3.14%
1998	\$112	\$720	1.30%
2000	\$124	\$865	1.19%
2005	\$154	\$1,062	1.21%
2010	\$194	\$1,274	1.27%
2014	\$194	\$1,498	1.08%
2015	\$213	\$1,606	1.11%
2016	\$234	\$1,637	1.12%
2017	\$270	\$1,710	1.32%
2018	\$250	\$1,816	1.15%
2019	\$250	\$1,956	1.07%
2020	\$250	\$2,039	1.02%
2021	\$250	\$2,110	0.99%

Pass-through of Increase in Registration Fee to Tenants

In 2003, the BPOA proposed changing the way the Annual General Adjustment (AGA) was calculated, shifting from a pass-through of actual cost increases to a flat formula based on a percentage of the CPI.

The Board approved of this formula, and in 2004, the voters approved of this change in how the AGA was calculated. Prior to the change in the AGA methodology, all increases in the registration fee between 1980 and 2005 were taken into consideration and incorporated in the Annual General Adjustment of rents.

Since the adoption of statewide vacancy decontrol in the late 1990s, rent levels have been set using two different standards. Under vacancy decontrol, owners are expected to consider past and anticipated future operating cost increases when setting the initial rent for a new tenancy.

Therefore, under the stated logic of vacancy decontrol, increases to the registration fee presumably have been factored into the rent charged a new tenant. Approximately 90% of the units have experienced at least one decontrol event since 1999. The Board has been extremely careful to guarantee that owners of the 10% of units never decontrolled continue to receive compensation for actual increased costs, such as adjustments to the registration fee. Since 2004, the Board has found that it would be fair and equitable, in view of the purposes of the Ordinance, to pass along to tenants a part or all of the increase in fees as a temporary adjustment of rent ceilings.

For several years, the Board approved a pass-through of up to \$4.00 per month to tenants where the tenancy began prior to January 1, 1999. In 2015, with the \$19-per-year increase in the registration fee, the amount of the pass-through was increased by \$2.00 per month for a new total pass-through of \$6.00 per month. In 2016, when the fee was raised by \$18, an additional \$2.00 per month was added, raising the monthly pass-through to \$8.00 per unit. In 2017, when the fee was increased by \$36, the pass-through was increased by an additional \$3.00 per unit, bringing the total monthly pass-through to \$11 per unit. Three years ago, the fee was lowered to \$10 per month to reflect the \$20-per-year decrease to the registration fee and it has remained at that level since then. This year, if the fee is maintained at the proposed \$250 per unit, the Budget & Personnel Committee believes it is appropriate to maintain the pass-through at \$10 a month. The proposed pass-through may be taken for 12 consecutive months and cannot begin prior to July 1, 2021, and must terminate no later than December 31, 2022, unless extended by future Board action. The change shall not result in a pass-through of greater than \$10.00 per month to any tenant. The pass-through must be on a form provided by the Board or use language provided by the Director, and a copy must be filed with the Program.

Mitigation of Impact of Pass-through for Low-Income Tenants

The last time the fee was increased, the Board discussed the impact that the pass-through of the fee could have on tenants on a fixed income, especially following the ongoing cuts in several state and federal programs assisting those most vulnerable in our society. Consequently, the Board adopted a resolution directing staff to develop a mechanism that allows low-income tenants with a household income of 40% or less of the Area Median Income (AMI) to be reimbursed for the pass-through. Funds for the reimbursement came from the AEPHI settlement. Pursuant to Board Regulation 1271(B), in the event of overcharges from a case in which a tenant has not claimed reimbursement within a year, the Board may designate a program of the City of Berkeley that benefits low- and/or moderate-income tenants. Because the AEPHI settlement was entirely from overcharges to tenants and did not include any registration fee, the Board elected to use this as a source to fund the mitigation of the pass-through. Since 2010, around 700 low-income individuals have taken advantage of this program and utilized around \$130,000 of the AEPHI Fund balance.

If the Board wishes to continue this mitigation, it will need to authorize an additional allocation from the AEPHI settlement account, which currently contains approximately \$61,000. The original \$18,000 allocation for the pass-through reimbursement program lasted over six years. As the registration fees have increased over the years, we have noticed two trends: More owners are taking the pass-through and more low-income tenants are requesting reimbursement. This trend

had continued unchanged until last year when there was a reduction in the number of both passthroughs and reimbursement requests. The COVID-19 pandemic likely contributed to the reduced number of passthroughs and reimbursement requests received this fiscal year. The following table, lists the totals from each of the past several years:

Year	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020	2020/21
Registration Fee Charged (amount of pass-through)	\$213 (\$6 per month)	\$234 (\$8 per month)	\$270 (\$11 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)
Number of Notices Property Owners Sent to Tenants	404	486	595	601	680	557 (YTD)
Number of Qualified Tenants Requesting Reimbursement	55	75	101	110	126	75 (YTD)

This year, the Program will spend roughly \$10,000 in additional allocation for reimbursements. Given the likelihood that number of requests the Program will receive will revert to pre-pandemic levels in FY 2021/22, staff estimate that that an additional allocation of \$13,000 is needed. The Budget & Personnel Committee recommend the Board continue the program and authorize the \$13,000 allocation for FY 2021/22.

In 2010, the Board also discussed the appropriate income level to qualify for the reimbursement program. Under federal guidelines, 50% of area median income (AMI) is considered “Very Low Income.” Previously, 30% of AMI was considered “Extremely Low Income”, but that definition has since been changed to be the greater of 30/50ths (60 percent) of the Section 8 very low-income limit. To our knowledge, there is no unique designation for 40% of the AMI. The household income by size of household for 30%, 40% and 50% of the AMI for Alameda County is listed below. According to HUD guidelines, the 2021 area median income for a household in Alameda County is \$125,600. The HUD guidelines were published on April 1st of 2021. The table below lists income standards for 1-8 person households calculated at 30%, 40% and 50% of the AMI, rounded to the nearest \$50 per HUD’s practice.

Income Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
30% AMI	\$26,400	\$30,150	\$33,950	\$37,700	\$40,700	\$43,750	\$46,750	\$49,750
40% AMI	\$35,150	\$40,200	\$45,200	\$50,240	\$54,250	\$58,300	\$62,300	\$66,300
50% AMI	\$43,950	\$50,250	\$56,500	\$62,800	\$74,000	\$79,500	\$84,950	\$90,450

In calculating the 50% AMI “Very Low Income” limit, HUD also includes “High Housing Cost Adjustment” for the Oakland-Fremont CA HUD Metro FMR Area. This increases the base 50% AMI income limit category for a family of four by \$5,700 or 9.1%.

HUD Income Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
50% AMI	\$47,900	\$54,800	\$61,650	\$68,500	\$74,000	\$79,500	\$84,950	\$90,450

In previous years, the Board established a standard that allows low-income tenants with a household income of 40% or less of the AMI to be reimbursed for the pass-through and it was not until FY 2018/19 the Board set the qualifying income at the higher 50% AMI level. In FY 2019/20, Staff and the Budget and Personnel Committee recommended that the mitigation pass-through for low-income tenants be adopted to match the HUD’s higher 50% AMI or “Very Low Income” limit, including the “High Housing Cost Adjustment” and to continue to allow individuals to demonstrate proof of qualification for reimbursement if they already have been determined eligible for another similar state or federal program, including but not limited to CalWorks, CalFresh, Medi-Cal, WIC or another program approved by the Executive Director. The Budget & Personnel Committee recommend the mitigation pass-through for low-income tenants be adopted with this standard again for FY 2021/22.

The Budget and Personnel Committee also recommend that reimbursement for the pass-through be limited to the current registration year, which is consistent with the Board’s practice for the past two years.

Please note that the registration fee pass-through and low-income tenant reimbursement programs are only applicable to controlled rental units and will not apply to Measure MM units.

Conclusion

The Budget & Personnel Committee recommends that the Board adopt resolutions to set the fee for fully covered units at \$250, the fee for partially covered units subject to Measure MM at \$150 per unit.³ The committee also recommend that the Board consider setting a lower \$37 fee for partially covered units subject to Measure MM that are in affordable housing projects that are managed by a non-profit and are within the regulatory period established in a regulatory agreement with the City of Berkeley through its Housing Trust Fund program

Finally, the Budget & Personnel Committee recommends that the Board adopt a resolution to authorize the registration passthrough and low-income tenant reimbursement program to

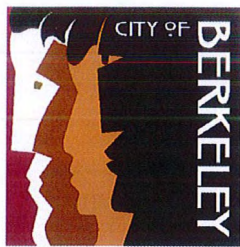
³ This would be the fourth year in a row that the fee for fully covered units would be set at \$250. Additionally, the \$150 fee for Measure MM rental units incorporates cost recovery for implementation of the Measure MM services and staff time spent during the current fiscal year.

continue in FY 2021/22, and to authorize an additional allocation of \$13,000 from the Board's AEPHI settlement account for this purpose.


Name and Telephone Number of Contact Person

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

Attachment – FY 2020/21 Mid-Fiscal Year Budget Report



Rent Stabilization Board
Office of the Executive Director

DATE: February 18, 2021
TO: Honorable Members of the Berkeley Rent Board
FROM: Honorable Members of the Budget & Personnel Committee
By: Matt Brown, Acting Executive Director 
SUBJECT: Mid-Fiscal Year Budget Report

Recommendation

That the Board add a permanent Community Services Specialist II position to the staffing model to serve as a Housing Counselor. The Budget & Personnel Committee reviewed a Mid-Fiscal Year Budget report prepared for the committee at its meeting on January 28, 2021, and unanimously recommended that the full Board adjust the staffing model to hire an additional housing counselor to respond to increased demand within the Public Information Unit.

Background

On June 18, 2020, the Board adopted a staffing model and budget with a maximum expenditure authorization for FY 2020/21. The Board received periodic budget updates and discussed the issue at several prior Board meetings. Prior to adopting the budget the Board voted to keep the annual registration fee at \$250 per unit. The Board maintained a larger than expected uncommitted reserve balance from the previous fiscal year, caused by staff turnover and unexpected vacancies in several previously-budgeted positions. These staffing changes resulted in some delays in delivery of services and/or deferral of some new initiatives or projects. At the time the Board adopted the budget there was considerable concern regarding how the COVID-19 pandemic and accompanying Shelter in Place Orders would affect collection of Registration Fees. Short-term revenue gaps were anticipated. At staff's recommendation, the Board adopted a cautious approach when establishing the initial staffing levels and services for the current fiscal year. To that end, the Board incorporated a formal mid-year budget review as part of the process for adopting the budget for FY 2020/21. The Board reasoned that it would be able to make more informed choices regarding to what extent it is able to fill several positions and/or fund program enhancements.

The Board anticipated having an uncommitted reserve of \$130,997, or about 2.5% of its reoccurring operational budget at the conclusion of this fiscal year. This was far below the Boards targeted 8% reserve. To that end, the Budget & Personnel Committee asked staff to take a conservative approach and wait before committing to larger capital expenditures until impacts

to revenue were known. This would allow time to adjust the budget if revenues came in even lower than anticipated. The Board adopted this approach with careful consideration and determined it to be the best path forward for the agency to continue to provide a high level of service to the public. The Board determined that it was in the agency's best interest to utilize the reserve in this manner in order to prevent raising the registration fee during a time of crisis and uncertainty.

The potential impact on the reserve funds and the uncertainty surrounding revenue collection at the time the budget was adopted underscored the need for the Commissioners to incorporate a formal mid-year review for this fiscal year. The Board reasoned that it would then be able to adjust expectations and service delivery to respond to any outstanding issues should they arise over the final six months of 2020.

Fiscal Year 2020-2021 Revenue Collection

The Board authorized an expenditure level of \$6,096,209 for FY 2020/2021 which included several major one-time costs. For three years the Board has maintained an additional Capital Reserve of \$500,000. As has been discussed regularly, \$400,000 of this Capital Reserve was earmarked for upgrades and/or a more cost-effective replacement of the Board's rent tracking database (RTS).¹ The Board authorized significantly reducing its uncommitted operational fund balance for this fiscal year in order to maintain the current level of service without raising the annual registration fee.

The Board anticipated collecting 4,850,000 for the current fiscal year. As of December 31, 2020, we have collected \$4,861,780.² There are currently 158 delinquent accounts representing 601 units that have failed to pay Registration Fees.³ Our compliance efforts continue, and Registration staff has just sent out January penalty bills.⁴ The number of delinquent accounts and unregistered units is a bit higher than we normally see, but not extraordinary (particularly given the circumstances).

¹ The Board also set aside additional funds to cover expenses associated with online registration, staff training and one-time legal fees related to confidential personnel matters.

² By comparison, our agency collected \$4,942,849 as of December 31, 2019.

³ Of these units, 115 accounts totaling 414 units have failed to pay the FY 20/21 Registration Fee. Additionally, of the 601 units listed above, 79 are fraternity "summer" rentals, so they are not full fees. In total, \$97,900 in current fiscal year and \$26,500 in prior fiscal year Registration Fees remain unpaid.

⁴ The Board adopted Resolution 20-14 on July 16, 2020, which created an amnesty period to allow property owners the opportunity to pay the Board's Registration Fee for FY 2020/2021 without penalty if they did not timely pay and were financially impacted by COVID-19. The Board may consider further amnesty allowance depending on how successful we are in collecting penalties over the next several months.

Fiscal Year 2020-2021 Mid-Year Expenditures & Updated Projections

As of December 31, 2020, the Board has expended a total of \$2,503,499⁵. Actual mid-year expenditures are significantly less than what was anticipated in the Board's adopted budget. This is largely due to several areas of reduced expenditure, most significantly from salary savings due to the unfilled permanent Executive Director position and the vacant Deputy Director position. Staff now project that total FY 2020/21 expenditures will be around \$800,000 less than what the Board authorized in the adopted budget.

In addition to salary savings, staff project savings in capital expenditures related to the RTS replacement project. This is because 3Di, Inc., the vendor developing the RTS replacement platform, graciously agreed to delay and spread-out payments for the development of platform between two fiscal year. Payments for development will likely begin in FY 2021/22 and extend into FY 2022/23.

3Di has informed staff that the launch of the Measure MM registration solution will create some additional costs on their end that are separate from the larger RTS replacement project. Staff anticipated some additional costs to the agency related to Measure MM because 3Di's subscription costs are based on the number of rental units added to the system and the additional Measure MM units have increased the total amount of units the database will track. Staff is still going over the details of these costs with 3Di and will inform the Budget & Personnel Committee if this requires an amendment to 3Di's current contract with the Rent Board.

A preliminary mid-year budget update is attached to this report and provides details on actual expenditures by budget line-item. The actual year-end numbers in this update are not yet final and are pending final review by the City of Berkeley's contracted outside auditor.

Measure MM

The Board did not plan for the registration process or implementation of Measure MM when it adopted the FY 2020/21 budget in June of 2020. Indeed, the ballot initiative was not even adopted by Council and placed on the ballot until the end of July, so there was no way to plan for possible costs associated with these changes to the Rent Ordinance.

Measure MM imposes registration requirements on certain partially covered rented residential units; namely single-family homes, condominiums, and units defined as new construction under B.M.C. Sections 13.76.040Q. and 13.76.050I. While there may be certain state laws that restrict the amount of rent that landlords are able to charge these tenancies, Measure MM did not impose any local rent regulations on the units subject to registration. These units will remain exempt from Berkeley's rent control provisions, but they are now required to register, and the Rent Ordinance's good cause for eviction protections and security deposit interest provisions continue to apply to these tenancies.

⁵ These are preliminary numbers as of early January 2021. The Finance Department has not completed accounting of all December 2021 expenditures.

Measure MM additionally requires the Board to set a Registration Fee for these units much as it has for controlled units since the inception of the ordinance in 1980. After careful consideration of the issue, the Board adopted Resolution 20-23 which both identified the enhanced services that our agency would offer for partially covered units and clarified that the Board would not be charging a Registration Fee for the remainder of FY 20/21. Should the agency incur any expenses administering the recent changes to the ordinance or registering the new Measure MM units, these expenses may be folded into the FY 21/22 Measure MM Registration Fee.⁶ Thus, depending on the expenses that the Board incurs for administering these changes over the remainder of the current fiscal year, the amount of the Measure MM Registration Fee may be slightly higher for FY 21/22 than it otherwise would have been without consideration of the expenses from FY 20/21.

Current Agency Priorities

The Rent Board's adopted FY 2021 Budget strongly prioritized the Rent Board's five core services⁷ or areas of work, which are:

- Outreach
- Counseling
- Petitions & Mediations
- Registration of controlled rental units
- Policy, administrative, and legal support

In addition to this “core” work, the agency currently maintains the following priority projects and initiatives:

- Implementing Measure MM
- Adapting outreach and housing counseling to changes in state & local law related to the eviction moratorium and the ongoing COVID-19 response.
- Developing the 3Di platform to allow for Measure MM unit registration.
- Developing the 3Di platform to replace the existing Rent Tracking System (RTS) and case management system.
- Working with the Centre for Organizational Effectiveness on an executive transition assessment to help inform a successful recruitment and selection of a new permanent Executive Director.
- Providing input to the 4x4 Committee and City Council on implementation of the Fair Chance and “TOPA” Ordinance.

⁶ Board staff will endeavor to conduct a more comprehensive analysis this spring to determine what the fee should be for these partially covered units, but the current presumption is that the fee charged to Measure MM units will differ from that charged to controlled units.

⁷ More detail on the Board's core services can be found in the June 18, 2020 report recommending adoption of the FY 2020/21 Line-Item Budget and June 20, 2019 report on Rent Stabilization and Good Cause for Eviction in the 21st Century.

- Providing input to the Planning Department and HHCS Department on planned revisions to Berkeley's Demolition Ordinance and Relocation Ordinance.
- Implementing a two-phase project to recreate all Rent Board web content (including PDFs) and transfer to new website CMS and expand integration with the City's public records portal.

The following projects have been identified by Staff, with the Board and its other committees as priorities, but implementation work has not yet begun:

- Complete a new tenant survey and begin scoping a study/survey of property owners.
- Select a vendor to complete the scanning of all property files, and other agency files.

Two of the agency's current priority projects, the Measure MM implementation and the RTS and case management replacement project, are large, time-intensive projects that impact staff in all the work units. These larger, agency-wide projects are particularly resource-intensive and often take up all extra staff capacity for any other initiatives or projects beyond the provision of the agency's five core services. This is particularly true at this moment when staff is working on both the implementation of Measure MM and has begun to work on transition RTS and case management to the 3Di Platform.

The development of the 3Di platform is ongoing and should extend well into the next fiscal year, particularly for the non-registration related features such as Case Management, and the modules used for the processing of both evictions and petitions. Staff should have increased capacity to take on an additional project, such as the scanning of property files after the Measure MM implementation has been completed.

It is important to note that the initiatives/projects listed above do not impact all work units equally. For example, adapting outreach and counseling to the constant stream of changes to state and local law related to the COVID-19 response has impacted mainly the Public Information Unit and the Legal Unit. The resources a proposed initiative requires, and the agency's current workload and capacity to respond, are important factors when considering any changes to the existing staffing model.

Current Staffing Model

The agency's current staffing model has 23.55 Full time equivalent (FTE) career positions and one temporary position. The agency's senior staff attorney has filled in as the Acting Executive Director after the retirement of the previous Executive Director. The temporary position is for the provisional appointment of an Associate Planner that is set to end on June 30, 2021.

City of Berkeley Hiring Freeze

On April 22, 2020, the City of Berkeley instituted a citywide hiring freeze and asked each Department Director to suspend all hiring activities. The Hiring Freeze does allow limited exceptions when necessary for critical organizational functions, for safety and general welfare and to minimize risk exposure. While the Rent Board is not bound by this decision, it has been the Board's practice to only move forward with the hiring of critical positions during previous hiring freezes. This is also practical because most of the agency's positions are city classifications and shared with the other City of Berkeley Departments; past layoffs have caused the agency to absorb employees from other departments that have bumping rights under existing labor union agreements.

Filling Vacancies

The permanent Executive Director and the Deputy Director are the agency's only current staff vacancies.

Vacant Permanent Executive Director Position

The Rent Board has hired the Centre for Organizational Effectiveness to perform an executive transition assessment. The assessment is currently in progress and the results are anticipated soon. This assessment will identify key competencies that are important for a successful director of the agency to have and will help inform the recruitment and selection process for the position. After the assessment is completed, staff will return to the Budget & Personnel Committee to review the findings and make a recommendation to the full Board on how to proceed with the Executive Director hiring.

The Executive Director is clearly a critical position for the agency and filling it is necessary for the agency to move forward.

Vacant Deputy Director Position

The Rent Board's adopted budget proposed to maintain this position as part of the agency's staffing model but to delay filling until the after the hiring of a permanent Executive Director. The Agency has not had an active staff person in the Deputy Director role for several years. The agency has adapted to operating without a Deputy Director and is able to provide its core services without filling this position.

There is not a critical need to fill this Deputy Director position immediately.

Potential New Positions

The Budget & Personnel Committee has expressed interest in both creating a General Counsel position and adding an additional housing counselor to the staffing model.

General Counsel Position

On November 6, 2020, the staff provided the committee with an initial memo on this topic and plans to return with a more thorough memo with more detailed information on what needs to be done to create his new position.⁸ During this initial discussion, the committee did not get a chance to deliberate on a recommendation on how the existing staffing model should be adjusted if a General Counsel is added. While the exact duties of a General Counsel position still require development, the duties of this position would in many ways correspond with the current duties of the Board's senior staff attorney. The agency's senior staff attorney is currently a Staff Attorney III position.

It is also important to note that, unlike the Staff Attorney III position the Board currently has, the General Counsel position would report directly to the elected Board. Staff will seek further information regarding how incorporating a General Counsel position into the staffing model affects the other staff attorney positions (e.g. will they report to the General Counsel or Executive Director?).

Staff seeks input from this committee on the impacts of adding a General Counsel position to the overall staffing model. If the Board does create a new General Counsel position it would make some sense to eliminate the Staff Attorney III position and maintain a single lead attorney for the agency.

The agency's existing senior staff attorney has served as the Acting Executive Director since April of 2020. Once a permanent Executive Director is hired, the Board will know the status of the Staff Attorney III position and would be in a better position to decide whether eliminating it and replacing it with a General Counsel is in the agency's best interest. Staff's current recommendation is that the committee recommend the Board fill the permanent Executive Director position first before finalizing plans to hire a new General Counsel position.

If the General Counsel position were to replace the existing Staff Attorney III position, it would fill a critical and needed role for the agency. There is no existing salary level set for a General Counsel, but we estimate it would cost at least 10% more than a Staff Attorney III.⁹

⁸ The Acting Executive Director contacted HR to discuss what the Board would need to do to create and fill this position, but the analyst has yet to respond with an answer to that question.

⁹ The Santa Monica Rent Board has a General Counsel position as part of their permanent staffing model. That position is paid 2.4% less than the Executive Director. Staff recommends a similar salary differential if the Board chooses to hire a General Counsel.

Additional Housing Counselor Position

Both the committee and agency staff have expressed interest in adding to staff capacity in response to the additional workload created by the passage of Measure MM. The Public Information Unit has recently experienced increase demand for service, and the housing counselors have played a critical role in responding to community concerns regarding housing insecurity. Furthermore, adding an additional Housing Counselor to the staffing model would not only help the agency respond to Measure MM client contacts but would add needed staff capacity for an expanded enforcement effort to ensure all rented Measure MM properties are properly registered. This additional capacity could also help the agency absorb potential additional work related to the Fair Chance Ordinance, TOPA and possibly the Relocation Ordinance. All the Agency's Housing Counselors are currently in the Community Services Specialist II position.

As mentioned in the section on current agency priorities, the housing counselors in the Public Information Unit have been particularly impacted by the constant changing of laws related to the COVID-19 response. Adding additional staff capacity to this unit will also help address the needed capacity to adapt to future laws addressing responding to the pandemic. Adding an additional housing counselor will provide critical staff capacity to assist with a successful implementation of Measure MM.

Next Steps

While the agency waits for the Centre for Organizational effectiveness to complete the executive transition assessment so it can proceed with the hiring process of a permanent Executive Director the Board may wish to consider if any adjustments are needed to the current staffing model. The timing of adding any new positions, whether they happen during the remainder of the current fiscal year or sometime next fiscal year is an important consideration and will help staff and the Board determine the appropriate fee level for the FY 2022 registration fee. This is especially true since most of the positions discussed in this report are management or executive level position that have a large impact on the agency's recurring budget. For context, adding a new General Counsel positions permanent would cost the agency more than adding two additional housing counselor positions.¹⁰

Adding only those positions that are critical to providing the agency's cores services should avoid the need to increase the current registration fee above \$250 per unit and allow the agency to learn the actual number of units that are eventually registered due Measure MM. Staff will not know the actual number of units that register under MM until after the Board sets FY 2022 registration fee and adopts its annual budget.

Given that the additional Measure MM funding will not be known until next fiscal year, adding additional staff positions that rely on this funding source would require the Board to either deficit

¹⁰ The financial impact of adding a General Counsel to the staffing model would be largely mitigated by eliminating the Staff Attorney III position given that these two positions would likely have somewhat similar salaries.

spend or raise the registration for controlled rental units at a time when many property owners have experienced rent shortfalls due to the pandemic.

The Board has yet to hire any new employees during the COVID-19 pandemic. The hiring process has been complicated due to the need to rely on a remote process for the interviews, onboarding, and training of any new hires. When considered in tandem with both the citywide hiring freeze and the pandemic's overall impact to the rental housing market, staff recommends that the Board consider limiting the creation of any additional positions to those that are critical to the agency's core services, including the ongoing implementation of Measure MM, with the intent of avoiding any significant increase to the registration fee for controlled rental units for the FY 21/22 registration season.

Budget & Personnel Committee Recommendation

Having reviewed a similar report and hearing from staff, on January 28, 2021, the Budget & Personnel Committee unanimously recommended that the full Board authorize a staffing model adjustment to add a permanent Community Services II to serve as a Housing Counselor in the Public Information Unit. If the Board adopts this change, staff will immediately look to advertise for a position so as to expedite the interview process and onboarding a potential employee.

The Budget & Personnel Committee will continue to discuss the other positions discussed in this report at future meetings and bring recommendations to the Board.

Conclusion

The Deputy Director and Executive Director positions are already a part of the existing staffing model adopted by the Board in June of 2020, so the Board would simply have to follow standard HR protocols before hiring those positions. Should the Board choose to add positions, such as another Housing Counselor or a General Counsel position¹¹, it will have to adopt a new staffing model at a full Board meeting. While there are challenges associated with hiring new employees in a remote working environment, there are certainly advantages to increasing staff's capacity to respond to the myriad projects on which the Board is currently working. Staff awaits the Board's direction regarding the Budget & Personnel Committee's recommendation before taking further action.

Attachments:

1. Mid-Fiscal Year Budget Update Spreadsheet
2. Adopted Fiscal Year 2020/2021 Staffing Model
3. Proposed Staffing Model with addition of Community Services Specialist II to Public Information Unit
4. Proposed Resolution 21-01 Adjusting Staffing Model to add a Community Services Specialist II position to the Public Information Unit

¹¹ There may be additional steps to adding a General Counsel position (such as possible approval from the Personnel Board). As stated earlier, an HR representative has yet to answer that question.

**Rent Stabilization Program
FUND 440
Preliminary FY 2020 Year-End & FY 2021 Mid-Year Budget Update**

Code	Description	Adopted FY 2020	Actual Year-End FY 2020	Adopted FY 2021	Mid-Year FY 2021	Projected FY 2021
11-01	Monthly Employees	2,500,000	2,278,607	2,482,000	1,133,745	2,240,000
11-03	Hourly Employees	200,000	193,425	0	0	0
13-01	Overtime	10,000	4,149	5,000	421	5,000
27-20	Benefits	1,650,000	1,546,846	1,620,000	663,914	1,500,000
30-12	Stipends	53,000	51,200	53,500	24,850	53,500
30-23	Misc. Legal Expenses	7,500	121,372	360,000	219,025	260,000
30-36	Temp. Agency Employees	1,000	0	0	0	0
30-38	Misc. Professional Services	352,500	354,175	410,000	147,837	410,000
30-42	Office Equip. Mtc. Svcs. / Furniture	13,000	9,901	13,000	4,775	13,000
30-43	Bldg. & Structures Mtc. Svc.	400	340	400	190	400
30-51	Bank Credit Card Charges	35,000	17,519	25,000	6,429	25,000
40-10	Professional Dues & Intern Fees	4,000	2,779	3,000	2,060	3,000
40-31	Telephones	4,200	5,246	5,000	2,484	5,000
40-50	Printing and Binding	38,000	32,340	25,000	16,689	30,000
40-62	Meals & Lodging	4,000	0	1,000	0	1,000
40-63	Registration Fees/Training	1,000	0	12,000	0	10,000
40-61/64	Transportation & Commercial Travel	14,000	802	5,000	0	5,000
40-70	Advertising/public access	45,000	39,454	30,000	16,818	30,000
40-80	Books & Publications	13,000	11,138	13,000	5,009	13,000
50-10	Rental of Land / Buildings	340,000	345,261	355,000	194,180	355,000
51-10	Postage	45,000	43,236	25,000	14,173	25,000
51-20	Messenger / Delivery	800	201	500	0	500
55-11	Office Supplies	13,500	12,778	15,000	5,568	15,000
55-50	Food and Water	3,000	647	2,000	352	1,000
70-43	Office Equipment and Furniture	5,000	418	5,000	0	5,000
70-44	Computers, Printers, Software	10,000	2,464	10,000	6,500	10,000
75-25	PC Replacement/City Software Licences	9,500	0	50,709	25,356	50,709
75-35	Mail Services	3,600	3,600	3,600	1,800	3,600
75-50	City Vehicle / Fuel & Maint.	1,500	1,500	1,500	0	1,500
	Expenditure Subtotal**	5,377,500	5,079,397	5,531,209	2,492,174	5,071,209
	Special Projects (RTS Upgrade, online registration, training)	182,500	50,020	565,000	11,325	200,000
	Annual Capital Reserve	400,000	0	0	0	0
	Total Authorized Fund Expenditures*	5,960,000	5,129,417	6,096,209	2,503,499	5,271,209
	Total Authorized Fund Revenue*	5,150,000	5,092,558	4,850,000	4,861,780	4,950,000
	Annual Surplus/Shortfall	(810,000)	(36,859)	(1,246,209)	2,358,281	(321,209)
	Previous FY Carryover Expenditures		51,190			
	FUND BALANCE (cash basis)	814,196	1,536,147	289,938	2,648,219	1,214,938
	FUND BALANCE (accrual basis)	814,196	1,536,147	289,938	2,648,219	1,214,938
	TOTAL UNCOMMITTED OPERATIONAL FUND BALANCE	714,196	1,036,147	254,938	2,613,219	779,938

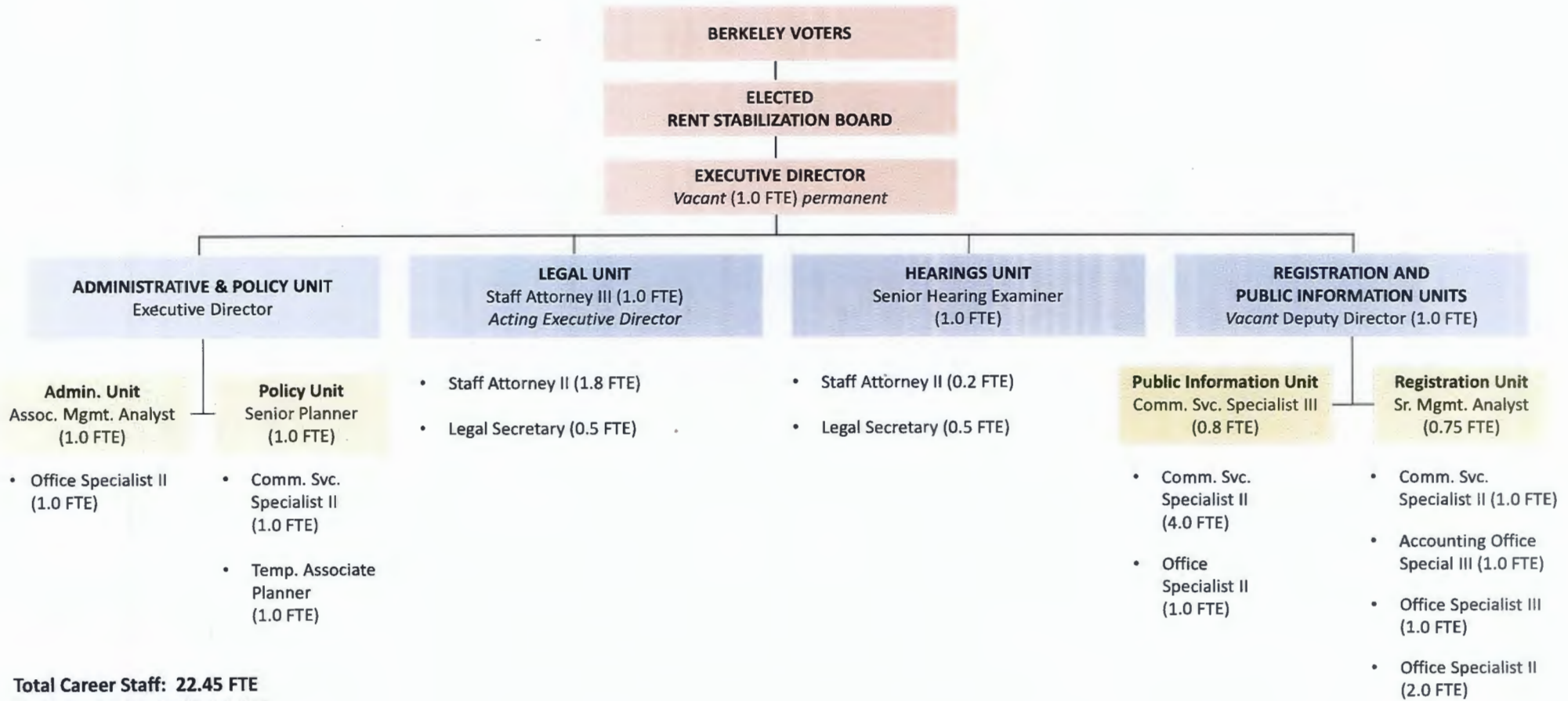
* Note: this report only reflects charges & revenues against the Rent Board Fund (Fund 440) and does not include services charged to or received from other funds

** Note: variance in actual expenditures and total fund balance reflects remaining balance in reimbursement offset escrow

Current Berkeley Rent Stabilization Program FY 2020/21 Organization Chart

Current Career and Temporary Positions FY 2020/21

Sorted by Division Supervision



Total Career Staff: 22.45 FTE

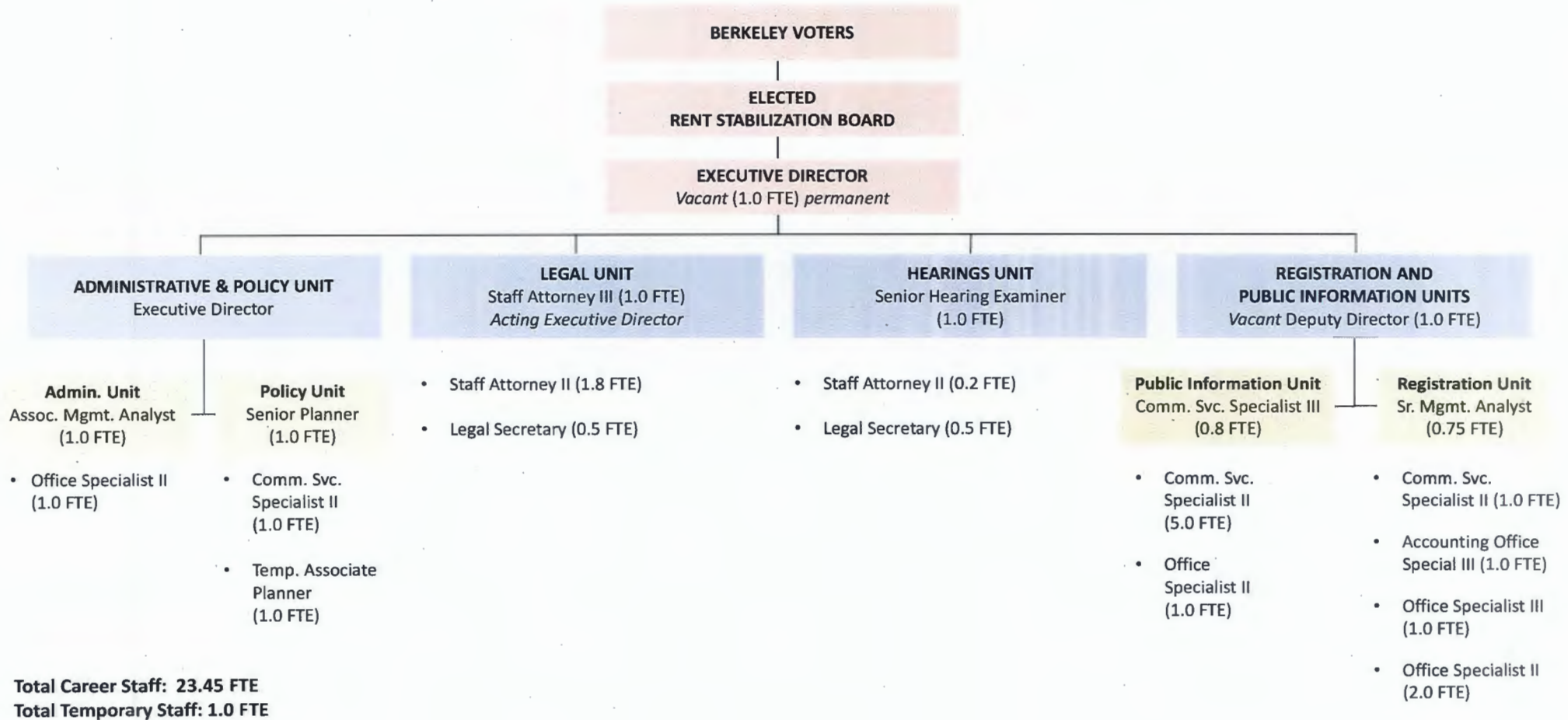
Total Temporary Staff: 1.0 FTE

Proposed Berkeley Rent Stabilization Program 2020/21 Organization Chart*

Proposed Career and Temporary Positions FY 2020/21

Sorted by Division Supervision

*Recommended by the Rent Stabilization Board's Budget & Personnel Committee



RESOLUTION 21-01

ADJUSTING THE FISCAL YEAR 2020-2021 STAFFING MODEL POSITION DETAIL TO INCLUDE AN ADDITIONAL PERMANENT COMMUNITY SERVICES SPECIALIST II POSITION TO SERVE AS A HOUSING COUNSELOR IN THE PUBLIC INFORMATION UNIT

BE IT RESOLVED by the Rent Stabilization Board of the City of Berkeley as follows:

WHEREAS, the Rent Stabilization Board operates on the basis of a fiscal year and each year adopts an operational budget after public review and input; and

WHEREAS, Section 123 of Article XVII of the Charter of the City of Berkeley provides that the Rent Stabilization Board shall finance its reasonable expenses by charging landlords annual registration fees in amounts deemed reasonable by the Board; and

WHEREAS, prior to adopting the budget and staffing model, the Budget & Personnel Committee met several times to monitor the budget and the Program's progress meeting the goals established by the Board; and

WHEREAS, on April 30, 2020, after reviewing the available reserves and considering the economic stress caused by the global COVID-19 pandemic, the Board voted to maintain the annual registration fee at \$250 per unit; and,

WHEREAS, on May 13, 2020, June 5, 2020, and June 11, 2020, the Budget & Personnel Committee and the Acting Executive Director met and discussed a line-item operating budget and staffing model for FY 2021 for the Board's review and consideration; and,

WHEREAS, on June 18, 2020, the Board adopted Resolution 20-07 adopting the Fiscal Year 2020-2021 authorizing the staffing model position detail and maximum expenditure level; and

WHEREAS, the operating budget (including contracts) for FY 2020-2021 authorized new expenditures totaling \$6,096,209, which includes both recurring operational and capital needs; and

WHEREAS, the Board has realized some savings in its overall operating budget for the current fiscal year given that several positions remain unfilled; and

RESOLUTION 21-01

ADJUSTING THE FISCAL YEAR 2020-2021 STAFFING MODEL POSITION DETAIL TO INCLUDE AN ADDITIONAL PERMANENT COMMUNITY SERVICES SPECIALIST II POSITION TO SERVE AS A HOUSING COUNSELOR IN THE PUBLIC INFORMATION UNIT
(Page 2)

WHEREAS, in light of the unprecedented economic circumstances caused by the global COVID-19 pandemic and the related potential for a shortfall in registration fee revenue, the Board incorporated a formal, mid-fiscal year review to the budget process to assess revenues, reserves, and the need for staffing model and/or programmatic changes; and,

WHEREAS, after performing the mid-fiscal year budget review and examining the current workload and filled positions along with the goals and objectives for FY 2020-2021 articulated by the Board, the Acting Executive Director, and the Budget & Personnel Committee, the Board believes that it is necessary to add an additional permanent Community Services Specialist Position II to serve as a Housing Counselor in the Board's Public Information Unit;

NOW, THEREFORE, BE IT RESOLVED that the Board directs staff to add an additional permanent Community Services Specialist Position II to serve as a Housing Counselor in the Board's Public Information Unit (there would then be a total of five Housing Counselors); and

BE IT FURTHER RESOLVED THAT the addition of this position will not cause the Board to exceed the overall spending level totaling \$6,096,209 (\$5,631,209 in recurring operational and special projects, and \$465,000 in funding from the capital reserve and \$400,000 of which was authorized previously) for the Fiscal Year 2020-2021.

Dated: February 18, 2021

Adopted by the Rent Stabilization Board of the City of Berkeley by the following vote:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
Matt Brown, Acting Executive Director

RESOLUTION 21-05

SETTING THE FISCAL YEAR 2021/2022 ANNUAL REGISTRATION FEE FOR FULLY COVERED UNITS; DUE JULY 1, 2021

BE IT RESOLVED by the Rent Stabilization Board of the City of Berkeley as follows:

WHEREAS, the Rent Stabilization Board operates on the basis of a fiscal year and each year adopts an operational budget after public review and input; and

WHEREAS, Section 123 of Article XVII of the Charter of the City of Berkeley provides that the Rent Stabilization Board shall finance its reasonable expenses by charging landlords annual registration fees in an amount deemed reasonable by the Board; and

WHEREAS, the Acting Executive Director and Rent Stabilization Board believe that new recurring annual revenues of at least \$5,700,000 in FY 2022 will be necessary to meet the Program's operating needs and maintain an uncommitted reserve Fund balance approaching 8% throughout FY 2022; and

WHEREAS, because of the ongoing housing crisis, demand for Rent Stabilization Program services has increased dramatically in recent years, including an estimated 40% to 60% increase over the past 7 years; and

WHEREAS, the Rent Stabilization Program has provided important services to tenants and landlords during the current COVID-19 pandemic and relief effort; and

WHEREAS, the Board believes that, to the extent possible, the Program should continue to meet the needs of owners and tenants requesting our services and maintain a staffing level to allow that to happen; and

WHEREAS, inflation has increased approximately 34% and average rents of controlled units have increased by approximately 67% since 2009; and

WHEREAS, since 2009, the base annual registration fee has only been increased three times by a total of \$56; and

WHEREAS, the current fee of \$250 represents 0.99% of the average (mean) monthly rent for rental units regulated by the Berkeley Rent Stabilization Program; and

WHEREAS, in FY 2018 the Board adopted a total fee of \$270, \$250 to cover necessary operational costs and an additional fee of \$20 to cover costs of anticipated capital improvements and to establish a capital reserve; and

RESOLUTION 21-05

SETTING THE FISCAL YEAR 2021/2022 ANNUAL REGISTRATION FEE FOR FULLY-COVERED UNITS; DUE JULY 1, 2021 (Page 2)

WHEREAS, in FY 2019 the Board adopted a fee of \$250, \$245 to cover necessary operational costs and \$5 dedicated to capital needs; and

WHEREAS, in FY 2020 the Board again adopted a fee of \$250, \$245 to cover necessary operational costs and \$5 dedicated to capital needs; and

WHEREAS, in FY 2021 the Board adopted a fee of \$250 to cover only necessary operational costs; and

WHEREAS, because of salary related savings in FY 2021, the Board has an operational reserve balance of over 8%; and

WHEREAS, to reach the revenue targets referenced above, an annual registration fee of \$250 per unit fee for fully covered units is required; and

WHEREAS, the Board will meet to consider and adopt a final budget document detailing the revenues, line-item expenditures and staffing model in June 2021.

NOW THEREFORE, BE IT RESOLVED that the annual FY 2022 registration fee for fully covered rental units, due July 1, 2021, is hereby set at \$250 per unit; and,

BE IT FURTHER RESOLVED that the Acting Executive Director shall produce a final budget document detailing the revenues, total expenditure level (recurring and one-time costs) broken down in line-item detail, and staffing model for the Board's consideration and adoption at a scheduled meeting in June 2021.

Dated: May 6, 2021

Adopted by the Rent Stabilization Board of the City of Berkeley by the following vote:

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
Matt Brown, Acting Executive Director

RESOLUTION 21-06

SETTING THE FISCAL YEAR 2021/2022 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2021

BE IT RESOLVED by the Rent Stabilization Board of the City of Berkeley as follows:

WHEREAS, the Rent Stabilization Board operates on the basis of a fiscal year and each year adopts an operational budget after public review and input; and

WHEREAS, Section 123 of Article XVII of the Charter of the City of Berkeley provides that the Rent Stabilization Board shall finance its reasonable expenses by charging landlords annual registration fees in an amount deemed reasonable by the Board; and

WHEREAS, the Acting Executive Director and Rent Stabilization Board believe that new recurring annual revenues of at least \$5,700,000 in FY 2022 will be necessary to meet the Program's operating needs and maintain an uncommitted reserve Fund balance approaching 8% throughout FY 2022; and

WHEREAS, Measure MM, which was placed on the general election ballot by the Berkeley City Council on July 30, 2020, and subsequently passed by the voters on November 3, 2020, now requires the Board to register certain partially covered rental units, including: rented single-family homes, condominiums, and newly-constructed units; and

WHEREAS, on December 17, 2020, by Resolution 20-17, the Rent Stabilization Board, approved the implementation of registration for partially exempt units due to the amendments to the Rent Stabilization Ordinance mandated by Measure MM; and

WHEREAS, Resolution 20-17 established that the Rent Stabilization Board will not charge a Registration Fee for partially exempt Measure MM units for the remainder of the FY 2021; and

WHEREAS, Resolution 20-17 further resolved that any additional expenses associated with registering or providing services for partially exempt units during the remainder of the current fiscal year shall be considered and potentially increase the Registration Fee for partially exempt units for the 2021/2022 Fiscal Year; and

WHEREAS, Resolution 20-17 authorized Rent Stabilization Program staff to offer a number of services previously unavailable to tenants and landlords of partially exempt units including, but not limited to mediation regarding a variety of different rental housing concerns and counseling regarding: evictions and security deposits, the Berkeley Emergency Response Ordinance, the local eviction moratorium (BMC Section 13.110), the state eviction moratorium (AB 3088), the statewide anti-rent-gouging law (AB 1482), the Tenant Buyout Ordinance, the Rental Housing Safety Program, and the Short-Term Rental Ordinance; and

RESOLUTION 21-06

SETTING THE FISCAL YEAR 2021/2022 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2021 (Page 2)

WHEREAS, the Acting Executive Director and Rent Stabilization Board estimate that there are approximately 4,000 units that require registration under Measure MM; and

WHEREAS, the additional expenses associated with registering and providing services for partially exempt Measure MM units during FY 2021 is \$200,000; and

WHEREAS, the Acting Executive Director and Rent Stabilization Board believe that \$400,000 in annual revenue will be necessary to register and provide services to Measure MM units in FY 2022; and

WHEREAS, the Rent Stabilization Program has provided important services to tenants and landlords of partially exempt Measure MM units during the current COVID-19 pandemic and relief effort; and

WHEREAS, the Board believes that, to the extent possible, the Program should continue to meet the needs of owners and tenants of Measure MM units that request our services and maintain a staffing level to allow that to happen; and

WHEREAS, to reach the revenue target referenced above, a \$100 per unit fee for partially exempt Measure MM units is required; and

WHEREAS, to recover expenses associated with registering and providing services for partially exempt Measure MM units during FY 2021, an additional \$50 per unit fee is required; and

WHEREAS, the Budget & Personnel Committee approved calculating the Measure MM fee using this methodology this year but specifically stated that the Board may wish to adjust the way it calculates this fee in subsequent years to more closely align with the Rent Board services offered to all landlords and tenants and how much it costs to fund those services agency-wide; and

WHEREAS, the Board will meet to consider and adopt a final budget document detailing the revenues, line-item expenditures and staffing model in June 2021.

NOW THEREFORE, BE IT RESOLVED that the annual FY 2022 registration fee for partially exempt Measure MM units, due July 1, 2021, is hereby set at \$150 per unit; and,

BE IT FURTHER RESOLVED that Rent Stabilization Program staff collect as much information as possible on the impacts and expenses associated with registering and providing services for partially exempt Measure MM units in FY 2022; and,

RESOLUTION 21-06

SETTING THE FISCAL YEAR 2021/2022 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2021 (Page 3)

BE IT FUTHER RESOLVED that the Rent Stabilization Board will consider the all data and information gathered on the impacts and expenses associated providing services to partially exempt Measure MM units in FY 2022 when setting the registration fee levels for FY 2023.

Dated: May 6, 2021

Adopted by the Rent Stabilization Board of the City of Berkeley by the following vote:

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
Matt Brown, Acting Executive Director

RESOLUTION 21-07

SETTING THE FISCAL YEAR 2021/2022 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS IN AFFORDABLE HOUSING PROJECTS THAT ARE MANAGED BY A NON-PROFIT AND HAVE AN OPERATIVE REGULATORY AGREEMENT WITH THE CITY OF BERKELEY THROUGH ITS HOUSING TRUST FUND PROGRAM; DUE JULY 1, 2021

BE IT RESOLVED by the Rent Stabilization Board of the City of Berkeley as follows:

WHEREAS, the Rent Stabilization Board operates on the basis of a fiscal year and each year adopts an operational budget after public review and input; and

WHEREAS, Section 123 of Article XVII of the Charter of the City of Berkeley provides that the Rent Stabilization Board shall finance its reasonable expenses by charging landlords annual registration fees in an amount deemed reasonable by the Board; and

WHEREAS, the Acting Executive Director and Rent Stabilization Board believe that new recurring annual revenues of at least \$5,700,000 in FY 2022 will be necessary to meet the Program's operating needs and maintain an uncommitted reserve Fund balance approaching 8% throughout FY 2022; and

WHEREAS, Measure MM, which was placed on the general election ballot by the Berkeley City Council on July 30, 2020, and subsequently passed by the voters on November 3, 2020, now requires the Board to register certain partially covered rental units, including: rented single-family homes, condominiums, and newly-constructed units; and

WHEREAS, on December 17, 2020, by Resolution 20-17, the Rent Stabilization Board, approved the implementation of registration for partially exempt units due to the amendments to the Rent Stabilization Ordinance mandated by Measure MM; and

WHEREAS, Resolution 20-17 established that the Rent Stabilization Board will not charge a Registration Fee for partially exempt Measure MM units for the remainder of the FY 2021; and

WHEREAS, Resolution 20-17 further resolved that any additional expenses associated with registering or providing services for partially exempt units during the remainder of the current fiscal year shall be considered and potentially increase the Registration Fee for partially exempt units for the 2021/2022 Fiscal Year; and

WHEREAS, Resolution 20-17 authorized Rent Stabilization Program staff to offer a number of services previously unavailable to tenants and landlords of partially exempt units including, but not limited to mediation regarding a variety of different rental housing concerns and counseling regarding: evictions and security deposits, the Berkeley Emergency Response Ordinance, the local eviction moratorium (BMC Section 13.110), the state eviction moratorium (AB 3088), the statewide

RESOLUTION 21-07

SETTING THE FISCAL YEAR 2021/2022 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS IN AFFORDABLE HOUSING PROJECTS THAT ARE MANAGED BY A NON-PROFIT AND HAVE AN OPERATIVE REGULATORY AGREEMENT WITH THE CITY OF BERKELEY THROUGH ITS HOUSING TRUST FUND PROGRAM; DUE JULY 1, 2021 (Page 2)

anti-rent-gouging law (AB 1482), the Tenant Buyout Ordinance, the Rental Housing Safety Program, and the Short-Term Rental Ordinance; and

WHEREAS, Board staff will be able to provide tenants in these affordable housing units some, but not all, services it provides to other Measure MM tenants; and

WHEREAS, rental units in certain affordable housing project projects that are managed by a non-profit do not qualify for an exemption from registration under MM per Rent Stabilization Ordinance section 19.76.050.K; and

WHEREAS, the Rent Stabilization Program provides important services to these tenants, including counseling of low-income tenants in these units; and

WHEREAS, the Rent Stabilization Board's mediation program is available to tenants, property owners, and the non-profit managers with these units; and

WHEREAS, there are costs associated with providing the above referenced services to these units; and

WHEREAS, the Rent Stabilization Board does not want to overburden affordable housing service providers with fees given that they do not operate for a profit; and

WHEREAS, the Acting Executive Director and Rent Stabilization Board estimate that there are approximately 500 units in affordable housing projects that require registration under Measure MM; and

WHEREAS, the Rent Stabilization Program has provided important services to tenants and landlords of partially exempt Measure MM units during the current COVID-19 pandemic and relief effort; and

WHEREAS, the Board believes that, to the extent possible, the Program should continue to meet the needs of owners and tenants of Measure MM units, including units in affordable housing projects, that request our services and maintain a staffing level to allow that to happen; and

WHEREAS, to reach the revenue target referenced above, a \$25 per unit fee for partially exempt Measure MM units is required; and

RESOLUTION 21-07

SETTING THE FISCAL YEAR 2021/2022 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS IN AFFORDABLE HOUSING PROJECTS THAT ARE MANAGED BY A NON-PROFIT AND HAVE AN OPERATIVE REGULATORY AGREEMENT WITH THE CITY OF BERKELEY THROUGH ITS HOUSING TRUST FUND PROGRAM; DUE JULY 1, 2021 (Page 3)

WHEREAS, to recover expenses associated with registering and providing services for partially exempt Measure MM units during FY 2021, an additional \$12 per unit fee is required; and

WHEREAS, the Board will meet to consider and adopt a final budget document detailing the revenues, line-item expenditures and staffing model in June of 2021.

NOW THEREFORE, BE IT RESOLVED that the annual FY 2022 registration fee for partially exempt Measure MM units, due July 1, 2021, is hereby set at \$37 per unit; and,

BE IT FURTHER RESOLVED that Rent Stabilization Program staff collect as much information as possible on the impacts and expenses associated with registering and providing services for partially exempt Measure MM units in affordable housing projects in FY 2022; and,

BE IT FURTHER RESOLVED that the Rent Stabilization Board will consider all data and information gathered on the impacts and expenses associated providing services to partially exempt Measure MM units in affordable housing projects in FY 2022 when setting the registration fee levels for these units in FY 2023.

Dated: May 6, 2021

Adopted by the Rent Stabilization Board of the City of Berkeley by the following vote:

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
Matt Brown, Acting Executive Director

RESOLUTION 21-09

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2021/2022 REGISTRATION FEE AS A TEMPORARY GENERAL ADJUSTMENT OF RENT CEILINGS AND HAVE STAFF IMPLEMENT A MECHANISM THAT ALLOWS QUALIFYING LOW-INCOME TENANTS TO BE REIMBURSED FOR ANY PASS-THROUGH

BE IT RESOLVED by the Rent Stabilization Board of the City of Berkeley as follows:

WHEREAS, the Rent Stabilization Board operates on the basis of a fiscal year and each year adopts an operational budget after public review and input; and

WHEREAS, Section 123 of Article XVII of the Charter of the City of Berkeley provides that the Rent Stabilization Board shall finance its reasonable expenses by charging landlords annual registration fees in amounts deemed reasonable by the Board; and

WHEREAS, the Executive Director and Rent Stabilization Board believe that recurring annual revenue of \$5,700,000 in FY 2021 will be necessary to meet the Program's operating and capital needs and it will require an annual registration fee of \$250 per unit for fully covered units \$150 for partially covered Measure MM units; and

WHEREAS, Sections 6.N and 8.K of the Rent Stabilization Ordinance authorize the Rent Board to approve passing a portion of annual registration fees along to tenants as a rent adjustment; and

WHEREAS, prior to the voters changing the way in which the Annual General Adjustment (AGA) was calculated effective in 2005, the Board passed along to tenants all increases in the registration fees as one of the components of the AGA; and

WHEREAS, with the voter-approved change in how the AGA is calculated, the Board is no longer allowed to include new increases to the registration fee as part of the AGA, but only as a pass-through adopted and extended each year; and

WHEREAS, the Rent Stabilization Board consistently found that it would be fair and equitable in view of the purposes of the Rent Ordinance to pass along to tenants part or all of the increase in the registration fee as a temporary adjustment of rent ceilings; and

WHEREAS, under vacancy decontrol, owners are expected to take into account past and anticipated future operating cost increases when setting the initial rent for a new tenancy, and therefore, increases to the registration fee presumably have been factored into the rent charged; and

WHEREAS, approximately 9.6% of the rental units in the City have a tenancy that began prior to January 1, 1999, when vacancy decontrol was fully implemented; and

RESOLUTION 21-09

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2021/2022 REGISTRATION FEE AS A TEMPORARY GENERAL ADJUSTMENT OF RENT CEILINGS AND HAVE STAFF IMPLEMENT A MECHANISM THAT ALLOWS QUALIFYING LOW-INCOME TENANTS TO BE REIMBURSED FOR ANY PASS-THROUGH (Page 2)

WHEREAS, the Board has attempted to guarantee that owners of these non-decontrolled rental units continue to receive a pass-through for increased costs to the registration fee; and

WHEREAS, the Rent Stabilization Board finds that it would be fair and equitable in view of the purposes of the Rent Stabilization Ordinance to continue to pass along to certain tenants a portion of the 2022 registration fee as a temporary adjustment of rent ceilings; and

WHEREAS, the Board also understands and wishes to mitigate the financial hardships experienced by tenants at 50% or less of Area Median Income (AMI) as calculated by the Department of Housing and Urban Development (HUD) for the Oakland-Fremont, CA HUD FMR Area, or otherwise receiving certain forms of income-qualifying assistance, who have to pay the pass-through; and

WHEREAS, the Board has unclaimed overcharge money available in the AEPHI Lawsuit Settlement Fund designated under Regulation 1271(B) for programs that benefit low- and/or moderate-income tenants.

NOW THEREFORE, BE IT RESOLVED that for each rental unit in which the tenancy began prior to January 1, 1999, for which a full registration fee is paid for Fiscal Year 2022, the landlord may, by serving legal notice pursuant to California Civil Code section 827, increase the rent by up to \$10.00 a month for twelve consecutive months, provided, however, that this partial registration fee pass-through shall not be considered part of the permanent rent ceiling for purposes of calculating the 2022 Annual General Adjustment; and

BE IT FURTHER RESOLVED that this twelve-month temporary general adjustment of up to \$10.00 may not be imposed prior to July 1, 2021, and, regardless of when first collected, shall terminate no later than December 31, 2022, unless extended by further Board action; and

BE IT FURTHER RESOLVED that the maximum increase shall not result in a pass-through greater than \$10.00 per month, and notice to tenants of any pass-through shall be on a form provided by the Board or use language approved by the Executive Director; and

BE IT FURTHER RESOLVED that the landlord shall be required to submit a copy of the above-referenced form to the Rent Board before collecting the pass-through; and

RESOLUTION 21-09

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2021/2022 REGISTRATION FEE AS A TEMPORARY GENERAL ADJUSTMENT OF RENT CEILINGS AND HAVE STAFF IMPLEMENT A MECHANISM THAT ALLOWS QUALIFYING LOW-INCOME TENANTS TO BE REIMBURSED FOR ANY PASS-THROUGH (Page 3)

BE IT FURTHER RESOLVED that the Board instructs the Director to implement a program that reimburses low-income tenants with a household income at 50% or less of the AMI as calculated by HUD for the Oakland-Fremont, CA HUD FMR Area, or otherwise demonstrating proof of qualification in another state or federal program (including, but not limited to, CalWORKS, CalFresh, Medi-Cal, WIC) approved by the Director, for any pass-through of registration fees they incur as provided by Regulation 1271(B), which allows for distribution of unclaimed funds to benefit low-income tenants; and

BE IT FURTHER RESOLVED that in order to fund the reimbursements to low-income tenants, the Director is authorized to spend up to an additional \$13,000 from the AEPHI Lawsuit Settlement Fund.

Dated: May 6, 2021

Adopted by the Rent Stabilization Board of the City of Berkeley by the following vote:

Yes:

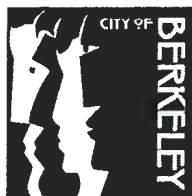
No:

Abstain:

Absent:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
Matt Brown, Acting Executive Director



Rent Stabilization Board
Legal Unit

DATE: May 6, 2021

TO: Honorable Members of the Rent Stabilization Board

FROM: Matthew Siegel, Staff Attorney *MS*

SUBJECT: Adopting a Summer Rental Period Registration Fee for Sororities and Fraternities for the 2021/22 Registration Year

Recommendation

That the Board adopt Resolution 21-08 to authorize a Summer Rental Period registration fee of \$70.00 as well as procedures for sororities and fraternities for the pending 2021/22 registration year. Under the proposed resolution, qualifying sororities and fraternities shall be eligible to participate in a revised registration process which shall include a prorated registration fee for summer rentals provided that the following conditions are met: 1) a contact person/liaison must be provided for all future Board-related matters; 2) any participating sorority or fraternity must be in good standing with the registration requirements of the ordinance; 3) All qualifying sororities and fraternities must meet the requirements for sorority or fraternity status as determined by the Rent Board; and 4) Participating sororities and fraternities must comply with registration procedures as will be developed by the Agency.

At its March 25, 2021 committee meeting, the Budget & Personnel Committee reviewed and approved these recommendations along with the proposed Resolution.

Background

In late 2009/early 2010 our agency was made increasingly aware that many fraternities were and had been renting out some of their rooms during the summer to non-members to support their budgets and operating costs. We discovered that this practice was, in fact, widespread. Since units that are not expressly exempted under the ordinance must be registered we were compelled to investigate the matter. Our investigation confirmed that fraternity houses have routinely been renting to non-members, particularly during the summer months.

Because the Board believed that most fraternities were unaware of their obligation to register these seasonal/summer units, the Board authorized an Amnesty Program in November 2010 for chapters that had been renting out rooms to non-members on a seasonal or summer basis. The Amnesty Program was successful in its goal of resolving prior years registration fees owed the

agency as the Board collected \$49,583 in past due registration fees from twenty-two (22) chapters. In addition, through the Amnesty Program, staff was able to make positive contacts with various members of the fraternity community including property owners, property managers, student representatives and UC Berkeley staff.

At the conclusion of the Amnesty Program fourteen lawsuits were filed in Superior Court against those property owners and chapters that had not availed themselves of the Amnesty Offer. All of those cases resolved via settlement.

Between 2010 and 2016, the Board, annually adopted resolutions continuing the practice of allowing a limited summer rental program, provided specific conditions were met and adhered to.

Measure AA

The passage of Measure AA in 2016 codified the determination that a room rented in a fraternity or sorority would be exempt from the ordinance only if it is occupied by a member of the fraternity or sorority and that the property is owned by the chapter or an entity whose sole purpose is the maintenance of the chapter.

Board Regulations 520 and 808 were adopted in 2017 to implement the fraternity/sorority registration process. Regulation 520 codifies the language in Measure AA setting out the terms for exemption for a fraternity/sorority room and Regulation 808 codifies the ability of the Board to set and charge an annual reduced registration fee for rooms rented out by chapters to non-members on a seasonal basis.

Summer Registration Process

As a result of the Amnesty Program, staff had numerous discussions with representatives of the Greek community regarding our agency's registration process. These talks, which covered the unique needs and concerns of fraternities, were with chapter presidents, students, property managers, members of the Fraternity Alumni Council (FAC), the FAC as a group, alumni representatives, and attorneys representing a consortium of chapters. This process enabled all stakeholders to be educated on the rights and responsibilities of the Greek community as it related to rent control and housing.

After numerous committee meetings and Board presentations, the Board approved, via resolution, a Summer Registration Process for fraternities at its May 14, 2012 meeting. The pilot summer registration process for fraternities required chapters to:

- 1) Pay a reduced, pro-rated fee of \$50 per unit for summer rentals;
- 2) Fill out Registration Forms specifically tailored to summer rentals and;
- 3) Provide the Board with a permanent contact person/liaison.

For the 2012/13 year, the agency collected \$9,520.00 in registration fees from the various fraternities representing the registration of one hundred seventy six (176) units. As part of the

registration process, staff conducted unannounced inspections of four chapters to ensure that Fraternity Summer Registration Forms were placed in the room as mandated by the Board's prior resolution. Forms were in place for these chapters.

The pilot program was renewed for the 2013/14 registration year. For the 2013/14 year, the agency collected \$8,144 in registration fees from the various fraternities representing one hundred sixty (160) units. Four chapters claimed full exemption and one chapter failed to make any payments. Two chapters paid summer registration fees approximately two weeks late.

For the 2014/15 registration year, the agency collected \$8,076 in registration fees from the various chapters representing one hundred forty six (146) summer rental units and four full-time units. In addition to the \$8,076 in fees collected, the agency also collected \$9,506 in full-time registration fees due to two chapters having been suspended and renting to other tenants and one house being sold to private ownership and being rented as a rooming house.

Two chapters paid late but received Administrative Waivers. These chapters were notified of the ramifications should they continue to pay late in the future. One chapter remained in arrears for non-payment and was sued as part of our annual Small Claims Court efforts.

For the 2015/16 registration year, the agency collected \$8,786 in registration from the various chapters representing one hundred forty six (146) units.

For the 2016/17 registration year, the seasonal fee was increased to \$60 per room and the agency collected \$15,424 in registration fees from twenty-three (23) chapters representing nineteen (19) full-time units and one hundred eighty one (181) summer rental units.

For the 2017/18 registration year, the seasonal fee was increased to \$70 per room. The agency has collected \$11,600 in registration fees from one hundred forty (140) units representing eighteen (18) chapters. Two rooms were registered as "full-time" rentals. Two chapters paid full registration fees totaling \$8,370 due to their renting their houses to other chapters.

For the 2018/2019 registration year, the seasonal fee remained at \$70 per room. The agency has collected \$13,543 in registration fees and penalties from one hundred sixty-nine (169) units representing eighteen (18) chapters, Full registration fees totaling \$14,147 were paid for 57 units whose chapters chose to rent the houses out full-time to other chapters.

For the 2019/20 registration year, the seasonal fee remained at \$70 per room. The agency collected \$14,259 in registration fees and penalties from twenty-one (21) chapters registering one hundred sixty (160) rooms. Four chapters paid the full registration fees for their house since those chapters rented out their houses to other fraternities. These fees totaled \$16,250 and represents sixty-five (65) units.

For the most recent 2020/21 registration year, the seasonal fee remained at \$70 per room. The agency collected \$7,490 in registration fees from twenty (20) chapters registering one hundred seven (107) rooms. Four chapters paid full registration fees for either the entire property or some of the units on the property for fifty-four (54) units totaling \$13,440. Nine chapters claimed no

summer rentals and two chapters failed to provide registration fees or forms. In total, the agency collected \$20,930 for the 2020/21 Summer Fraternity Registration.

Registration for Sororities

As the initial research, review and compliance activities with fraternities wound down in 2012, the Board made clear that staff was to begin communications with the various sororities. Commencing in January 2013, staff began this process.

Staff identified thirteen sorority chapters that owned and operated houses in Berkeley. As a result of staff review and investigation it was confirmed that no houses rented rooms to non-members. To determine the exempt status of sororities, staff corresponded with each chapter representative as well as conducted site inspections. As a result of these efforts, staff obtained declarations from chapter representatives affirming that no rooms/units were rented to non-sorority members.

Based on staffs' findings that no sororities are being rented to non-members, staff recommended reviewing their status every three years. Staff randomly contacted several chapters during 2015/16 and again during 2018/19 and have confirmed that their houses either remained closed down for the summer or exclusively reserved for their members. Staff will conduct additional similar random checks periodically in the future.

Conclusion

For the most part, chapters have paid registration fees and filed Unit Status and/or Registration Forms. While staff has provided a moderate level of assistance to the various chapter representatives, a vast majority of chapters have been able to register their houses with little or no assistance. A discreet minority of chapters however have provided more of a challenge with late payment and/or failure to timely file the required forms. While staff is engaged in compliance efforts with these chapters, the reduced fee assessed has covered the costs of operating the summer rental program. As allowed by law, the attached resolution continues the program initially started in 2012 and staff proposes maintaining the seasonal registration fee at \$70.

We believe the proposed Resolution is the most fair and equitable way for the Board to address the matter of registering any possible sorority or fraternity summer rentals. For the majority of the Board's registration year, fraternities operate rental units that have been conditionally exempted from rent and eviction controls. While the non-member students who occupy these units are fully protected by rent and eviction controls during the summer, they uniformly vacate at the end of the summer break. Fraternities consistently rent these units at below market rents, and imposing a full fee and registration reporting requirement for such a short tenancy represents a substantial burden for an organization that exists for the sole purpose of maintaining the chapter/house. This process not only covers our costs to administer the program but also increases the likelihood that tenants renting these units will be timely informed of their rights.

Name and Telephone Number of Contact Person:

Matthew Siegel, Staff Attorney (510) 981-4930

RESOLUTION 21-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2021/2022 FISCAL YEAR

BE IT RESOLVED by the Rent Stabilization Board of the City of Berkeley as follows:

WHEREAS, for over thirty-six years neither fraternities nor sororities were expressly exempt from the provisions of the Rent Stabilization Ordinance; and,

WHEREAS, as early as 1982, the City Attorney crafted legal opinions for the Rent Board and City Council that confirmed the applicability of the ordinance to fraternities and sororities due to their similarity to rooming houses; and,

WHEREAS, the Board did not charge a number of fraternities for Registration Fees before the 2012/2013 fiscal year, because the Board was not made aware that fraternities were routinely renting to non-members during the summer months; and,

WHEREAS, when the Board became aware of these summer rentals, the Commissioners authorized an amnesty program wherein the fraternities were only charged fees for three years and all penalties were forgiven; and

WHEREAS, by Resolution 12-07, the Board initiated a pilot program during the 2012/2013 fiscal year to charge all qualifying fraternities \$50 per unit for summer rentals to non-members in order to meet the anticipated costs for implementing services related to this discreet group of summer fraternity rentals; and

WHEREAS, Board staff was largely successful in registering fraternities' summer tenancies; and,

WHEREAS, before the 2013/2014 fiscal year, staff investigated summer rentals in sororities and found that the vast majority of sorority rooms did NOT qualify as controlled rental units; and,

RESOLUTION 21-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2021/2022 FISCAL YEAR (Page 2)

WHEREAS, the Board adopted Resolution 13-04 on May 13, 2013, which made clear that the Board wishes to continue to charge a reduced fee for summer rentals in fraternities and wishes to extend the same option to sororities should they decide to provide housing to non-member summer tenants; and,

WHEREAS, the Board adopted similar resolutions in 2014, 2015, 2016, 2017, 2018, 2019 and 2020, which made clear that the Board wishes to continue to charge a reduced fee for summer rentals in fraternities and wishes to extend the same option to sororities should they decide to provide housing to non-member summer tenants; and,

WHEREAS, with the passage of Measure AA, fraternities and sororities are now exempt under the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76.050M) as long as a rental unit or room is rented to an active member of the chapter and that chapter owns the fraternity or sorority where the member is residing; and,

WHEREAS, on April 24, 2017, the Board adopted Rent Board Regulation 520 specifying that rental units located within a fraternity or sorority that is occupied by a non-member is subject to all sections of the Rent Control Ordinance and that tenants who occupy rental units for only part of the year in such chapters shall be considered “authorized seasonal rentals” and those rooms/units shall be charged a reduced registration fee; and,

WHEREAS, on April 24, 2017 the Board adopted Rent Board Regulation 808 specifying that an “authorized seasonal rental” of a fraternity or sorority is a rental that occurs during the summer months and that the Board is authorized to charge a reduced registration fee for these rentals and said fee shall be set when the Board sets its annual fee for all units; and

RESOLUTION 21-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2021/2022 FISCAL YEAR (Page 3)

WHEREAS, on May 15, 2017 the Board set the summer rental fee at \$70 per unit; and

WHEREAS, on May 7, 2018 the Board set the summer rental fee at \$70 per unit; and

WHEREAS, on April 18, 2019 the Board set the summer rental fee at \$70 per unit; and

WHEREAS, on April 30, 2020 the Board set the summer rental fee at \$70 per unit for the current 2020/21 fiscal year; and

WHEREAS, on March 25, 2021 the Budget & Personnel Committee recommended the summer rental fee be maintained at \$70 per unit.

NOW, THEREFORE, BE IT RESOLVED that for the 2021/2022 registration year, the reduced registration fee for authorized seasonal rentals for qualifying fraternities and sororities shall remain at \$70 per unit for summer rentals to non-members in order to meet the anticipated costs for implementing services related to this discreet group of summer fraternity/sorority rentals; and,

BE IT FURTHER RESOLVED that for purposes of this Resolution, the “Summer Rental Period” shall be May 16, 2021, through August 14, 2021; and,

BE IT FURTHER RESOLVED that if a non-fraternity/non-sorority member remains a tenant during any time outside of the Summer Rental Period, the fraternity/sorority shall be required to pay a full registration fee as defined by Resolution 20-06 for the rental unit; and,

BE IT FURTHER RESOLVED that fraternities and sororities shall be required to submit Fraternity/Sorority Summer Registration Forms for each rental to a non-member living at the chapter during the Summer Rental Period; and,

BE IT FURTHER RESOLVED that fraternities and sororities shall post a copy of this Fraternity/Sorority Summer Registration Form in a clearly visible space in the room/unit occupied by the non-member tenant throughout the entirety of the Summer Rental Period; and,

RESOLUTION 21-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2021/2022 FISCAL YEAR (Page 4)

BE IT FURTHER RESOLVED that all fraternities and sororities shall provide a permanent contact person to whom Board staff can send a bill (this person should not be a student, as the Board intends to maintain contact with this representative for all matters related to current and future registration and billing); and,

BE IT FURTHER RESOLVED that, this Resolution incorporates by reference the fraternities listed in Board Resolutions 12-07,13-04, 14-04, 15-03, 16-03, 17-06, 18-07, 19-10, 20-06 and the sororities listed in Board Resolution 17-06, 18-07, 19-10 and 20-06.

BE IT FURTHER RESOLVED that the Board shall revisit the issue of which fraternities and sororities qualify for a reduced Summer Rental Period registration fee should the Board wish to adopt a similar fee in future years; and,

BE IT FURTHER RESOLVED that if another fraternity or sorority not identified by this Resolution submits a claim that it should qualify for the reduced Summer Rental Period registration fee, the fraternity/sorority shall submit its claim to the Board, and staff shall review any such claim and determine its eligibility; such determination may be appealed to the Board as other claims of exemption are reviewed; and,

BE IT FURTHER RESOLVED that in no case shall a fraternity or sorority be permitted to participate in this program to pay a reduced registration fee for the Summer Rental Period for the 2021/2022 fiscal year unless that fraternity/sorority has fully resolved any past due Board registration fees and is otherwise in compliance with the Rent Ordinance registration requirements; and,

RESOLUTION 21-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2021/2022 FISCAL YEAR (Page 5)

BE IT FURTHER RESOLVED that Board staff shall be empowered to investigate and inspect fraternities and sororities during the Summer Rental Period to ensure they are complying with the terms of this Resolution; and,

BE IT FURTHER RESOLVED that Board staff is authorized to develop rules and procedures to implement the counseling, registration, and services associated with this program; and,

BE IT FURTHER RESOLVED that violations of terms set forth in this Resolution shall require Board staff to charge fraternities and sororities a full registration fee for all units where violations are found and require that Board staff charge penalties allowed by Berkeley Municipal Code Section 13.76.080.

Dated: May 6, 2021

Adopted by the Rent Stabilization Board of the City of Berkeley by the following vote:

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chair
Rent Stabilization Board

Attest: _____
Matt Brown, Acting Executive Director

No. 20-3366

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

COMMUNITY HOUSING IMPROVEMENT PROGRAM, RENT STABILIZATION
ASSOCIATION OF N.Y.C, INC., CONSTANCE NUGENT-MILLER, MYCAK
ASSOCIATES LLC, VERMYCK LLC, M&G MYCAK LLC, CINDY REALTY LLC,
DANIELLE REALTY LLC, FOREST REALTY, LLC,
Plaintiffs-Appellants,

v.

(caption continued on inside cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

**BRIEF OF AMICI CURIAE CITIES OF LOS ANGELES, SAN JOSÉ, SANTA
MONICA, OAKLAND, AND WEST HOLLYWOOD, CALIFORNIA, THE
COUNTY OF SANTA CLARA, THE CITY AND COUNTY OF SAN FRANCISCO,
CALIFORNIA, THE SANTA MONICA RENT CONTROL BOARD, AND THE
BERKELEY RENT STABILIZATION BOARD IN SUPPORT OF DEFENDANTS-
APPELLEES AND AFFIRMANCE**

JAMES R. WILLIAMS
SUSAN P. GREENBERG
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CITY OF NEW YORK, RENT GUIDELINES BOARD, DAVID REISS, CECILIA
JOZA, ALEX SCHWARZ, GERMAN TEJEDA, MAY YU, PATTI STONE, J. SCOTT
WALSH, LEAH GOODRIDGE, SHEILA GARCIA, RUTHANNE VISNUASKAS,

Defendants-Appellees,

N.Y. TENANTS AND NEIGHBORS (T&N), COMMUNITY VOICES HEARD (CVH),
COALITION FOR THE HOMELESS,

Intervenors.

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* are governmental entities for whom no corporate disclosure is required.

Dated: April 23, 2021

By: /s/ Danielle L. Goldstein
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INTEREST OF AMICI CURIAE AND SUMMARY OF ARGUMENT¹

The Cities of Los Angeles, San José, Santa Monica, Oakland, and West Hollywood, California, together with the County of Santa Clara, California, the City and County of San Francisco, California, the Santa Monica Rent Control Board, and the Berkeley Rent Stabilization Board (Amici), submit this brief in support of Defendants-Appellees and the District Court’s order in this case. Amici are local governments across California who design and administer rent stabilization laws (RSLs), enact policies to address the causes and impacts of housing instability, and implement an array of State and local programs in the housing market. In so doing, we seek to serve our entire populations—tenants and landlords alike. We tailor these complex and varied regulatory regimes to our specific housing stocks, population characteristics, and local and regional economies. We also seek to address segregation and histories of racial discrimination.

As a result, rent stabilization laws are no monolith: they are enacted and adjusted in response to circumstances including changes in rent, variable

¹ All parties have consented to the filing of this brief. No party’s counsel authored this brief in whole or in part, and no person or entity other than Amici or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E). Amici thank Stanford Law School student Julian Schneider for his substantial assistance in drafting this brief.

development patterns, shifting demographics, and growth or stagnation in wages. These local measures are also constrained by statewide limitations, most notably California's Costa Hawkins Rental Housing Act. *E.g.*, Cal. Civ. Code § 1954.50, *et seq.* This scaffolding of policy choices reflects our diversity and the particularities of crafting tailored solutions to our local needs.

These complex State and local rent stabilization regimes have long been upheld as constitutional. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440 (1982) (“States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation.”). But, in a sharp departure from this long-standing precedent, Appellants and Amici San Francisco Apartment Association and California Apartment Association (SFAA/CAA) argue that New York's RSL facially violates the Takings Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment. Brief for Appellants (App. Br.) at 15-19. Both claims are without merit. Appellants identify no legitimate basis to overturn the will of local communities and the judgments of their representatives in enacting RSLs tailored to local conditions and concerns.

New York City's (New York) RSL is not facially a regulatory taking. Facial regulatory takings claims turn on whether the regulation eliminates *all* economic value of the property. *See Hodel v. Va. Surface Mining & Reclamation Ass'n*, 452

U.S. 264, 295-96 (1981). Because rent-stabilized units are valuable properties that generate substantial profit for their owners, the RSL is not facially a regulatory taking.

In view of this limitation, Appellants attempt to mount a facial regulatory challenge using a test consisting of the “ad hoc, factual inquiries” set out in *Penn Central Transportation Co. v. City of New York*. 438 U.S. 104, 124 (1978). But this test is unavailable for facial claims, which are, by their nature, not fact-sensitive. See *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470, 495 (1987). And Appellants’ own application of these “complex factual assessments” fails to investigate the effects on *specific* landowners. *Yee v. City of Escondido*, 503 U.S. 519, 523 (1992). This gap between the *Penn Central* test and Appellants’ application of it demonstrates both that this test is incompatible with a facial analysis and that Appellants cannot prevail even if the test applied.

Appellants’ Due Process Clause argument is also erroneous. They contend that economic legislation should be reviewed under strict scrutiny. App. Br. at 61. In the alternative, they argue that, even if rational basis applies, New York’s RSL does not achieve its stated purpose. App. Br. at 61-65. But courts have long held that the appropriate standard for regulations of private property is rational basis review, which asks only if there is a conceivable rationale for the statute. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 391 (1926). And rent

stabilization laws further the “legitimate interest” of states and local jurisdictions to preserve local communities and to protect vulnerable populations. *Nordlinger v. Hahn*, 505 U.S. 1, 12 (1992).

New York’s RSL—just like laws across California—is a valid and vital use of the state’s police power. RSLs preserve local neighborhoods and communities, and they ensure housing for community members at a range of income levels. They also help to prevent the displacement of vulnerable community members for whom displacement can lead to profound disruptions of healthcare, education, and employment. *See, e.g.*, N.Y.C. Admin Code § 26-501; West Hollywood Mun. Code § 17.04.020 (facilitating aging in place due to high proportion of renters over sixty-five); L.A. Mun. Code § 151.01 (limiting rent increases in light of fixed-, low-, and moderate-income populations); S.F. Admin. Code § 37.9(i) (facilitating aging in place for residents who are elderly, disabled, or catastrophically ill).

Appellants ignore, too, that RSLs are enacted against the backdrop of a larger, varied, and evolving set of state and local programs and laws addressing the causes and implications of housing instability. States like New York and California face a severe housing crisis with wide-ranging and significant implications for local governments, their community members, and the public health. This crisis requires local governments to use their police powers to implement a multi-faceted approach to build affordable housing, prevent

displacement, and support residents at risk of, or experiencing, homelessness.

Some of these tools include grants and loans to finance affordable housing and supportive housing services. Other regulatory measures promote the construction and disbursement of affordable units. And a number of these tools, like rental subsidies and development or refurbishment incentives, benefit landlords. For local governments like Amici, RSLs are one pivotal strategy among many to further government interests while serving the entire community.

ARGUMENT

I. New York’s RSL Is Not a Facial Regulatory Taking Because Rent-Stabilized Units Have Economic Value.

Appellants urge that New York’s RSL facially violates the regulatory takings doctrine. App. Br. at 55. But the RSL is not susceptible to a facial takings claim.² There are two types of takings challenges: facial and as-applied. Because a successful facial challenge targets a law in all possible applications, the test to show facial invalidity is extremely difficult to meet: It is the so-called “categorical” test, which demands that the challenged regulation eliminate *all* economic value in the class of property at issue. *See Hodel*, 452 U.S. at 295-96; *see also Suitum v. Tahoe Reg’l Planning Agency*, 520 U.S. 725, 736 n.10 (1997)

² For the reasons capably set out in Appellees’ briefs, RSLs cannot be a physical taking. Brief for City Appellees (NYC Br.) at 22-39. For the sake of brevity, Amici do not repeat that discussion here.

(confirming facial regulatory takings claims are limited to the categorical test). In contrast, the more lenient, fact-dependent, “non-categorical” standard is only employed in as-applied challenges. *See Pennell v. City of San Jose*, 485 U.S. 1, 10 (1988) (limiting these “ad hoc, factual inquir[ies]” to “actual factual setting[s]”) (internal citations omitted).

Because, under New York’s RSL, rent-stabilized units remain valuable, profit-generating property, the RSL easily survives the test for facial challenge. As a result, Appellants attempt to import the standard for an *as-applied* takings challenge,³ which uses “ad hoc, factual inquiries” considering a variety of factors focused on a specific “claimant.” *Penn Central*, 438 U.S. at 124. But facial challenges, by definition, do not focus on a distinct, concrete controversy. *See, e.g., Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008) (“[A] plaintiff can only succeed in a facial challenge by ‘establish[ing] that no set of circumstances exists under which the Act would be valid,’ *i.e.*, that the law is unconstitutional in all of its applications.”) (internal citations omitted).

³ Appellants also attempt to create a new test fashioned from general statements of principle and a 1988 dissenting opinion. App. Br. at 37-39. Appellants urge that when a law imposes “public burdens” on private actors, that law effects a taking. App. Br. 37. But such arguments have been rejected, *see* NYC Br. at 56-58, and cannot be reconciled with a proper takings analysis. Determining the causes of social and economic issues, and crafting appropriate policy solutions, should rest with the people and their elected representatives.

In other words, a facial challenge is fundamentally incompatible with *Penn Central*'s fact-intensive, fact-dependent analysis. Nevertheless, Appellants urge this Court to adopt it here. The result is that Appellants improperly attempt to obtain the remedy associated with a facial challenge—a finding that New York's RSL is unconstitutional in *all* applications—by showing only that it may be unconstitutional in *some*. And while Appellants distort the governing law in an attempt to make the non-categorical test appear less fact-sensitive, in so doing they only demonstrate that they fail to meet it.

A. Rent Stabilization Laws Do Not Facially Violate the Regulatory Takings Doctrine Because Rent-Stabilized Units Are Economically Valuable.

Appellants claim that New York's RSL facially violates the regulatory takings doctrine, but then ignore the test applicable to a facial challenge. *See* App. Br. at 36-43. A facial regulatory taking can be established *only* through the categorical test. *See Hodel*, 452 U.S. at 295-96; *see also Suitum*, 520 U.S. at 736 n.10.

To establish a categorical taking, the property owner must show that the regulation eliminates “*all* economically beneficial uses.” *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992); *see also Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 330 (2002) (limiting categorical takings to a reduction in value “of 100%”). This test creates, at a

minimum, “an uphill battle” for the plaintiff. *Keystone*, 480 U.S. at 495. Here, that hill is insurmountable.

Under any RSL, the landlord retains their ownership of a valuable piece of property.⁴ The landlord receives compensation for the property’s use. And the landlord can sell the property for its value—and, of course, may profit off the sale. Since the landlord’s rent-stabilized unit retains economic value, New York’s RSL does not effect a categorical taking, and thus cannot facially violate the regulatory takings doctrine. Indeed, the RSL “easily survives scrutiny” under this test, in part because the law “merely regulates the conditions” of leasing units. *Hodel*, 452 U.S. at 296.

B. Appellants Misapply the Penn Central Factors and Confirm the Non-Categorical Test’s Unsuitability for Facial Challenges.

Because they cannot meet the categorical test, Appellants attempt to apply the non-categorical test, which employs the factors set out in *Penn Central*. See App. Br. at 44-45. But this test cannot be deployed in a facial challenge because it

⁴ In California, the State Legislature has found that rent-stabilized units “enable[] a favorable return for a property owner compared to other business investments.” A.B. 1482, Cal. Assemb. Floor Analysis 2 (Sept. 10, 2019). Amici’s data confirm this finding. For example, in the City of Los Angeles, the value of rent-stabilized apartments has increased at a similar rate as unregulated properties, while net operating income of regulated properties has increased at a rate well-above inflation. See ECONOMIC STUDY OF THE RENT STABILIZATION ORDINANCE AND THE LOS ANGELES HOUSING MARKET, CITY OF LOS ANGELES HOUS. DEP’T. 5-6 (2009), https://clkrep.lacity.org/onlinedocs/2007/07-0883_rpt_lahd_6-25-2009-1.pdf.

is a fact-intensive inquiry into how the regulation affects a *specific* owner—not, as Appellants contend, whether the regulation affects owners *generally*. It is an “ad hoc, factual inquir[y]” considering a variety of factors applied specifically to the particular “claimant” and property at issue. *Penn Central*, 438 U.S. at 124. This “intensive *ad hoc* inquiry” investigates “the circumstances of each particular case.” *Buffalo Teachers Fed’n v. Tobe*, 464 F.3d 362, 375 (2d Cir. 2006). As a result, the Supreme Court has refused to adopt definitive rules, and has instead required a multi-factor test: (1) “the economic impact of the regulation on the claimant;” (2) “the extent to which the regulation has interfered with distinct investment-backed expectations;” and (3) “the character of the governmental action.” *Penn Central*, 438 U.S. at 125.

Appellants distort these factors in service of their claim, attempting to strip them of the factual specificity they plainly require. Apart from the fundamental legal flaws of this argument, Appellants’ mischaracterization of the law means they fail to show that they actually meet the *Penn Central* factors. And, as a result, Appellants could not prevail even if the non-categorical test could be applied here.

The economic impact of the regulation on the claimant. This factor gauges how much value a particular property has lost as a result of the challenged regulation. This factual determination compares the “value that has been taken from the property with the value that remains in the property.” *Murr v. Wisconsin*,

137 S. Ct. 1933, 1943 (2017). And this comparison, in turn, requires a detailed examination of what the value of the specific property would be without the regulation *and* “the proper unit of property against which to assess the effect” of the regulation. *Id.* Appellants attempt to gloss over all of these fact-bound (and required) inquiries by claiming that New York’s RSL has an economic impact *generally* because rent-stabilized apartments *generally* charge lower rent than exempt apartments. App. Br. at 49-50.

But this proposition by itself says nothing about the RSL’s impact on a particular property. The law requires looking at “the [regulation’s] effect on the *entire* property held by the owner.” *Murr*, 137 S. Ct. at 1944 (emphasis added). As a result, different landlords will have different units of comparison. For example, a landlord who owns multiple units in a building, including a mix of rent-stabilized and exempt units, might have a different “denominator” than a landlord who only owns rent-stabilized units.⁵ *Keystone*, 480 U.S. at 497. This reliance on *ad hoc* economic assessments of each owner’s property reinforces the as-applied nature of the test. And Appellants’ failure to show any *particular* loss of economic value for *specific* landowners means they do not demonstrate this factor even if the

⁵ In addition, underscoring the fact-sensitive nature of the inquiry, California state law permits landlords to set the initial rent for each new tenancy. Cal. Civ. Code § 1954.53. As a result, even in buildings subject to rent control laws, each unit could have different rent levels depending on the length of the tenancy.

Penn Central test applied.

The extent to which the regulation has interfered with distinct investment-backed expectations. Determining whether the regulation interferes with investment-backed expectations requires a factual finding that the property was bought “in reliance on a state of affairs that did not include the challenged regulatory regime.” *Allen v. Cuomo*, 100 F.3d 253, 262 (2d Cir. 1996) (internal citations omitted). Appellants argue that New York’s RSL generally interferes with investment-backed expectations by reducing landlord profits compared to market-rate apartments. App. Br. at 52. But Appellants’ failure to address this factor’s central factual question is fatal. New York’s State and local governments have employed some form of rent regulation since the 1940s, but compliance costs have changed over time. Since landlords expect some regulatory compliance costs, and those costs will differ on a per-unit basis, this factor requires cataloguing the investment-backed expectations of *each* landlord in New York City for *each* rent-stabilized unit. Indeed, many New York landlords of rent-stabilized units would receive an unexpected *windfall* if the current regulations were curtailed. The thousands of permutations of this analysis are a reminder of why this *ad hoc*, factual inquiry is not amenable to a facial challenge.

The character of the governmental action. This final factor inquires whether the regulation at issue constitutes “an affirmative exploitation by the state,” as

distinct from “a negative restriction” on the use of the property. *Buffalo Teachers Fed’n*, 464 F.3d at 375; *see also Horne v. Dep’t of Agriculture*, 576 U.S. 350, 361 (2015) (affirming “the longstanding distinction between government acquisitions of property and regulations”) (internal citation omitted). Appellants also misconstrue this factor; they neither acknowledge nor faithfully apply this controlling precedent. Instead, they claim, among other things, that New York’s RSL has the character of governmental action because it regulates property use by owners of rent-stabilized apartments. *See App. Br.* at 46-47. But New York’s RSL is fundamentally a negative restriction on the use of property and not “tantamount to a direct appropriation or ouster” by the government. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005).

In *Buffalo Teachers*, this Court held that the state’s action was “uncharacteristic of a regulatory taking” because nothing was “affirmatively taken by the government.” 464 F.3d at 375 (holding that annulling a “contractual right to a wage increase” was uncharacteristic of a regulatory taking because the government did not acquire property). Just like the statute in *Buffalo Teachers*, New York’s RSL is a negative restriction, not a government acquisition of property, because it merely restricts how landlords use their property and contract with tenants. It is not characteristic of a regulatory taking.

In sum, Appellants’ facial regulatory challenge to New York’s RSL is not

viable because the *Penn Central* factors require engaging in *ad hoc*, factual assessments for each unit. Moreover, a facial challenge “must establish that *no set of circumstances* exists under which the Act would be valid.” *United States v. Salerno*, 481 U.S. 739, 745 (1987) (emphasis added). Appellants fail to establish that there is *a* set of circumstances under which the RSL is invalid, let alone that it is invalid in *all* possible circumstances. And individual landlords aggrieved by the RSL are not without remedy; such landlords could seek relief under an as-applied theory, to highlight the impact in their individual cases.

II. Rent Stabilization Laws Promote the Continuity of Neighborhoods, Prevent Displacement, and Work in Tandem with State and Local Programs to Serve the Entire Community.

A. Appellants’ Request for Strict Scrutiny Is Wrong on the Law and Dangerous in its Implications.

Appellants argue that New York’s RSL violates the Due Process Clause and that the District Court erred by applying rational basis review to that claim. *See* App. Br. at 59. But the law here is neither unsettled nor ambiguous: The District Court applied the correct analysis. Property regulations violate the Due Process Clause only when they are “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.” *Village of Euclid*, 272 U.S. at 395; *see also Lingle*, 544 U.S. at 542 (rational basis review for economic regulation); *F.C.C. v. Beach Commc’ns, Inc.*, 508 U.S. 307, 313 (1993) (same); *Pennell*, 485 U.S. at 11 (same); *Beatie v. City of New York*, 123

F.3d 707, 712 (2d Cir. 1997) (same).

Appellants insist that property rights are “fundamental rights” and, as a result, regulations affecting *any property right* should be reviewed under strict scrutiny. App. Br. at 59. But Appellants fail to identify a single case to support that contention, choosing to ignore the law. *See United States v. Locke*, 471 U.S. 84, 109 (1985) (“[I]n the regulation of private property rights, the Constitution offers the courts no warrant to inquire into whether some other scheme might be more rational[.]”). Instead, Appellants cite *Washington v. Glucksberg*, which holds that strict scrutiny applies only when the right is “deeply rooted in this Nation’s history and tradition,” and is so “implicit in the concept of ordered liberty . . . that neither liberty nor justice would exist if [the right] were sacrificed.” 521 U.S. 702, 721 (1997) (internal citations omitted).

To put it mildly, the nation’s liberty and justice do not depend on total freedom from economic regulation; to the contrary, even freedom to contract is a “qualified, and not an absolute, right.” *West Coast Hotel Co. v. Parish*, 300 U.S. 379, 392 (1937). Accordingly, in the modern era, courts subject economic regulations to rational basis review. *See, e.g., Loretto*, 458 U.S. at 426 (affirming “substantial regulation” of private property “to promote the public interest”). And, under that standard, “it is very difficult to overcome the strong presumption of rationality that attaches to” the regulations. *Beatie*, 123 F.3d at 712.

If strict scrutiny were applied to property rights, then the cascading effects could, for example, nullify zoning laws across the country. *See Village of Euclid*, 272 U.S. at 391 (holding that zoning ordinances “bear[] a rational relation to the health and safety of the community”). Such an outcome would devastate “the most essential function performed by local government,” which ensures local control over local issues and protects diverse notions of “quality of life.” *Village of Belle Terre v. Boraas*, 416 U.S. 1, 13-14 (1974) (J. Marshall, dissenting). If strict scrutiny was applied to all property used in economic transactions (as Appellants seek), then the dizzying consequences could extend immeasurably far: to consumer protection laws, land use laws, building codes, food safety ordinances, minimum wage laws, and more.

Appellants and Amici SFAA/CAA alternatively characterize landlords as a vulnerable minority who have been hurt by “an increasingly hostile atmosphere.” Amici SFAA/CAA Br. at 13. But this claim is neither legally nor factually serious.⁶ To the contrary, Amici SFAA/CAA have banked impressive legislative

⁶ Amici SFAA/CAA point to the gradual increase in statutory requirements for “habitability” as proof of a hostile atmosphere. Amici SFAA/CAA Br. at 35 n.20. But the implied warranty of habitability exists in nearly every jurisdiction in America—and it was first created in *Javins v. First Nat’l Realty Corp.* *See* 428 F.2d 1071 (D.C. Cir. 1970). Appellants and Amici SFAA/CAA’s claim of “hostility” against them is based on the extraordinary claim that there they are a protected class because they face the “burdens” of maintaining units with “roof[s],

successes, including recent successful lobbying for a \$2.6 billion State law guaranteeing landlords up to eighty percent of unpaid rent by tenants who are financially impacted by COVID-19.⁷ Indeed, San Francisco has created a relief fund to provide financial support to landlords of rent-controlled units whose tenants have been unable to pay rent due to the COVID-19 pandemic. *See* S.F. Admin. Code §§ 10.100-51.1. Landlords have also obtained significant protections in the California Legislature through the Costa-Hawkins Act and the Ellis Act, which significantly limit local rent control laws.⁸ *See* Cal. Civ. Code § 1954.50, *et seq.*; Cal. Gov. Code § 7060, *et seq.*; *see also* Cal. Assemb. Bill 1506 (2017) (failed repeal bill). And landlords have even successfully lobbied the electorate to reject attempts to narrow their protections. *See, e.g.*, Cal. Proposition 10 (2018) (failed initiative to expand local governments' authority to enact rent control on

walls, floors” and of ensuring that all units have “hot and cold water.” Amici SFAA/CAA Br. at 35 n.20.

⁷ *See Gov. Newsom signs bill that will use \$2.6 billion in federal funds for unpaid rent*, CALIFORNIA APARTMENT ASSOCIATION (Jan. 29, 2021), <https://caanet.org/gov-newsom-signs-bill-with-2-6-billion-in-federal-funds-for-unpaid-rent/>.

⁸ In general, the Costa-Hawkins Rental Housing Act protects landlords by prohibiting rent control on certain types of housing, such as newly constructed rentals and allowing landlords to set the initial rent for new tenants. Cal. Civ. Code § 1954.50 *et seq.* The Ellis Act allows landlords to evict tenants in rent-controlled units, who would otherwise be protected from no-fault evictions, when a landlord seeks to leave the rental business. Cal. Gov. Code § 7060 *et seq.*

residential property); Cal. Proposition 21 (2020) (same). Billions of dollars in State aid and protective State regulations are not the products of “a position of political powerlessness.” *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973).

SFAA/CAA cite several lawsuits challenging San Francisco rent control regulations in support of their claim that they have been subjected to “anti-landlord legislation.” *See* Amici SFAA/CAA Br. at 14 n.3. Far from establishing landlords as a vulnerable population, however, SFAA/CAA’s list simply shows that landlords regularly challenge San Francisco’s regulations—and that they sometimes succeed, but often not. Moreover, rents in San Francisco remain among the highest in the nation, despite the limits that the City imposes on rent increases once a tenant begins occupancy.⁹ There are thousands of eviction filings in San Francisco per year, and landlords generally can reset the rent to market at the start of each new tenancy. For example, in 2018-2019, the San Francisco Rent Board reported over 1,500 eviction notices.¹⁰

At base, this lawsuit is an attack on the merits of rent stabilization laws, not

⁹ Neil Gerstein, *Zumper National Rent Report*, ZUMPER: BLOG (Mar. 24, 2021), <https://www.zumper.com/blog/zumper-national-rent-report-march-2021/>.

¹⁰ *Rent Board Annual Statistical Report FY 2018-2019*, SAN FRANCISCO RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD 2 (Nov. 15, 2019), https://sfrb.org/sites/default/files/Document/Statistics/Annual%20Statistical%20Report%20FY2018-2019-Web_Final.pdf.

an attempt to protect a truly vulnerable minority from abuse. But whether RSLs are wise policy is a matter for the people through their elected representatives. *See Lingle*, 544 U.S. at 545 (explaining that rational basis review gives “deference to legislative judgments” in determining “the need for, and likely effectiveness of, regulatory actions”). The only question for this Court is whether the government has a rational basis for its enactment.

B. Rent Stabilization Laws Promote Housing Stability and Preserve Neighborhoods.

Appellants contend that New York’s RSL violates the Due Process Clause because, even if evaluated under rational basis review, the legislation does not achieve its stated purpose. *See App. Br.* at 61-65. While courts have consistently found that rent stabilization laws *do* achieve their stated purposes, the Due Process Clause imposes no burden on local jurisdictions to prove it. To show that the RSL lacks any rational basis under the Due Process Clause, Appellants must prove that “there is [no] reasonably conceivable state of facts that could provide a rational basis” for the law. *Beach Comm’ns*, 508 U.S. at 313, 315 (concluding that “a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence”).

Across New York and California, state and local governments use RSLs to prevent disruptive rent increases and further their “legitimate interest in local

neighborhood preservation, continuity, and stability.” *Nordlinger*, 505 U.S. at 12 (1992). California’s cities implement a diverse array of rent stabilization laws to further local objectives and to protect vulnerable populations. For example, the City of Los Angeles enacted its Rent Stabilization Ordinance (RSO) in 1978 to combat a severe housing shortage and rising rents, which disparately affected, and continues to affect, “senior citizens, persons on fixed incomes, and low and moderate income households.” L.A. Mun. Code § 151.01. The City of Los Angeles ties permissible rent increases to the consumer price index, with a 3 percent floor and an 8 percent ceiling, which has led to lower tenant turnover in RSO units than in unregulated units.¹¹ *See* L.A. Mun. Code §§ 151.06, 151.07. And the City of West Hollywood—one of California’s most densely populated cities—passed its RSO, in part, to allow its renters to age in place and to prevent displacement of its elder community members. *See* West Hollywood Mun. Code § 17.04.020.¹²

¹¹ *See* ECONOMIC STUDY OF THE RENT STABILIZATION ORDINANCE AND THE LOCAL HOUSING MARKET, CITY OF LOS ANGELES HOUS. DEP’T. 19 (2009), https://clkrep.lacity.org/onlinedocs/2007/07-0883_rpt_lahd_6-25-2009-1.pdf

¹² Indeed, the California Legislature recently chose to leave these local, varied protections in place by enacting the Emergency Tenant Protection Act of 2019 (ETPA). Amici SFAA/CAA mischaracterize the ETPA as a “statewide rent control bill,” *see* SFAA/CAA Br. at 2, 33-34 n.18, but to the contrary, the ETPA is a targeted and time-limited provision enacted to curb specific forms of rent-gouging, *see* A.B. 1482, Cal. Assemb. Floor Analysis 2 (Sept. 10, 2019). For

These laws also evolve as local governments respond to the community's changing needs. In response to the effects of displacement on children attending schools, the City of Berkeley recently amended its rent-stabilization ordinance to prohibit owner-move-in evictions of families with school-aged children during the school year. *See* Berkeley Mun. Code § 13.76.130(a)(9)(k). San Francisco has, over the years, enacted special eviction protections for its most vulnerable residents, such as victims of domestic violence, school-age children, teachers, and the elderly. S.F. Admin. Code §§ 37.1, 37.9(a)(3), (i), (j). And, in the face of rampant residential real estate speculation, Santa Monica's policies target types of rapid rent increases that disparately affect "the poor, minorities, students, young families, and senior citizens." Santa Monica Rent Control Charter Amendment, Art. XVIII § 1800.

Some of Amici's laws reflect California's tradition of direct democracy. Santa Monica's Rent Control Law, which was enacted by voter initiative as an

example, the ETPA sets modest caps on the percentage by which rent may be increased for some properties and imposes a "just cause" requirement to help prevent landlords from evicting tenants in order to dramatically increase rents. Cal. Civ. Code §§ 1947.12, 1946.2. In these ways, the ETPA complements, rather than supplants, more protective rent-stabilization and eviction-protection laws enacted by local governments, including Amici, in response to particular local needs and conditions. *Id.* § 1947.12(k); *see also* A.B. 1482, Cal. Assemb. Floor Analysis 2 (Sept. 10, 2019).

amendment to the City Charter, allows both landlords and tenants to petition for hearings on adjustments to the rent beyond the allowed annual increase. *See* Santa Monica Rent Control Charter Amendment, Art. XVIII. Similarly, Berkeley's rent stabilization law was originally passed by voter initiative. *See* Berkeley Mun. Code § 13.76.020.

Many of Amici's RSLs also seek to balance the interests of landlords and tenants. Oakland's RSL intends to "encourage investment in residential housing while also protecting the welfare of residential tenants" and "foster[ing] better relations between rental property owners and tenants." Oakland Mun. Code § 8.22.010. As a result, Oakland allows rent increases for rehabilitation costs and allows landlords to bank rent increases not imposed in prior years; the City even mediates disputes between landlords and tenants over rental rates and evictions. *See id.* at §§ 8.22.065, 8.22.100, 8.22.140. Amici's RSLs guarantee fair returns for landlords on their rental properties. *See, e.g.,* West Hollywood Mun. Code § 17.32.010; Santa Monica Charter Amend., Art. XVIII § 1800. RSLs cannot (and are not intended to) stop all displacement, and they recognize that landlords need to be able to charge adequate rents and retain a financial incentive to keep their properties safe and habitable.

While protecting low-income households is an important feature of New York's RSL and many others, Appellants erroneously claim that RSLs seek *only* to

maintain low-income housing. *See* App. Br. at 62. State and local governments serve their entire populations, seeking not only to maintain low-income housing, but also moderate-income housing, mixed-income neighborhoods, and the distinctive character of our communities, which would otherwise be eroded by displacement. These “legitimate interest[s]” are more than sufficient to establish a rational basis to regulate the landlord-tenant relationship. *Nordlinger*, 505 U.S. at 12.

C. Rent Stabilization Laws Also Serve as One Important Prong in a Mix of Strategies to Address the Broader Effects of Housing Instability and Protect the Public Health.

Rent stabilization laws also function as a component of a far broader set of government programs and policies addressing the implications of housing instability and precarity and their effects on public health and resident welfare. These extensive efforts have drawn from every available resource in governments’ toolbox—including, for example, significant funding for affordable housing, social services, and public health programs; regulations protecting tenants and landlords alike; standards for housing quality and safety; and a varied and evolving mix of development initiatives, incentives, and innovations. The rationale for any particular rent stabilization regime thus cannot be evaluated in a vacuum. Rather, such regulatory programs are properly understood as one important and long-accepted plank in a series of strategies by which governments seek to act on every

front to curb displacement and homelessness, support tenants and landlords, and protect public health, safety, and general welfare.

Amici's experience as safety-net providers for our residents confirms that rent increases and evictions are a leading cause of tenant displacement.¹³ The corrosive effects of such displacement are far-reaching. After an eviction in a tight rental market, it is "extremely difficult to relocate in the same city, or even the same region."¹⁴ This displacement negatively impacts children's education, with children who move frequently experiencing academic delays, lower test scores, and frequent school absences.¹⁵ Some families are forced into crowded conditions, which is similarly detrimental to children's academic and behavioral development.¹⁶ Displacement also affects families' support structure and

¹³ See generally Bay Area Regional Health Inequities Initiative, *Displacement Brief*, GETHEALTHY SAN MATEO COUNTY 2, <http://www.gethealthysmc.org/sites/main/files/file-attachments/barhii-displacement-brief.pdf?1465844839> (last visited Apr. 13, 2021).

¹⁴ A.B. 1482, Cal. Assemb. Floor Analysis 2 (Sept. 10, 2019).

¹⁵ Bay Area Regional Health Inequities Initiative, *Displacement Brief*, GETHEALTHY SAN MATEO COUNTY 2, <http://www.gethealthysmc.org/sites/main/files/file-attachments/barhii-displacement-brief.pdf?1465844839> (last visited Apr. 13, 2021).

¹⁶ *Id.*; see also County of Santa Clara Department of Planning and Development and Office of Supportive Housing, *Inclusionary Housing Ordinance*, COUNTY OF SANTA CLARA 5 (May 26 and May 28, 2020), https://www.sccgov.org/sites/dpd/DocsForms/Documents/InclusionaryHousing_Outreach_Presentation.pdf.

employment opportunities.¹⁷ Finally, evictions and large rent increases are a major cause of homelessness, with dramatic increases in rent sometimes acting as a “final straw” driving people into homelessness.¹⁸

Housing instability, evictions, and displacement in turn have marked and well-documented impacts on public health¹⁹ and place significant added strain on Amici’s safety-net health care institutions.²⁰ Local and state governments’ recent

¹⁷ A.B. 1482, Cal. Assemb. Floor Analysis 2 (Sept. 10, 2019).

¹⁸ A.B. 1482, Cal. Senate Judiciary Report 1 (July 8, 2019).

¹⁹ See, e.g., THE STATE OF THE NATION’S HOUS., JOINT CTR. FOR HOUS. STUDIES OF HARV. U. 5-6 (2013),

<https://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son2013.pdf> (explaining that families spend less on food and healthcare when rent is high); Bay Area Regional Health Inequities Initiative, *Displacement Brief*, GETHEALTHY SAN MATEO COUNTY 1, <http://www.gethealthysmc.org/sites/main/files/file-attachments/barhii-displacement-brief.pdf?1465844839> (last visited Apr. 13, 2021). (explaining that people who cannot afford housing are less likely to attend medical appointments and take needed medications); *Homelessness and Health: What’s the Connection?*, NAT’L HEALTH CARE FOR THE HOMELESS COUNCIL 1-2 (Feb. 2019), <https://nhchc.org/wp-content/uploads/2019/08/homelessness-and-health.pdf> (discussing nexus between homelessness and health issues).

²⁰ Several of Amici play a central role in protecting public health and/or providing safety-net health care. The County of Santa Clara, for example, is the second largest safety-net medical provider in the State of California, operating an extensive network of County-owned hospitals, satellite health clinics, and public pharmacies; a public health department covering 15 cities within the County; and a publicly run health insurance plan available to anyone who lives or works in the County. San Francisco’s budget anticipates \$2.6 billion of funding in the upcoming fiscal year for public health services and safety-net medical care, including over a billion dollars in funding for Zuckerberg San Francisco General Hospital. See *FY 2021-22 and FY 2022-23 Budget*, S.F. DEP’T PUB. HEALTH 4

experience battling the effects of COVID-19 has only further underscored the close nexus between housing stability and public health. For example, policies that limit evictions have been found to reduce cumulative deaths by 11 percent.²¹ Looking forward, stable housing will continue to be particularly important for people experiencing chronic symptoms or complications from COVID-19. And Amici anticipate that more residents will be at risk of homelessness due to the economic impacts of COVID-19, as well as the expiration of pandemic-related eviction moratoriums.

Recognizing the acute and cascading harms to the public resulting from housing instability and lack of affordable housing stock, Amici, like many other local governments, have collectively invested extensive public resources and enacted policies to build and protect affordable housing. For example, Santa Clara County voters approved an \$950 million affordable housing bond, with planned development projects across seven cities within the County over the next several

(Jan. 19, 2021), https://www.sfdph.org/dph/files/budget/files/FY_21-23_HC_First_Budget_Hearing_Presentation-1-19-21_Final.pdf. San Francisco has also budgeted almost \$490 million in public funds for supportive housing and shelters this fiscal year. *See Budget*, S.F. DEP'T HOMELESSNESS & SUPPORTIVE HOUS., <https://hsh.sfgov.org/about/budget/> (last visited Apr. 22, 2021).

²¹ Kay Jowers et al., *Housing Precarity and the COVID-19 Pandemic: Impacts of Utility Disconnection and Eviction Moratoria on Infections and Deaths Across US Counties*, NAT'L BUREAU OF ECON. RES. WORKING PAPER 11 (Jan. 2021), https://www.nber.org/system/files/working_papers/w28394/w28394.pdf.

years.²² Similarly, the City of Los Angeles has committed over \$973 million in loans for the construction of permanent supportive housing, along with millions of dollars each year in low-interest loans and tax credits for the construction and rehabilitation of affordable housing.²³ As part of these and other funding and regulatory programs, new developments are subject to a varied range of inclusionary housing incentives and requirements. *See, e.g.*, Santa Monica Municipal Code Chapter 9.64, Affordable Housing Production Program (“requires developers of market rate multi-family developments to contribute to affordable housing production and thereby help the City meet its affordable housing need”); L.A. Muni. Code § 12.22 A.31 (providing land use incentives in exchange for affordable housing). Landlords have also received significant public subsidies to shield them from the impact of COVID-related losses. *See* S.B. 91, 2021-2022 Leg., Reg. Sess. (Cal. 2021); S.F. Admin. Code §§ 10.100-51.1.

²² *County of Santa Clara Approves Funding for 7 More Affordable Housing Developments Totaling 865 New Apartments for Homeless, Senior and Low-Income Residents*, COUNTY OF SANTA CLARA: NEWS (March 10, 2020), <https://www.sccgov.org/sites/opa/newsroom/Pages/more-affordable-housing.aspx>.

²³ *Prop HHH Developments Summary*, CITY OF LOS ANGELES: HOUS. & COMMUNITY INVESTMENT DEP’T. (March 24, 2021), <https://hcidla2.lacity.org/housing/prop-hhh-developments-summary>; *Affordable Housing Managed Pipeline*, CITY OF LOS ANGELES: HOUS. & COMMUNITY INVESTMENT DEP’T. (April 13, 2021), <https://hcidla2.lacity.org/partners/affordable-housing-managed-pipeline>.

In New York and California, the need for such a multi-layered approach to addressing these issues is particularly acute given their long-standing and accelerating housing crises. In California, close to 30 percent of renters spend more than half of their income on rent²⁴—leaving them with far less money to purchase other necessities like food and healthcare.²⁵ And over a million households—19 percent of all renter households—were behind on their rent payments as of December 2020.²⁶ Federal data from January 2020 indicates that whereas homelessness had increased about 2.2% nationally, California had experienced an increase of more than three times that rate.²⁷ Such intractable and complex problems often call, in Amici’s experience, for a mix of strategies to address the causes and implications of housing instability on multiple fronts, such

²⁴ Sara Kimberlin, *Californians In All Parts of the State Pay More Than They Can Afford For Housing*, CAL. BUDGET & POL’Y CTR. (Sept. 2017), <https://calbudgetcenter.org/resources/californians-parts-state-pay-can-afford-housing/>.

²⁵ THE STATE OF THE NATION’S HOUS., JOINT CTR. FOR HOUS. STUDIES OF HARV. U. 5-6, 9 (2013), <https://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son2013.pdf>.

²⁶ *See Fact Sheet: Preventing Eviction and Indebtedness in California*, BAY AREA EQUITY ATLAS, <https://bayareaequityatlas.org/research/analyses/COVID-19-evictions-california> (last visited Apr. 22, 2021).

²⁷ THE 2020 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS, U.S. DEP’T OF HOUS. & URBAN DEV. 7, 11 (Jan. 2011), <https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf>.

as by acting both to increase housing stock *and* to protect those who are already housed from eviction.

If anything, Amici's experience reflects that no one approach to addressing the causes and effects of housing disparities and shortages is a panacea. Placing a rent stabilization program in the mix of state and local regulations and programs protecting tenants and landlords, incentivizing development and protection of housing, and responding to varied local needs and conditions is quite clearly rationally related to a legitimate governmental purpose.

CONCLUSION

For the foregoing reasons, this Court should affirm the District Court's decision.

Respectfully submitted,

Dated: April 23, 2021

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 29(a) and Circuit Rule 29-1(c) because it contains 6,497 words, exclusive of the portions of the brief that are exempted by Federal Rule of Appellate Procedure 32(f). I certify that this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6).

Dated: April 23, 2021

By: /s/ Danielle L. Goldstein
Danielle L. Goldstein

CERTIFICATE OF SERVICE

I, Danielle L. Goldstein, hereby certify that I electronically filed this Brief of Amici Curiae Cities of Los Angeles, San José, Santa Monica, Oakland, and West Hollywood, California, the County Of Santa Clara, the City And County Of San Francisco, California, the Santa Monica Rent Control Board, and the Berkeley Rent Stabilization Board in Support Of Defendants-Appellees and Affirmance with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system on April 23, 2021. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed April 23, 2021, at Los Angeles, California.

/s/ Danielle L. Goldstein

Danielle L. Goldstein

Commissioner Attendance at Rent Stabilization Board Meetings: 2021

2021	Soli ALPERT	James CHANG	Xavier JOHNSON	Andy KELLEY	Paola LAVERDE	Mari MENDONCA	John SELAWSKY	Leah SIMON-WEISBERG	Dominique WALKER
January 21	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT
February 18	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT
March 18	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT
April 15									
May 6									
June 17									
July 15									
August 19									
September 23									
October 21									
November 18									
December 16									

* = Absent *with* compensation

** = Absent due to a medical reason

Bold and italicized = Special Meeting

**Commissioner Attendance at Rent Stabilization Board COMMITTEE Meetings:
January-March 2021 (Q1)**

COMMITTEES	Soli ALPERT	James CHANG	Xavier JOHNSON	Andy KELLEY	Paola LAVERDE	Mari MENDONCA	John SELAWSKY	Leah SIMON-WEISBERG	Dominique WALKER
<i>Budget & Personnel</i>									
Thursday, January 28, 2021		Present					Present	Present	Present
Thursday, February 25, 2021		Present					Present	Present	Present
Thursday, March 25, 2021		Present					Present	Present	Present
<i>Eviction / Section 8 / Foreclosure</i>									
Thursday, February 11, 2021					Present	Present	Present		Present
Thursday, March 11, 2021					Present	Present	Present		Present
<i>Habitable & Sustainable Housing</i>									
<i>This Committee did not meet this quarter.</i>									
<i>IRA / AGA / Registration</i>									
Tuesday, February 9, 2021	Present		Present	Present				Present	
Tuesday, March 2, 2021	Present		Present	Present				Present	
<i>Outreach</i>									
Wednesday, February 10, 2021		Present		Present	Present	Present			
Wednesday, March 24, 2021		Present		Present	Present	Present			
<i>4 x 4 Joint Committee on Housing (City Council/Rent Board)</i>									
Wednesday, February 24, 2021	Present		Present	Present				Present	
Wednesday, March 10, 2021	Present		Present	Present				Present	
<i>2 x 2 Committee on Housing (BUSD/Rent Board)</i>									
<i>This Committee did not meet this quarter.</i>									

**Commissioner Attendance at Rent Stabilization Board COMMITTEE Meetings:
January-March 2021 (Q1)**

COMMITTEES	Soli ALPERT	James CHANG	Xavier JOHNSON	Andy KELLEY	Paola LAVERDE	Mari MENDONCA	John SELAWSKY	Leah SIMON- WEISBERG	Dominique WALKER
<i>Ad Hoc Committee on Technology Issues</i>									
<i>This Committee did not meet this quarter.</i>									

^ = Meeting cancelled due to lack of a quorum

* = Absent with compensation



= Not a member of this Committee at this time



BERKELEY RENT BOARD

Security Deposit : Landlord and Tenant Rights & Responsibilities

Carla Orozco, Housing Counselor
Berkeley Rent Board

March 24, 2021

AGENDA

Introduction

Security Deposit Collection

Security Deposit Refund

Security Deposit Interest

Resolving Disputes

SECURITY DEPOSITS: STATE LAW

California Civil Code 1950.5

Maximum is two
months' rent
(unfurnished unit)

All money collected
at the onset of the
tenancy beyond
first month's rent is
considered deposit

Full deposit must be
refundable

SECURITY DEPOSITS: RENT BOARD

REGULATION 705

Deposit cannot be increased during a tenancy

Exception: Pet deposit where pets not previously allowed. State limit still applies.



SECURITY DEPOSIT USE

Unpaid rent

Damage caused by tenant
(less "normal wear and tear")

Necessary cleaning
(to return to condition delivered)

RECOVERING YOUR SECURITY DEPOSIT

1. Provide 30-day written notice to vacate
2. Clean unit and repair damage
3. Request a walk-through inspection
4. Take photos at move-in and move-out
5. Notify your landlord of your new address

SECURITY DEPOSIT RETURN

CALIFORNIA CIVIL CODE 1950.5

Offer a walk-through inspection within 14 days of planned move-out

Return deposit within 21 days of tenant move-out

If deductions >\$125, provide itemized list & invoices/receipts

REPLACEMENT ROOMMATES

- ▶ Landlord is not obligated to return the security deposit until the unit is vacant
- ▶ In cases of rotating roommates, the incoming tenant should pay the deposit to the departing tenant

SECURITY DEPOSIT DISPUTES

1. Write a letter with documentation
2. File a Rent Board petition
3. Pursue the issue in small claims court

SECURITY DEPOSIT INTEREST

Interest must be paid annually and upon move-out

Interest calculated at "Berkeley Bank Rate" (currently 0.2%)

Annual interest due in December (grace period until January 31st) and at move-out

Move-out interest paid at monthly "move-out" rate (currently 0.1%)

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510-981-7368 (RENT)
rent@cityofberkeley.info

INTEREST: TENANT'S REMEDY


REGULATION 704

- ▶ 704. Deduction of Interest from Rent
- ▶ Where a tenant has not received refund of security deposit interest by January 31 of any year for any preceding calendar years, the tenant may recover the interest by deducting the interest amount from rent, under the procedure in this regulation. For purposes of this regulation, the interest rate for the immediately preceding calendar year is 10%. For all other preceding years, the interest rate shall be as set forth in the table contained in [Regulation 701\(C\)](#).
- ▶ [Effective Date: May 25, 1990; amended November 5, 1999; amended April 4, 2005; amended to make clear that 10% interest rate automatically attaches to unpaid security deposit interest for the immediately preceding year after January 31 of any year, and tenant does not have to give landlord notice of intention to deduct interest from rent - 9/19/19]

ONLINE REGISTRATION IS NOW AVAILABLE!

Now you can register new tenancies and make registration payments online!

SET UP AN ACCOUNT TODAY



Sign-up is easy!

Have an email on file with the Rent Board?

REGISTER TENANCIES



From your kitchen table!
File vacancy registration forms or change unit status online from anywhere!

PAY REGISTRATION FEES



From the beach!
You can pay for one property at a time or multiple properties all at once!

Visit our website to find a link to Online Registration: www.cityofberkeley.info/rent

VISIT OUR WEBSITE

cityofberkeley.info/rent

- ❑ Tenant Information
- ❑ Laws & Regulations
- ❑ Workshops & Seminars
- ❑ Mediation & Petition Forms
- ❑ Rent Board Commission Meetings

COVID-19 Updates: See cityofberkeley.info/covid19 for news, information, and status of City services.

CITY OF BERKELEY

Home Residents Businesses COVID-19 Services Elected Officials

search: GO

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FAQ
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WHAT'S NEW
Rent Board Services during COVID-19
Budget Info FY 2020-2021
FY 2020-21 Registration Information
AGA
New Laws & Regulations
Tenant Protection Ordinance
Bed Bug Notification
Green Lease Addendum
Security Deposit Interest
Tenant Buyout Ordinance
My Rent Ceiling

POPULAR TOPICS
Berkeley Rental News
Civil Grand Jury Report
Client Feedback Page
Data & Reports
Ellis Information
Events
Evictions
Fire Safety
Forms
Guide to Rent Control
Habitability & Repairs
Laws and Regulations
Mediation: Info and Forms
Moving In/Moving Out Guide
Other Sources
Landlord and Tenant Workshops & Seminars
Owner Move-Ins

RENT STABILIZATION BOARD
2125 Milvia Street, Berkeley, CA 94704
TEL: (510) 981-7368, TDD: (510) 981-6903, FAX: (510) 981-4910
Office Hours: M,Tu,Th,F 9 a.m. to 4:45 p.m., Wed 12 p.m. to 6:30 p.m., Email: rent@cityofberkeley.info

Landlord Information **Tenant Information** **Forms** **Elected Rent Board** **Laws & Regulations** **Data & Reports**

Annual Registration Fees of \$250 per unit WERE DUE Wednesday, July 1, 2020. Payments not received or postmarked by the due date were assessed a 100% penalty. **Under Berkeley Rent Board Resolution 20-14, owners whose late payments are due to financial impacts of COVID-19 are eligible for a full waiver of registration penalties.** For questions about your registration status, please call our office at (510) 981-7368 and leave a message. Your call will be returned by a Registration Unit staff member.

The Rent Board office is currently CLOSED to the public.

WHAT IS RENT CONTROL?
... and How Does it Affect Me?

HOW CAN WE HELP YOU?

- Know Your Rights & Responsibilities as a [Landlord](#) or [Tenant](#)
- [Register Your Residential Rental Unit](#)

IMPORTANT COVID-19 INFORMATION
For Landlords & Tenants

Register Online

Upcoming Meetings & Events

September 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

JOIN OUR EMAIL LISTS

- Annual General Adjustment
- Billing & Registration
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- Rent Board Committee Agendas
- Workshops and Seminars for Property Owners
- Workshops and Seminars for Tenants



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BERKELEY RENT BOARD

QUESTIONS? CONTACT US!



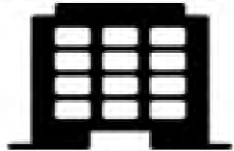
BERKELEY RENT BOARD



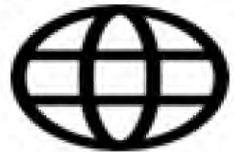
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2125 MILVIA STREET BERKELEY



WWW.CITYOFBERKELEY.INFO/RENT



BERKELEY RENT BOARD

Item 8.a.(3).b.

Buying and Selling Rental Property in Berkeley

April 7, 2021

*Berkeley Rent Board Housing Counselors
Moni T. Law and Carla Orozco*

AGENDA

- Rent Control Basics
- Registration Requirements (fully covered and MM)
- Preparing to Sell a Property
- Considerations When Buying a Property
- Good Cause for Eviction
- Tenant Buyout Agreements
- Security Deposit Interest

CONSIDERATIONS WHEN PURCHASING

- Tenant Occupied?
- Lease Terms for the Tenant?
- Security Deposit Interest Owed? (annual)
- Penalties Owed to the Berkeley Rent Board?

DUTY TO PAY SECURITY DEPOSIT INTEREST

- The Berkeley Rent Stabilization Ordinance requires landlords to pay tenants interest on their security deposits while being held by the landlord.
- Property Owners use the Berkeley Bank Rate. Interest rate to be paid in December 2020 for deposits held November 1, 2019- October 31, 2020: 0.2%

Rent Control Basics in Berkeley

Rent Control and Eviction Protections

RENT CONTROL: FULLY COVERED UNITS

	MULTI-UNIT PROPERTIES BUILT BEFORE JUNE 1980	ROOMING HOUSES	SINGLE FAMILY HOMES WITH TENANTS WHO MOVED IN BEFORE 1996
Registration?	Yes	Yes	Yes
Rent Control?	Yes	Yes	Yes
Eviction Protections?	Yes	Yes	Yes
Security Deposit Interest?	Yes	Yes	Yes

RENT CONTROL: PARTIALLY COVERED UNITS

	SINGLE FAMILY HOMES RE-RENTED AFTER 1/1/96	MOST CONDOMINIUMS	NEW CONSTRUCTION (Regulation 510)
Registration?	YES: Measure MM	Yes: MM	Yes: MM
Rent Control?	No	No	No
Eviction Protections?	Yes	Yes	Yes
Security Deposit Interest?	Yes	Yes	Yes

RENT CONTROL: FULLY EXEMPT UNITS

	TENANT SHARES KITCHEN OR BATH WITH PROPERTY OWNER	"GOLDEN DUPLEX"	TENANCIES STARTED AFTER 11/7/18 WHERE ONE UNIT IS AN ADU & EITHER UNIT IS OWNER-OCCUPIED
Registration?	No	No	No
Rent Control?	No	No	No
Eviction Protections?	No	No	No
Security Deposit Interest?	No	No	No

REGISTRATION FOR FULLY COVERED UNITS

- Registration Fee is \$250 per unit for the 2020/2021 Fiscal Year
- File Initial Registration Statement if property never registered
- Submit Amended Registration Statement within 60 days of transfer
- Contact the Rent Board and inquire BEFORE you close
- Registration Fees and Penalties: Debt passes to new owner

NEW LAW: RENT BOARD REGISTRATION OF UNITS UNDER MEASURE MM

- The following units must be registered by April 15th if they are rented:
 - Single Family Homes
 - Condos
 - New Construction (Certificate of Occupancy post-1980)

PRIMARY EXEMPTIONS

- Owner occupied, maintained for owner's use only, or occupied rent free
- Section 8 or Shelter Plus tenancies

SINGLE FAMILY HOME/CONDO EXEMPTION

- IF rented for up to two years AND you:
 - Own no more than 1 residential unit in Berkeley;
 - Lived in the unit as your primary residence for at least 365 consecutive days immediately prior to rental;
 - Will reoccupy the unit as primary residence;
 - Specify rent term, not to exceed 24 months, in the lease

QUALIFIED ADUS ARE FULLY EXEMPT

- Not subject to rent control protections
- Not registered with the Board
- No Good Cause for eviction protections
- Does not receive security deposit interest
- Owner-occupied 2-unit properties with tenancy starting after 11/7/2018

SHOWING UNITS DURING COVID PANDEMIC

- What are the Rules? Check Public Health Director's Shelter-in- Place Orders on website: <https://www.cityofberkeley.info/covid19/>
- The City of Berkeley's Public Health Department is aligned with the State of California Industry Guidance found at:
<https://files.covid19.ca.gov/pdf/guidance-real-estate--en.pdf>

SERVE PROPER NOTICE

- California Civil Code 1954
- At least 24 Hours in Advance
- During Normal Business Hours
- For Purpose of Renting or Selling

EVICTION MORATORIUM

- State of Emergency declared at national, state, local levels in response to COVID-19 global pandemic
- City of Berkeley: COVID-19 Emergency Response Ordinance bans most evictions during local state of emergency
- State of California: COVID-19 Tenant Relief Act (AB 3088) and SB 91 prohibits landlords from evicting tenants due to COVID-19-related financial distress

LIMITATIONS ON EVICTIONS IN BERKELEY

During Eviction Moratorium

- Evictions are permitted in the following cases:
 - Ellis Act Evictions
 - Evictions that are necessary for the health and safety of residents (The health and safety exception cannot be the resident's actual or suspected COVID-19 illness or exposure)
 - Some instances of nonpayment of rent (AB 3088/SB91)

LIMITATIONS ON EVICTIONS IN BERKELEY

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WHEN EVICTION MORATORIUM ENDS: 12 GOOD CAUSES (sale of property NOT good cause)

- 1) Non-Payment of Rent
- 2) Violating a Material Term of the Lease
- 3) Willfully causing substantial damage and refusing to pay for repairs
- 4) Refusal to sign a substantially similar lease upon expiration
- 5) Disturbing peace and quiet of others
- 6) Refusal to allow access to show, inspect or repair after receiving 24 hr notice
- 7) Temporary Relocation for Substantial Repairs
- 8) Demolition Permit
- 9) Owner/Relative Move-In for self, spouse, parent or child
- 10) "Sabbatical Leave" allowing return to primary residence
- 11) Refused to vacate temporary housing offered after repairs completed
- 12) Tenant engages in unlawful activity on the premises

INCREASED RELOCATION PAYMENTS (13.76.130.A.9.g)

- Ellis and OMI Relocation Payments are now the same (1/1/2021):
 - \$16,341 in standard relocation
 - \$5,447 in additional relocation to certain tenants

ELIGIBILITY FOR ADDITIONAL \$5,447

- Low-income tenants
- Disabled tenants
- Elderly tenants
- Minor Children
- Tenants whose tenancy began prior to January 1, 1999

SCHOOL-YEAR PROTECTION FOR FAMILIES WITH CHILDREN (13.76.130.A.9.k)(OMI ONLY)

- Landlord may not recover possession of unit if:
 - Tenants in unit for 12 months or more with a minor child and
 - If effective date of termination falls within the school year (published on Berkeley Unified School District website)

TENANT BUYOUT AGREEMENTS: 5 REQUIREMENTS

- The right not to enter into a buyout agreement;
- The right to consult an attorney before signing;
- The right to rescind the agreement at any time up to 30 days after signing;
- The right to consult the Rent Stabilization Board; AND
- Mandatory language in the agreement to reflect these four rights.

ADDITIONAL BUYOUT REQUIREMENTS

- Give the tenant a copy of the agreement;
- File a copy of the fully executed agreement with the Rent Board between 31-60 days after signature; AND
- Complete the Mandatory “Buyout Agreement Disclosure Form” - keep copy at least five years after all parties sign

CITY'S RESIDENTIAL HOUSING SAFETY PROGRAM (RHSP) SCHEDULE A

- RHSP Registration Fee Annually, and Self-Certified Safety Checklist due by July 1 each year, copy to all tenants
- Includes decks, stairwells and balconies

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Housing_Code_Enforcement/SCH-A20%20FORM%20-%20Fillable.pdf

ONLINE REGISTRATION IS NOW AVAILABLE

SET UP AN ACCOUNT TODAY



RENT STABILIZATION BOARD

Request Online Account

Please provide the following information when creating an online account. All fields are required unless otherwise noted.

Account Information

Requestor Name Please enter a user ID that you can remember. For example, you might wish to use your email address as a user ID.

Requestor Email This will be your primary contact for the Rent Board. It will be used to send you registration information. *Please do not use your mailing address. Please include the city, state, and zip code.

Requestor Address Please provide the mailing address for you. You must provide a street name.

Requestor Phone Please provide a telephone number where we can reach you.

Requestor Address Please provide the Property Address (or address on your title report) of the property for which you are requesting registration. If you have multiple properties, please provide the address of one property. Multiple for a listing or listing address.

Sign-up is easy!

Have an email on file with the Rent Board? \

REGISTER TENANCIES



From your kitchen table!

File vacancy registration forms or change unit status online from anywhere!

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- ❑ Workshops & Seminars
- ❑ Mediation & Petition Forms
- ❑ Rent Board Commission Meetings

WELCOME

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WHAT'S NEW

Registration
AGA
Rent Board Services during COVID-19
Budget Info FY 2020-2021
New Laws & Regulations
Tenant Protection Ordinance
Bed Bug Notification
Green Lease Addendum
Security Deposit Interest
Tenant Buyout Ordinance
My Rent Ceiling

POPULAR TOPICS

Berkeley Rental News
Civil Grand Jury Report
Client Feedback Page
Data & Reports
Ellis Information
Evictions
Fire Safety
Forms
Guide to Rent Control
Habitability & Repairs
Laws and Regulations
Mediation: Info and Forms
Moving In/Moving Out Guide
Other Sources
Landlord and Tenant Workshops & Seminars
Owner Move-ins
Reg. Changes Archive
Security Deposits
Smoking Prohibition
Addendum
Sublease Addendum
Students-Renting 101
Tenant Screening Fees
My Rent Ceiling

QUICK LINKS

2021 Board Meetings
RSB Committee Meetings
Meet/Contact the Board
RSB Attendance Records
Rent Board Email Lists

RENT STABILIZATION BOARD

2125 Milvia Street, Berkeley, CA 94704
TEL: (510) 981-7368, TDD: (510) 981-6903, FAX: (510) 981-4910
Office Hours: M,Tu,Th,F 9 a.m. to 4:45 p.m., Wed 12 p.m. to 6:30 p.m., Email: rent@cityofberkeley.info

Landlord Information
Tenant Information
Forms
Elected Rent Board
Laws & Regulations
Data & Reports

Look up the new maximum allowable rent for your rental unit on **My Rent Ceiling**. In January of each year, the Rent Board posts the updated rent ceilings for all rent-controlled units, which include the annual increase (**AGA**) for units considered in compliance with local requirements.

At its October 2020 Regular Meeting, the Rent Stabilization Board approved **increases to the Owner Move-in and Ellis Act relocation assistance payments** that will go into effect on **January 1, 2021**.

WHAT IS RENT CONTROL?
... and How Does It Affect Me?

HOW CAN WE HELP YOU?

- Know Your Rights & Responsibilities as a [Landlord](#) or [Tenant](#)
- [Register Your Residential Rental Unit](#)
- Check Your Unit's [Rent Ceiling](#)
- Understand [Lawful Rent Increases](#) (including AGAs)
- Understand the [Eviction Process](#) in Berkeley
- File a Petition and [Understand the Hearings Process](#)
- [Mediate Landlord-Tenant Issues](#)
- Calculate [Interest on Security Deposits](#)

IMPORTANT COVID-19 INFORMATION
For Landlords & Tenants
[Register Online](#)

Upcoming Meetings & Events

April 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

- April 7 @ 10am
[Buying & Selling Rental Property in Berkeley Webinar](#) (Virtual)
- April 14 @ 10am

[Join Our Email Lists!](#)

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JOIN OUR EMAIL LISTS

- Annual General Adjustment
- Billing & Registration
- Newsletters & Announcements
- Rent Board Agendas
- Rent Board Committee Agendas
- Workshops and Seminars for Property Owners
- Workshops and Seminars for Tenants



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COMPLETE AN EVALUATION



BERKELEY RENT BOARD

Berkeley Rent Board Events Evaluation

Please fill out this evaluation and return to us. Thank you!

Event Title: _____

Event Presenter: _____

Please rate the quality of the presentation.

1 2 3 4 5

Disappointing

Exceptional

COMMENTS:

Please rate the length of the presentation.

1 2 3 4 5

Disappointing

Exceptional

COMMENTS:

Did you learn what you expected from this event?

1 2 3 4 5

Disappointing

Exceptional

COMMENTS:

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BERKELEY RENT BOARD

QUESTIONS? CONTACT US!



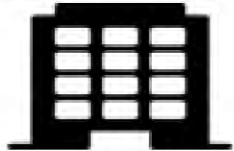
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BERKELEY RENT BOARD

Measure MM

Michele Byrnes, PIU Manager
Allison Pretto, Registration Manager

April 14, 2021

AGENDA

- Basic provisions of Measure MM
- Registration requirements & exemptions
- Rent Board services
- Measure MM materials
- Q & A
- Next steps

² 510-981-7368 (RENT)
rent@cityofberkeley.info

BACKGROUND

- Rent Ordinance Amendments recommended by elected Rent Board on May 21, 2020
- Amendments placed on ballot by Berkeley City Council on July 30, 2020
- Passed by Berkeley voters on November 3, 2020
- Implemented in winter & spring 2021

BASIC PROVISIONS OF MEASURE MM

- Newly required registration for some units:
 - rented single family homes
 - rented condominiums
 - newly constructed rental units
- Measure MM units: tenants have good cause for eviction protections and receive annual security deposit interest
- Eviction Moratorium during proclaimed emergency
- ADU Clarification

4

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rent@cityofberkeley.info

REGISTRATION EXEMPTIONS

- Single family homes rented for up to two years
- Landlord owns only one residential unit in Berkeley
 - lived in the unit as their primary residence for at least 365 consecutive days immediately prior to rental

AND

- Will reoccupy the unit as their primary residence when the rental agreement terminates
- Lease must specify that the tenancy will not exceed 24 months

EXEMPT UNITS NOT AFFECTED BY MM

- Section 8
- Shelter Plus Care
- ADU
- Rent-Free
- Vacant/Not Available for Rent
- Owner-Occupied
- Owner Use

6
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rent@cityofberkeley.info

REGISTRATION REQUIREMENTS

- Landlords must register their Measure MM units by April 15, 2021; no payment in FY 20-21
- Newly rented units must be registered within 60 days
- Two-phase initial Measure MM registration process

⁷ 510-981-7368 (RENT)
rent@cityofberkeley.info

FEES & PENALTIES

- Registration fee will be determined by elected Board in early May
 - Fully covered units
 - Measure MM units
- Registration billing statements sent out last week of May
- First fee will be due by Thursday, July 1, 2021
- Penalties for late payment

RENT BOARD SERVICES FOR MM UNITS

- Registration of Measure MM units
- Counseling for Measure MM tenants & landlords
 - COVID-19 emergency response laws
 - State anti-gouging protections, Berkeley Tenant Protection Ordinance, Relocation Ordinance, Fair Chance Ordinance
- Mediation for Measure MM tenants and landlords

MEASURE MM RESOURCES

- Measure MM webpage
- Fact sheet
- User guide for online registration

10

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rent@cityofberkeley.info

NEXT STEPS

- Be sure your property is properly registered
- Register and pay fees by July 1, 2021
- Find required forms online



11

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JOIN OUR EMAIL LISTS

- ❑ COVID-19 Updates
- ❑ Annual General Adjustment
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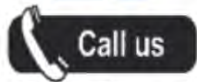


BERKELEY RENT BOARD

QUESTIONS?



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Rent Stabilization Board

RENT STABILIZATION BOARD
BUDGET & PERSONNEL COMMITTEE MEETING

Thursday, April 22, 2021

5:00 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 Rent Stabilization Board's **Budget & Personnel Committee** (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/95849409370?pwd=azVJRGlGUncvZGp2dmFjOGdILlFGUT09>. 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 1-408-638-0968 and enter Webinar ID: 958 4940 9370 and Passcode: 868411. 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 mbrown@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM FOR BUDGET & PERSONNEL 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 3:00 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, at (510) 981-7368 (981-RENT). The Committee may take action related to any subject listed on the Agenda.



Rent Stabilization Board

RENT STABILIZATION BOARD
BUDGET & PERSONNEL COMMITTEE MEETING

Thursday, April 22, 2022 – 5:00 p.m.

AGENDA

1. Roll Call
2. Approval of Agenda
3. Public Comment
4. Approval of March 25, 2021 Meeting Minutes (Attached to Agenda)
5. Update, Discussion and Possible Action regarding adding a General Counsel Position to the Staffing Model (See Attached Staff Report)
6. Discussion and Possible Action regarding Hiring a Temporary Worker to assist the Registration Unit with extra Customer Service and Data Entry work associated with Measure MM implementation.
7. Discussion and Possible Action regarding the modification and extension of the existing Contract with the Centre for Organization Effectiveness. (See Attached Staff Report)
8. Future agenda items
 - ➔ Comparison of 2019 and 2020 counseling service request data
 - ➔ Increasing Commissioner Stipends
9. Discussion and Possible Action to set next Committee meeting
10. Adjournment

STAFF CONTACT: Matt Brown, Acting Executive Director (510) 981-7368

COMMITTEE: James Chang, John Selawsky (Chair), Leah Simon-Weisberg, Dominique Walker



Rent Stabilization Board

RENT STABILIZATION BOARD
BUDGET & PERSONNEL COMMITTEE MEETING

Tuesday, April 27, 2021

8:30 a.m.

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

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Rent Stabilization Board

RENT STABILIZATION BOARD
BUDGET & PERSONNEL COMMITTEE MEETING

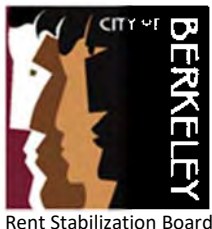
Tuesday, April 27, 2021 – 8:30 a.m.

AGENDA

1. Roll Call
2. Approval of Agenda
3. Public Comment
4. Update, Discussion and Possible Action on Measure MM Fee Requirements for Rental Units in Various Affordable Housing Projects (See Attached Staff Report)
5. Future agenda items
 - ➔ Comparison of 2019 and 2020 counseling service request data
 - ➔ Increasing Commissioner Stipends
6. Discussion and Possible Action to set next Committee meeting
7. Adjournment

STAFF CONTACT: Matt Brown, Acting Executive Director (510) 981-7368

COMMITTEE: James Chang, John Selawsky (Chair), Leah Simon-Weisberg, Dominique Walker



**RENT STABILIZATION BOARD
OUTREACH COMMITTEE MEETING**

Wednesday, April 21, 2021

5:30 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 Rent Stabilization Board's **Outreach Committee** (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/97533782971?pwd=cDcwbi90eVJLNGZ0WGJocFNHT0lmUT09>. 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, enter Webinar ID: 975 3378 2971 and Passcode: 078297. 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 mLaw@cityofberkeley.info with the Subject line in this format: "PUBLIC COMMENT ITEM FOR OUTREACH 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 3:30 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 other 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, at (510) 981-7368 (981-RENT). The Committee may take action related to any subject listed on the Agenda.



Rent Stabilization Board

**RENT STABILIZATION BOARD
OUTREACH COMMITTEE MEETING**

Wednesday, April 21, 2021 – 5:30 p.m.

AGENDA

1. Roll call
2. Approval of the Agenda
3. Approval of the Minutes of the March 24, 2021 Meeting
4. Public Comment
5. Survey 2021 – Discussion of Tenant Survey with Dr. Stephen Barton (45 minutes)

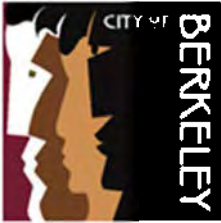
2009 Tenant Survey, Dr. Stephen Barton

[https://www.cityofberkeley.info/uploadedFiles/Rent Stabilization Board/Level 3 - General/Final%20Report%202009%20Tenant%20Survey.pdf](https://www.cityofberkeley.info/uploadedFiles/Rent%20Stabilization%20Board/Level%203%20General/Final%20Report%202009%20Tenant%20Survey.pdf)

6. Social Media Update: RSB Policy (attached). Discussion (15 minutes)
7. Staff Report: Recent and Upcoming Webinars, Workshops (10 minutes)
8. Schedule Next Meeting Date
9. Future Agenda Items
10. Adjournment

STAFF CONTACT: Moni T. Law, Housing Counselor (510) 981-4906, Ext. 704

COMMITTEE: James Chang, Andy Kelley, Paola Laverde (Chair), Mari Mendonca



4x4 Committee on Housing
City Council and Rent Board

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

Tuesday, May 4, 2021 – 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/91398011329?pwd=RUVqclpMUmd0bzFIS3lQY3c0ZkNDUT09> . 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: 913 9801 1329 and Passcode: 857447. 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

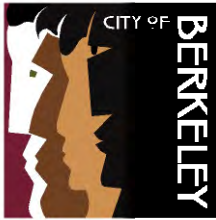
Tuesday, May 4, 2021 – 3:00 p.m.

1. Roll Call
2. Approval of the Agenda
3. Public Comment on Non-Agenda Matters
4. Approval of March 10, 2021 Committee Meeting Minutes
5. Update on Amendments to Short Term Rental Ordinance (Planning Department)
6. Discuss Adoption of an Affordable Housing Overlay to allow for 100% Affordable Housing Developments (CM Taplin)
7. Discuss Possibility of Passing Rental Forgiveness for the Time Period During the Pandemic (RBC Johnson)
8. Discuss SB 1079 Purchases (Ian Winters from Northern California Community Land Trust and Jocelyn Foreman)
9. Quick Updates on Previously Discussed Items
 - a. Amendments to the Demolition Ordinance (Mayor Arreguín)
 - b. Amendments to the Relocation Ordinance (Mayor Arreguín)
10. Discussion of Possible Future Agenda Items
11. 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, March 10, 2021 – 3:00 p.m.

Minutes To Be Approved

1. Roll Call: RB Chair Simon-Weisberg called the meeting to order at 3:03 p.m.
Present: RBC Alpert, Mayor Arreguín, CM Harrison (logged off at 4:14 p.m.), RBC Johnson, RBC Kelley, CM Robinson, RB Chair Simon-Weisberg.
Absent: CM Taplin.
Staff present: Diego Aguilar-Canabal, Matt Brown, Lief Bursell, Stefan Elgstrand, J.T. Harechmak, Ola Ojigbo, Matthew Siegel, Be Tran.
2. Approval of the Agenda: M/S/C (Robinson/Harrison) Approve the agenda with the following change: continue item 7 to the next meeting. Roll call vote. YES: Alpert, Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Taplin. Carried: 7-0-0-1.
3. Public Comment on Non-Agenda Matters: There were no speakers.
4. Approval of February 24, 2021 Committee Meeting Minutes: M/S/C (Robinson/Alpert) 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.
5. Update on Amendments to Short Term Rental Ordinance (CM Harrison):

The committee had an extensive discussion about how to deal with Airbnb listings that are for 14 days or more and thus do not trigger the requirement for a zoning certificate for short-term rentals, but for 30 days or less triggering payment of the transient occupancy tax.

There were no public speakers.

M/S/C (Harrison/Alpert) Motion to recommend that: (1) The City Council direct the City Manager to contact hosts that are renting units they own for more than 14 days and thus operating as a hotel, in zoning districts where a hotel is not a permitted use, to cease and desist; (2) the City Council refer to the City Manager to negotiate a requirement that Airbnb list the zoning certificate for properties that are renting; and (3) The City Council refer as a short-term referral to the City Manager to submit the list of hosts renting short-term rentals for more than 13 days to the Rent Board and that the Rent Board inform these hosts of the requirement to register with the Rent Board under the Rent Ordinance (including Measure MM amendments thereto), as appropriate. **Friendly amendment by Mayor Arreguín (accepted)**: request that the City Council prioritize the

existing referral for statutory changes to the Short-Term Rentals Ordinance in the Planning Commission's 2021 workplan. Roll call vote. YES: Alpert, Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Taplin. Carried: 7-0-0-1.

6. Update on Amendments to Demolition Ordinance (Planning Department): CM Harrison reported on a conversation with Supervisor Peskin of San Francisco on how San Francisco is approaching SB 330. The committee had an extensive discussion on pathways for and challenges around the "replacement" of demolished rent-controlled units.

There were no public comments.

7. Affordable Housing Overlay (CM Taplin): Continued to the next meeting by a prior vote of the committee.
8. Quick Updates on Previously Discussed Items: None.
9. Discussion of Possible Future Agenda Items: None.
10. Adjournment: M/S/C (Alpert/Robinson) Motion to adjourn. Roll call vote. YES: Alpert, Arreguín, Johnson, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Harrison, Taplin. Carried: 6-0-0-2.

The meeting adjourned at 4:19 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



Office of the City Manager

January 27, 2021

To: Honorable Mayor and Members of the City Council

From: *Dee* Dee Williams-Ridley, City Manager

Re: Referral Response: Short-Term Rentals Update and Outreach

City staff continue to improve upon a short-term rental program that, based on Council direction, allows residents to register and rent appropriate units and prevents properties from being rented improperly. This memorandum updates the City Council on the status of the short-term rentals (STR) program, and responds to a referral adopted by City Council on July 28, 2020.¹ Staff last updated the Council about this program at a work session on October 22, 2019.²

Registration

Any Berkeley resident who rents accommodations to guests for 13 or fewer nights in their home or accessory building is required to register their STR with the City. Since September 2017, the City has accepted 590 STR applications. Of those, 448 were approved, 88 were denied, 4 were disqualified due to a previous no-fault eviction, and 50 were closed for lack of response for more information and referred for code enforcement follow up. Not all of those that have been approved are still actively listing.

The City sent initial welcome letters to all active hosts in 2017, informing them of the rules of the STR program. The City continues to send new welcome letters on a regular basis as new hosts are identified, encouraging them to register their STR and informing them of the program rules.

In order to operate, an STR host must register with the City and be granted a Zoning Certificate (ZC-STR). The City created a dedicated online portal for STR hosts to register their units. Every ZC-STR application is reviewed by staff from Land Use Planning and the Rent Stabilization Board (RSB). Land Use Planning staff reviews for requirements such as landlord approval, whether the unit is a qualifying ADU or

¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-28_Supp_2_Item_42_Rev_Harrison.aspx

² https://www.cityofberkeley.info/Clerk/City_Council/2019/10_Oct/Documents/10-22_Special_Annotated_Agenda_pdf.aspx

restricted BMR unit, location to ensure it is in a qualifying zoning district, and evidence of proper neighbor notification. If there is more than one unit on the parcel, staff checks for owner/tenant occupancy. RSB staff review the application for no-fault eviction status and owner/tenant occupancy

Enforcement

The City's STR enforcement strategy is to issue communications to educate the host about local regulations and encourage compliance, and then to issue citations if the host does not come into compliance in a reasonable amount of time. Staff in the Planning Department and Finance Department have coordinated efforts since the initial program roll-out in late 2017, including the establishment of simple website pages for registering and paying taxes.

Since the last report in September 2019, the Planning Department has continued to utilize a third-party service called Host Compliance to identify non-compliant hosts that are advertising STR listings in Berkeley. Once a non-compliant host is identified, staff contacts them through a series of letters and phone calls. To date staff have issued 819 requests to register, 247 administrative citation warnings, and 104 administrative citations. Initial enforcement activities were focused on apartment buildings with multiple listings. Based on available data, all known listings have received compliance letters. Staff also investigate and address complaints about hosts with noisy guests and other nuisances through direct contact and warnings, as well as citations when warranted.

At the end of September 2020 there were 1,482 advertised listings for short-term rentals in Berkeley. Of those, 759 hosts (51%) were taking reservations while 723 (49%) were not actively taking reservations for the past 12 months. Of the 759 active listings, 514 hosts (68%) meet the current STR definition in Berkeley (13 nights or fewer). The other 245 listings (32%) accept reservations for more than 13 days, and therefore fall outside the current STR definition and do not require a City-issued Zoning Certificate.

Of the 514 active listings which meet the City's STR definition, 277 (54%) have an approved Zoning Certificate, while 237 (46%) operate illegally without a Zoning Certificate. The short-term rental marketplace has a pattern of fluidity, which in turn requires continuous monitoring. Enforcement letters are sent out to hosts regularly according to the available data, and staff issues escalating fines to hosts that do not either remove the listing or obtain a permit.

A recent enforcement letter was mistakenly sent to hosts who had already registered and been approved by the City, due to zoning certificate numbers not having been listed on each hosting page. After the letters were mailed, staff discovered that Airbnb blocks hosts from posting their zoning certificate number. On October 3, 2020 staff mailed a new letter apologizing for the mistake and stopping all enforcement against the

incorrectly identified hosts. Going forward, additional testing will be conducted on the screening criteria to verify non-compliance before conducting a broad enforcement action.

Outreach and Education Activities

Information for the general public is located on the City website including a summary page, a frequently asked questions page, and a registration page.³ Planning Department staff primarily receives and responds to inquiries about the STR program via a dedicated email address, STR@cityofberkeley.info, through the 3-1-1 customer service line, and through the third-party vendor.

On July 28, 2020, City Council referred to the City Manager the development of an outreach program to clarify existing short term rental regulations in areas that have proven confusing to hosts, guests, and tenants. Planning Department staff will work with the Public Information Officer in 2021 to further publicize STR regulations, explain the rules of the STR program, show hosts how to register, and emphasize how regulating the STR market is supportive of neighborhoods. Staff will also meet with community groups such as the Berkeley Property Owner's Association.

Revenue

The table below provides a summary of STR revenues in the first two fiscal years of operation.

Short-Term Rental Revenues Summary

Description	FY 2019	FY 2020	Difference	% change
Transient Occupancy Tax	\$1,806,679	\$1,175,706	\$(630,973)	-35%
Code Enforcement Fees	\$24,317	\$102,684	\$78,367	322%
Total Revenue	\$1,830,996	\$1,278,390	\$(552,606)	-30%

The STR-Transient Occupancy Tax (TOT) revenues for FY 2020 declined by approximately 35%. The decrease in the FY2020 tax revenue is attributable to a substantial decline in STR bookings due to the Governor's shelter in place order in March of 2020. The first quarter results of FY2021 for the STR revenues showed a steeper decline of over 80% when compared to the first quarter of FY 2020. Staff will be reviewing and analyzing the revenues from this tax in the next few weeks after the

³ <https://www.cityofberkeley.info/str/> ; https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Short_Term_Rentals_-_Frequently_Asked_Questions.aspx

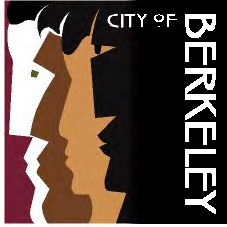
Page 4

January 27, 2021

Re: Referral Response: Short Term Rentals Update and Outreach

December month-end close. The close of December will indicate the actual receipts for the first six months of the current fiscal year and will help to determine if there is any discernable trend that can be used for future projections.

cc: Paul Buddenhagen, Deputy City Manager
David White, Deputy City Manager
Jenny Wong, City Auditor
Mark Numainville, City Clerk
Matthai Chakko, Assistant to the City Manager
Jordan Klein, Interim Director, Planning and Development Department
Henry Oyekanmi, Director, Department of Finance
Savita Chaudhary, Director, Department of Information Technology



Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: July 28, 2020

Item Number: 42

Item Description: **Short Term Referral to the City Manager to Clarify and Communicate Existing Regulations and Referral of New Regulations on Short Term Rentals to the Land Use, Housing and Economic Development Committee and Planning Commission**

Submitted by: Councilmember Harrison

Revisions

1. Adds a short-term referral to the City Manager to clarify existing materials communicating regulations related to short-term rentals.
2. Refers clarifying language and new provisions concerning host platform liability and penalties to the Planning Commission as well as the Land Use, Housing, and Economic Development Committee
3. Renumbers and restructures the memo for clarity.
4. Moves item from the Action to the Consent Calendar.



Kate Harrison
Councilmember District 4

CONSENT CALENDAR

July 28, 2020

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To: Honorable Mayor and Members of the City Council
From: Councilmember Kate Harrison
Subject: Referral to the City Manager to Clarify and Communicate Existing Regulations concerning Short Term Rentals and Referral of Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals to the Land Use, Housing, and Economic Development Committee and the Planning Commission.

RECOMMENDATION

1. Refer to the City Manager to come up with a program to clarify existing short term rental regulations in areas that have proven confusing to hosts, guests and tenants.
2. Refer ordinance considering Short Term Rental regulations including host platform responsibilities and possible remedies for violating the ordinance simultaneously to the Land Use, Housing and Economic Development Committee and the Planning Commission.

BACKGROUND

Berkeley has had regulations on short term rentals (STRs) since 2017, allowing STRs in most residential and commercial zones, as long as the host pays the transient occupancy tax and the unit being rented fits particular criteria (no Below Market Rate unit may be a short term rental, no unit may be a short term rental if it has had a No Fault Eviction in the past five years, etc.).

The referral to the City Manager's office is to address, clarify, and communicate three areas that are already supported by existing regulations but where irregularities in practice still exist and complaints have been received from Berkeley residents. We are also proposing clarifications to the code in the attached ordinance to insure clarity of intent in these provisions; Zoning Code amendments must be considered by the Planning Commission. City enforcement of these already existing provisions will be aided by clarifying the language to hosts and in statute. They are:

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1. Hosts can have only one residence

Individual people have the right to rent out their homes on a short-term basis, but in a housing crisis, it is in the best interest of the City to ensure that no one has extra units for STRs when they could house someone long term instead. To that end, we ask that the City Manager create a mechanism to clarify that a host that lives in a multi-unit building may only rent the particular unit (which may include accessory buildings or ADUs) in which they reside. Suggested clarifying language in Section 23C.22.030.F and 23C.22.030.I (pages 2-3) would ensure this is definitively understood.

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2. Short term rentals limited to single ADUs, single Accessory Buildings or Golden Duplexes not rented for the past ten years

The current ordinance limits use of Accessory Buildings or Accessory Dwelling Units to those that have not been rented for ten years. Additional information from the City Manager's Office clarifying that properties with more than one Accessory Building or ADU, cannot use non-owner occupied units as a short-term rental, consistent with state law that went into effect on January 1, 2020 is needed and, if necessary, Section 23C.22.020.D (page 1) of the Planning Zoning Code should be amended. Short term rentals are not allowed in non-owner occupied rental units in duplexes, and are limited to the unit in which the Host actually resides, but this provision is not clearly understood and enforcement needs to be expanded. We ask that clarifying information be provided by the City Manager. The proposed ordinance change would provide that unpermitted use of these units would be investigated by the Rent Stabilization Board under Section 23C.22.060.I (page 7).

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3. Closing the 14 to 30 day loophole

Under the Rent Stabilization Ordinance, any rental of 14 consecutive days or longer is considered a tenancy and not a short-term rental. However, hosts are not required to inform the City of the number of days per short term rental and and there are instances of regularly renting a unit for a period of time between 14 days and 30 days, thus circumventing standard regulations. 23C.22.030.N (page 3) and 23C.22.040 (page 4) would clarify existing regulations by expressly disallowing rentals between 14 and 30 days, and stating that no Zoning Certificate or advertisement for a short-term rental may be permitted for rentals longer than 14 days.

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The proposed ordinance would also include two changes not included in current law or regulations. These changes would be referred to the Land Use, Housing, and Economic Development Committee and the Planning Commission:

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Regulatory burden shared by the Host Platform

Proposals for regulating the host platform would consolidate regulation and ensure that the transient occupancy tax owned to the City gets paid. Recommended changes to 23C.22.050.H and I (page 5 of the Attachment) state that if a hosting platform is utilized to book a short term rental,

both it and the individual host are legally responsible and are jointly liable for remitting the transient occupancy tax. Proposed, section 23C.22.050.I (pages 5-6 of the Attachment) also outlines new duties of the hosting platform, including regular disclosure of short-term rental listings in the City as well as their address, length of stay, and listed prices. In addition, the hosting platform is responsible for ensuring that all short-term rentals are appropriately licensed with a Zoning Certificate and adds the requirements that STRs must list the Zoning Certificate on any STR advertisements. The new regulations would also include a safe harbor clause, making clear that hosting platforms that disclose listings, regularly remit the transient occupancy tax, and ensure the listing has a Zoning Certificate will be presumed to be in compliance with the chapter.

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Remedies

New proposed language under 23C.22.060E and 23C.22.060.J (page 7) would clarify that in the case of a private right of action the prevailing party is entitled to recover reasonable costs and attorney's fees, thus making private right of action more financially feasible. The new language would also give the City the right to issue administrative subpoenas to determine whether short-term rentals are in compliance with the chapter. Both of these suggested revisions are intended to encourage enforcement and compliance.

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Suggested changes in the ordinance would also clarify the definitions of the terms Accessory Building, Accessory Dwelling Unit, Hosting Platform, the Transient Occupancy Tax, and Golden Duplex and make other clarifying language changes.

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CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

ATTACHMENTS

1. Proposed Ordinance

Chapter 23C.22 Short-Term Rentals

23C.22.010 Purposes

The purposes of the Short-Term Rentals related regulations contained in this Chapter are:

- A. To prevent long-term rental units from being replaced with Short-Term Rentals and protect affordable housing units from conversion.
- B. To preserve and protect neighborhood character and livability from nuisances that are often associated with Short-Term Rentals.
- C. To generate City revenue to share City infrastructure cost and other public expenditures by operation of Short-Term Rentals under established standards.
- D. To provide alternative forms of lodging. (Ord. 7521-NS § 1 (part), 2017)

23C.22.020 Applicability

- A. Short-Term Rentals shall be allowed in residential uses in the following zoning districts: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-DMU, C-1, C-NS, C-SA, C-T, C-W, and MU-R.
- B. Short-Term Rentals shall be prohibited in below market rate (BMR) units. BMR units for Short-Term Rental purposes refer to Dwelling Units whose rents are listed as a result of deed restrictions or agreements with public agencies, and whose tenants must be income-qualified.
- C. A property containing a Dwelling Unit protected by a No-Fault Eviction cannot operate Short-Term Rentals for five years from eviction unless it is a single-family home that has been vacated for purposes of Owner Occupancy in compliance with the Rent Stabilization Ordinance.
- D. Short-Term Rentals are only allowed in a single Accessory Building and in single existing Accessory Dwelling Units (ADUs), or a Golden Duplex unless such ADUs are or have within the last 10 (ten) years preceding the effective date of this ordinance been used for long term rentals, as defined by the requirements of the Rent Stabilization Ordinance. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date this Ordinance first became effective. (Ord. 7521-NS § 1 (part), 2017)

23C.22.030 Definitions

The definitions set forth in this Section shall govern the meaning of the following terms as used in this Chapter:

A. Accessory Building: A detached building containing habitable space, excluding a kitchen, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.

B. Accessory Dwelling Unit: A secondary dwelling unit that is located on a lot which is occupied by one legally established Single-Family Dwelling that conforms to the standards of Section 23C.24. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements and provide the following features independent of the Single-Family Dwelling: 1) exterior access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes an efficiency unit and a manufactured home, as defined in the Health and Safety Code.

C. "Adjacent Properties" mean the Dwelling Units abutting and confronting, as well as above and below, a Dwelling Unit within which a Short-Term Rental is located.

D. "Dwelling Unit" means a building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household.

E. "Golden Duplex" means an owner-occupied duplex that is exempt from rent control and eviction protection, so long as it was occupied by the owner on December 31, 1979 and is currently occupied by the owner.

F. "Host" means any Owner and is used interchangeably in this Title with Owner Host. An Owner Host is a person who is the owner of record of residential real property, as documented by a deed or other such evidence of ownership, who offers his or her Host Residence, or a portion thereof, as a Short-Term Rental. For purposes of offering a Short-Term Rental, an Owner Host may not have more than one "Host Residence" in the City of Berkeley, excluding an Accessory Building or an Accessory Dwelling Unit on the same residential real property. A Tenant Host is a lessee of residential real property, as documented by a lease or other such evidence, who offers their Host Residence, or portion thereof, as a Short-Term Rental.

G. "Host Present" or "Host Presence" means the Host is living in the Host Residence during the Short-Term Rental period. In the case of a parcel comprised of a Single Family Dwelling and one or more authorized Accessory Dwelling Units and/or Accessory Buildings, the Host is considered Present if he or she is present in any Dwelling Unit on such property during the Short Term Rental period.

H. "Hosting Platform" means a business or person that provides a marketplace through which an Owner Host may offer a Dwelling Unit for Short-Term Rentals. A Hosting Platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a Dwelling Unit to be advertised through a website provided by the Hosting Platform and provides a means for potential Short-Term Rental Transients to arrange and pay for Short-Term Rentals, and from which operator of the Hosting Platform derives revenue, including booking fees or advertising revenues, from providing or maintaining the marketplace.

L. "Host Residence" means a Host's principal place of residence as defined by whether the Host carries on basic living activities at the place of residence, and whether the place of residence is the Host's usual place of return. Motor vehicle registration, driver's license, voter registration or other evidence as may be required by the City shall be indicia of principal residency. A Host may have only one place of principal residency in the City, and if that principal place of residency contains more than one dwelling unit, the principal place of residency shall be only one such dwelling unit.

J. "Host Responsibilities" means the requirements that a "Host" is obligated to comply with as set forth in this Ordinance.

K. "Local Contact" means a person designated by the Host who shall be available during the term of any Short-Term Rental for the purpose of (i) responding within sixty minutes to complaints regarding the condition or operation of the Dwelling Unit or portion thereof used for Short-Term Rental, or the conduct of Short-Term Rental Transients; and (ii) taking appropriate remedial action on behalf of the Host, up to and including termination of the Short Term Rental, if allowed by and pursuant to the Short Term Rental agreement, to resolve such complaints.

L. "No Fault Eviction" means an eviction pursuant to the Ellis Act or Sections 13.76.130.A.9 or 10 of the Berkeley Municipal Code.

M. "Short-Term Rental" or "STR" means the use of any Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portions thereof for dwelling, sleeping or lodging purposes by Short-Term Rental Transients. Short-Term Rental shall be an accessory use to a residential use and be considered neither a Tourist Hotel nor a Residential Hotel for purposes of this Title.

N. Short Term Rentals are allowed for 14 or fewer consecutive days. Any rental for more than 14 consecutive days is not permitted as a Short Term Rental, and any rental for more than 14 consecutive days and less than 30 consecutive days is not permitted in the City of Berkeley.

O. "Short-Term Rental Transient" or "STR Transient" means any person who rents a Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portion thereof, for 14 or fewer consecutive days.

P. "Transient Occupancy Tax" or "TOT" means local transient tax as set forth in Berkeley Municipal Code Section 7.36. The tax is paid by the Short-Term Rental Transient at the time payment is made for the Short-Term Rental. The TOT is then remitted to the City.

23C.22.040 Permit And License Required

Short Term Rentals are permitted only in the Host Residence. A Zoning Certificate and a Business License for a Short-Term Rental shall be required for each Host to operate a Short-Term Rental. A Host must provide the Uniform Resource Locator (URL) — specifically, the website address — for any and all advertisements for the STR, if applicable, on the Zoning Certificate application.

No Zoning Certificate may be issued to allow for a Short-Term Rental of more than 14 consecutive days, and no advertisement for a Short Term Rental of more than 14 consecutive days is allowed.

23C.22.050 Operating Standards and Requirements

A Short-Term Rental is allowed only if it conforms to each of the operating standards and requirements set forth in this Section, and the Host complies with all Host Responsibilities set forth in this Ordinance.

A. Proof of Host Residency.

1. An Owner-Host of a Short-Term Rental must provide documentation of Owner Host and Host Residence status and, if applicable, Host Presence, as defined above.

2. A Tenant-Host must provide documentation of lessee status, Host Residence and Host Presence, if applicable, as defined in subdivisions C, E, and B of Section 23C.22.030. In addition, a Tenant-Host must present written authorization allowing for a Short-Term Rental in the Host Residence from the building owner or authorized agent of the owner.

B. STR Duration and Required Residency Timeframes

1. When the Host is Present, the unit, or a portion thereof, may be rented as a Short-Term Rental for an unlimited number of days during the calendar year.

2. When the Host is not Present, the number of days that the unit can be used for Short-Term Rental purposes shall be limited to 90 days per calendar year.

C. Number of Occupants. The maximum number of Short-Term Rental Transients allowed for a Short-Term Rental unit shall be as provided for in the Berkeley Housing Code (BMC Chapter [19.40](#)).

D. Notification.

(i) Initial, one-time notification of the establishment of a Short-Term Rental by [Zoning Certificate](#) and Business license, shall be provided to the residents of all Adjacent Properties. Notification shall include Host and Local Contact information. Additional notification shall be required within a week of updated Host [or Local Contact information](#).

(ii) In any advertisement for the STR, a Host must include the [Zoning Certificate number](#).

E. Enforcement Fee. For the initial enforcement period, while enforcement costs are being determined, the Host shall pay an additional enforcement fee in an amount equal to 2% of the rents charged by that Host, not to exceed the cost of the regulatory program established by this Chapter over time. Such fees may be paid by the Hosting Platform on behalf of the Host. After the initial enforcement period, the Council may revise the enforcement fee by resolution.

F. Liability Insurance. Liability insurance is required of the Host, or Hosting Platform on behalf of the Host, in the amount of at least \$1,000,000.

G. Documents Provided to STR Transients. Electronic or paper copies of the Community Noise Ordinance and Smoke-Free Multi-Unit Housing Ordinance must be provided to STR Transients upon booking and upon arrival.

H. Transient Occupancy Tax. (“TOT”). The TOT shall be collected on all Short-Term Rentals. The Host is responsible for collecting and remitting the TOT, in coordination with any Hosting Platform, if utilized, to the City. If a Hosting Platform collects payment for rentals, then both it and the Host shall have legal responsibility for collection and remittance of the TOT.

I. Housing Platform Responsibilities.

(i) Subject to applicable laws, A Hosting Platform shall disclose to the City on a regular basis each rental listing located in the City, the names of the person or persons responsible for each such listing, the address of each such listing, the length of stay for each such listing, and the price paid for each booking transaction.

(ii) A Hosting Platform shall not complete any booking transaction for any STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform receives a fee the booking transaction.

(iii) A Hosting Platform shall not collect or receive a fee for a STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform would otherwise be entitled to receive a fee for the booking transaction.

(iv) Safe Harbor: A Hosting Platform operating exclusively on the internet, which operates in compliance with subsections (i), (li) and (iii) above, shall be presumed to be in compliance with this Chapter.

I. Housing Code Compliance. Any building or portion thereof used for Short-Term Rentals shall comply with the requirements of the Berkeley Housing Code (BMC Chapter [19.40](#)).

J. Payment of Additional Taxes: The Host shall pay all City taxes and fees owed, in addition to the TOT, if applicable, in a timely manner. [100](#)

K. The Host shall be responsible for listing on any rental ad the Zoning Certificate number. The Host shall also provide both the Business License number, if required pursuant to Chapter [9.04](#), and Zoning Certificate for the STR to the City and/or a vendor hired by the City to administer this Chapter, upon request.

23C.22.060 Remedies

A. Compliance with Second-Response Ordinance. The Host shall comply with the Second Response Ordinance (BMC Chapter [13.48](#)). The Host shall be prohibited from operating Short-Term Rentals for one year upon issuance of a third violation affidavit.

B. Violation of any provision of this Chapter is punishable as set forth in Chapters [1.20](#) and [1.28](#).

C. Violation of any provision of this Chapter is hereby declared to be a public nuisance subject to abatement under Chapters [1.24](#), [1.26](#) and [23B.64](#).

D. In any enforcement action by the City, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section [38773.5](#), attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of

attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

E. Any resident of the City may bring a private action for injunctive or other relief to prevent or remedy a public nuisance as defined in this Chapter, or to prevent or remedy any other violation of this Chapter. No action may be brought under this subdivision unless and until the prospective plaintiff has given the City and the prospective defendant(s) at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings within that period, or after initiation, has failed to diligently prosecute. The prevailing party in any such action shall be entitled to recover reasonable costs and attorney's fees.

F. Any occurrence at a Short-Term Rental unit that constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions, constitutes a public nuisance.

G. It shall be a public nuisance for any STR Transient of a Short-Term Rental unit where an event is taking place to refuse access to, or interfere with access by, Fire Department or other City personnel responding to an emergency call or investigating a situation.

H. Notwithstanding any provision of Chapter [13.48](#) to the contrary, a public nuisance as defined in this Section shall be subject to remedies set forth in Section [23C.22.060](#). (Ord. 7521-NS § 1 (part), 2017)

I. A violation of this Chapter by a Host Owner who offers or rents a rent controlled unit, multiple ADU's, multiple Accessory Buildings, or a Golden Duplex, may be reported to the Berkeley Rent Stabilization Board for investigation by the Board. Upon report of a violation to the Rent Stabilization Board, the Board is required to provide a written report of the investigation within 30 days. Where a violation is found, the Rent Board will immediately provide the written report supporting its finding of a violation to the City Attorney's office for remedial action by the City.

J. The City may issue and serve administrative subpoenas as necessary to obtain specific information regarding Short-Term Rentals located in the City, including but not limited to, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay, to determine whether the STR and related listing complies with this Chapter. Any subpoena issued pursuant to this section shall not require the production of information sooner than 30 days

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ATTACHMENT

PROPOSED ORDINANCE CHANGES

from the date of service. A person or entity that has been served with an administrative subpoena may seek judicial review during that 30 day period.



ACTION CALENDAR
DATE: March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin, Councilmember Ben Bartlett, Councilmember Rigel Robinson (co-sponsors)

Subject: Affordable Housing Overlay

RECOMMENDATION

Refer to the City Manager and Planning Commission revisions to the zoning code and General Plan, permitting increased height and density for 100% affordable housing developments, including but not limited to:

1. Exceeding standards set forth in California Government Code Section 65915 (AB-1763) with additional local height and density incentives, including waivers and modifications similar to those vested in state density bonus law, with ministerial approval contingent on objective zoning and design criteria, for qualifying 100% affordable projects deed-restricted for Low, Very Low, Extremely Low, and Moderate Income households (exclusive of manager's unit) pursuant to AB-1763, specifying:
 - a. In R3, R4, and all C-prefixed zoning districts, a local density bonus in addition to, and duplicative of, the state density bonus under Government Code Section 65915 for up to a total of 85' for qualifying projects;
 - b. In R-1, R-1A, R-2, and R-2A zones, a local 12' height bonus for qualifying projects, waiving density limits and permitting up to 80% lot coverage;
 - c. In all qualifying transit-adjacent areas, inclusive of all parcels within one-half mile of a commuter rail station, or within 1/4 mile of an AC Transit bus route with 7-day service in Fiscal Year 2019, waiving density limits, including units per acre, floor area ratio, and up to 80% lot coverage;
 - d. Create General Plan amendments that allow for 100% affordable qualifying projects to avoid inconsistencies with General Plan densities;
 - e. Increased density for projects outside of transit proximity threshold specified in 1(c) above contingent upon additional Transportation Demand Management (TDM) policies aiming to reduce Vehicle Miles Traveled (VMT) per capita, including bike parking, paratransit and shared micro-mobility systems;
 - f. Skilled and trained workforce standards as defined by the February 18, 2021 version of SB-7 (Atkins) for qualifying projects with at least 50,000 square feet of total floor area;

2. Exempting parcels with Designated Historic Landmarks and maintaining demolition restrictions consistent with state law;
3. On parcels within high-risk wildfire zones as determined by the California Department of Forestry and Fire Protection (CalFire), ministerial approval for qualifying projects should be contingent on fire blocking design and defensible space standards certified by the Planning Department.

Council directs the Planning Commission and staff to codify an Affordable Housing Overlay for 100% affordable housing as specified above in 2021-2022 work plans in anticipation of 2023-2031 RHNA cycle. Staff and the commission should build upon the framework established in Government Code Section 65915 as well as municipal implementations of Affordable Housing Overlays in other jurisdictions.

BACKGROUND

Berkeley has made insufficient progress on meeting its state-mandated Regional Housing Need Allocation (RHNA) goals for low- and moderate-income housing in the 2014-2022 RHNA cycle. As recently as the city's 2020¹ Housing Pipeline Report, the city had only fulfilled 23% of its moderate-income RHNA goals, 21% of its RHNA goals for Very-Low Income households, and a mere 4% for Low-Income households. Berkeley's next RHNA cycle is estimated to mandate roughly 3 times as many units² as the previous cycle's total of 2,959 units across all income tiers. SB-330 by Sen. Nancy Skinner (D-Berkeley), passed in 2019, requires municipal general plans to zone adequately to meet residential capacity mandated by RHNA goals and state-certified Housing Elements.

Affordable housing will continue to be a high priority, but nonprofit affordable housing developers may face stiff competition for scarce land with market-rate developers, particularly during an anticipated period of economic recovery. In 2019, Governor Newsom signed AB-1763 by Assembly member David Chiu (D-SF), amending California Government Code 65915 to confer greater fiscal advantages for 100% affordable housing developments through state density bonus law. The bill prohibits minimum parking requirements (which Berkeley has recently removed) and grants an increase of up to 33' in permitted height, with a waiver on density restrictions for projects located within a half-mile of major transit stops.

When the 42-unit affordable housing project at Harpers Crossing opened in Berkeley, at a total project cost of \$18 million, over 700 seniors applied. Without substantial funding and square footage for affordable housing, the City of Berkeley will be increasingly challenged to create enough subsidized housing to meet increasing demand. Increased allowable density and streamlined approvals for affordable housing will also be key to meeting Berkeley's RHNA goals for low- and moderate-income housing.

¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-28_Item_45_Annual_Housing_Pipeline_Report.aspx&sa=U&ved=2ahUKEwjc3tDIIntHuAhXWu54KHdyGAtAQFjABegQICRAC&usg=AOvVaw0eXQ4oP5AAL14h0lphPdr

² https://abag.ca.gov/sites/default/files/draft_rhna_allocation_presentation_to_exec_bd_jan_21.pdf

RATIONALE FOR RECOMMENDATION

As of 2019, development costs in the San Francisco Bay Area averaged \$600,000 for new housing funded by 9% Low Income Housing Tax Credits.³ At this cost, building nearly 4,000 housing units for low- and very low-income households would cost roughly \$2.5 billion, several orders of magnitude larger than the City of Berkeley's General Fund and Measure O bond funding.

Additional density bonuses and ministerial approval could reduce per-unit costs for affordable housing and increase Berkeley's capacity to meet its RHNA goals for low- and moderate-income housing. Increasing height limits allows smaller sites to fit enough homes to reach the economy of scale needed for affordable housing. According to an October 2014 report on affordable housing development by several state housing agencies, "for each 10 percent increase in the number of units, the cost per unit declines by 1.7 percent."⁴ A 2020 study by UC Berkeley's Turner Center on affordable housing projects funded by 9% Low Income Housing Tax Credits reported: "On average, efficiencies of scale translate into a reduction of about \$1,162 for every additional unit in a project."⁵

Increased density and streamlined, predictable permitting processes through ministerial review can increase the amount of affordable housing that limited public subsidies are able to provide. In San Francisco, a new affordable housing project at 833 Bryant St using modular construction qualified for ministerial review under state law and "is on pace to build homes, conservatively, about 30 percent faster and at 25 percent less cost per unit than the similar project."⁶

There is existing precedent in the state of California for meeting low-income RHNA goals with an Affordable Housing Overlay. In eastern Contra Costa County, the newly-incorporated city of Oakley established an Affordable Housing Overlay in 2005, which has yielded 7 affordable housing developments totaling 509 housing units combined as of 2019.⁷ Despite local opposition to low-income housing, the AHO enabled the city to obtain state certification for its first 2001-2007 Housing Element, procure funding from the county, and meet its low-income RHNA goals by rezoning 16.3 acres for multifamily housing.

³ Reid, C. (2020). The Costs of Affordable Housing Production: Insights from California's 9% Low-Income Housing Tax Credit Program. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC_Construction_Costs_March_2020.pdf

⁴ California Department of Housing and Community Development, et al. (2014). Affordable Housing Cost Study: Analysis of the Factors that Influence the Cost of Building Multi-Family Affordable Housing in California. Retrieved from https://www.treasurer.ca.gov/ctcac/affordable_housing.pdf

⁵ See footnote 3.

⁶ Decker, N. (2021). Strategies to Lower Cost and Speed Housing Production: A Case Study of San Francisco's 833 Bryant Street Project. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from <https://turnercenter.berkeley.edu/wp-content/uploads/2021/02/833-Bryant-February-2021.pdf>

⁷ UC Berkeley Turner Center for Housing Innovation. (2019). Affordable Housing Overlays: Oakley. Retrieved from https://turnercenter.berkeley.edu/wp-content/uploads/2020/10/Affordable_Housing_Overlay_Zones_Oakley.pdf

According to the Association of Bay Area Governments (ABAG), 28 jurisdictions in the 9-county Bay Area have some form of Housing Overlay Zone policy.⁸

According to a 2010 fact sheet by Public Advocates and East Bay Housing Organizations (EBHO), “the more valuable the developer incentives included in a Housing Overlay Zone, the more effective the HOZ will be in encouraging production of homes that people can afford. Desirable incentives both motivate developers to take advantage of the HOZ, and reduce development costs to allow construction of more affordable homes.”⁹

The City Council of Cambridge, Massachusetts passed an Affordable Housing Overlay amendment to its zoning code in October of 2020.¹⁰ The City Council of Somerville, MA passed a similar zoning ordinance in December of 2020. These zoning overlays permit greater height and density for ministerial approval 100% Below Market-Rate housing developments, following objective design criteria, in residential and commercial zones. The intent of these ordinances is to increase the availability of infill sites with an advantage for affordable housing development where nonprofit and public entities may otherwise be unable to compete in the private market, as well as promoting a more equitable distribution of affordable housing in cities where class and racial segregation still mirrors the historical legacy of redlining and Jim Crow-era racial covenants.

These ordinances preserve open space requirements and comport with restrictions on historic districts. The Somerville¹¹ and Cambridge¹² Overlays were overwhelmingly supported by nonprofit affordable housing developers and activists. The city of Boston is now considering similar proposals.¹³

Prior to introduction of the city’s Affordable Housing Overlay policy, Somerville City Councilor Ben Ewen-Campen, chair of the council’s Land Use Committee, directed city

⁸ <http://housing.abag.ca.gov/policysearch>

⁹ http://www.friendsofrpe.org/files/HOZ_Fact_Sheet_FINAL_7-27-10%282%29.pdf

¹⁰ Sennott, A. (2020). Mayor: ‘An important social justice moment.’ Councilors pass Affordable Housing Overlay after more than 20 community meetings. *WickedLocal.com*. Retrieved from <https://www.wickedlocal.com/story/cambridge-chronicle-tab/2020/10/06/an-important-social-justice-moment-cambridge-councilors-pass-affordable-housing-overlay/114657068/>

¹¹ Taliesin, J. (2020). Somerville moves to facilitate local affordable housing development. *WickedLocal.com*. Retrieved from <https://www.wickedlocal.com/story/somerville-journal/2020/11/23/residents-support-citys-move-ease-affordable-housing-development/6328944002/>

¹² Eisner, D. (2020). The Historic Affordable Housing Overlay Is about to Pass. How Did It Overcome so Many Obstacles? *A Better Cambridge*. Retrieved from <https://www.abettercambridge.org/the-historic-affordable-housing-overlay-is-about-to-pass-how-did-it-overcome-so-many-obstacles>

¹³ Logan, T. (2020). Boston to consider looser zoning for affordable housing. *The Boston Herald*. Retrieved from <https://www.bostonglobe.com/2020/08/24/business/boston-mull-looser-zoning-affordable-housing/>

staff to survey the region's affordable housing. "Overwhelmingly, we heard about two obstacles," Ewen-Campen wrote.¹⁴

First, and most obviously, is the cost of land. Today, it is nearly impossible for any non-profit housing developer to purchase property in Somerville. This is no surprise: they are competing against "market rate" developers and investors who can afford to pay far more because they'll soon be making windfall profits in our red-hot real estate market. Second, the funding agencies that support affordable housing are looking for predictability and certainty in the projects they support. This means that the uncertainty, delays, and discretionary nature of the permitting process in Somerville can be a major issue when attempting to secure funding. Together, these two obstacles mean that new affordable units in Somerville are almost always created by market rate developers through Somerville's "20% inclusionary zoning" policy, which is absolutely necessary but nowhere near sufficient to meet Somerville's goals for affordability.

Affordable housing nonprofits in California face similar fiscal and regulatory barriers to developing much-needed low- and moderate-income housing. While Berkeley does not have an abundance of vacant and/or publicly-owned land close to transit to help meet these goals, an Affordable Housing Overlay permitting more density for residential uses on commercial corridors for 100% affordable housing can tap into a larger subset of commercial parcels with residential potential in the city. According to a study by the UC Berkeley Turner Center for Housing Innovation, mid-sized cities in the San Francisco Bay Area have an average of 32.4% of land zoned for commercial uses, and this land tends to be evenly distributed between high- and low-opportunity neighborhoods as defined by the state's Tax Credit Allocation Committee.¹⁵

An overlay for 100% affordable housing with density bonuses and ministerial review are critical for ensuring that residential zoning does not exclude affordable housing for low- and moderate-income households from high-opportunity neighborhoods, a necessary precondition for the city to comply with fair housing law.

Pursuant to Assembly Bill 686 (Santiago) passed in 2018, jurisdictions are required to produce housing elements that comply with the Affirmatively Furthering Fair Housing rule published by the U.S. Department of Housing and Urban Development (HUD) on July 16, 2015. The bill defines this requirement in the context of housing elements as "taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically

¹⁴ Ewen-Campen, B. (2020). We need a city-wide 'Affordable Housing Overlay District' in Somerville. *The Somerville Times*. Retrieved from <https://www.thesomervilletimes.com/archives/103539>

¹⁵ Romem, I. & Garcia, D. (2020). Residential Redevelopment of Commercially Zoned Land in California. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from <https://turnercenter.berkeley.edu/wp-content/uploads/2020/12/Residential-Redevelopment-of-Commercially-Zoned-Land-in-California-December-2020.pdf>

concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.”¹⁶

Zoning standards that prohibit densities needed for more affordable housing in high-opportunity neighborhoods risk exacerbating gentrification and displacement. According to research by the UC Berkeley Urban Displacement Center, 83% of today’s gentrifying areas were rated “hazardous” or “declining” by the Home Owners Loan Corporation (HOLC), in part due to their Black and Asian populations, and denied federal mortgage insurance in the agency’s infamous redlining maps of the early 20th Century. “Desirable” neighborhoods with federal mortgage insurance were restricted to white homebuyers, and 75% of those neighborhoods are still measurably exclusionary today.¹⁷

The Urban Displacement Project has also reported that “subsidized housing is twice as effective as market-rate housing in mitigating displacement,” and Cash & Zuk (2019) recommend “equitable development considerations” which include “open[ing] up high-opportunity neighborhoods to low-income households.”¹⁸ Additionally, the researchers recommend local preference or right to return policies “to stabilize neighborhoods as new developments take root,” and the City of Berkeley has implemented a local preference policy as part of the Adeline Corridor Specific Plan.¹⁹

As the Home for All SMC Housing Overlay Zone fact sheet explains: “In locations where the zoning doesn’t allow residential development, HOZs can enable housing construction while avoiding the lengthy process of amending a general plan.”²⁰ This proposal only refers broad recommendations for general plan amendments to the Planning Commission to align intended outcomes of the Affordable Housing Overlay with general plan revisions that will result from the upcoming Housing Element update, but a robust Overlay can continue to promote 100% affordable housing development in future cycles when general plan amendments are not under consideration.

Additionally, an enhanced density bonus program with robust skilled and trained workforce standards can incorporate consistent labor standards²¹ into beneficial economies of scale as innovations in the construction industry such as cross-laminated timber or modular housing offer faster and cheaper construction for nonprofit affordable housing developers, so that projects with reduced construction costs still guarantee prevailing wages.

¹⁶ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB686

¹⁷ Cash, A. (2020). Redlining in Berkeley: the Past is Present. *Berkeley Rent Stabilization Board*. Retrieved from [https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/SPECIAL_Item%206_Redlining%20in%20Berkeley%20presentation_02.20.20_FINAL\(2\).pdf](https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/SPECIAL_Item%206_Redlining%20in%20Berkeley%20presentation_02.20.20_FINAL(2).pdf)

¹⁸ Cash, A & Zuk, M. (2019). Investment Without Displacement: From Slogan to Strategy. *Shelterforce*. Retrieved from <https://shelterforce.org/2019/06/21/investment-without-displacement-from-slogan-to-strategy/>

¹⁹ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Adeline%20Corridor%20Specific%20Plan%20Nov.%202020.pdf

²⁰ <https://homeforallsmc.org/toolkits/housing-overlay-zones/>

²¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB7

ALTERNATIVES CONSIDERED

Due to aforementioned state laws, there is no alternative in which the City of Berkeley does not rezone certain areas to meet its upcoming RHNA goals and have a certified Housing Element. While the city could simply abide by the standards set forth in AB-1763 with no additional incentives or streamlining for 100% affordable housing, this would risk insufficiently prioritizing low- and moderate-income housing, and is inconsistent with goals already identified by the City Manager's office to reduce homelessness and housing insecurity.

The City Manager's 1000 Person Plan to End Homelessness²² includes among its strategic recommendations:

“Continue implementing changes to Berkeley’s Land Use, Zoning, and Development Review Requirements for new housing with an eye towards alleviating homelessness. If present economic trends continue, the pace with which new housing is currently being built in Berkeley will likely not allow for a declining annual homeless population. Berkeley should continue to streamline development approval processes and reform local policies to help increase the overall supply of housing available.”

ENVIRONMENTAL IMPACTS

Research from UC Berkeley scholars and the CoolClimate Network²³ finds that urban offers one of the greatest potential policy levers for municipalities to reduce their greenhouse gas emissions. Incentives for affordable housing, such as density bonuses, also offer potential to reduce per capita VMT by increasing housing options in Berkeley and shortening commute times for a greater share of the local workforce. In an analysis of 252 California Cities, Durst (2021) finds that “each additional affordable housing incentive is associated with a 0.37 percentage point decrease in the share of workers who commute more than 30 minutes.”²⁴

An Affordable Housing Overlay coupled with the city's Local Preference policy could reduce Berkeley's transportation emissions by reducing per capita VMT pursuant to goals established in the city's Climate Action Plan.

FISCAL IMPACTS

TBD.

²² https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx

²³ Jones, C. et al. (2017). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning*, 3(2). doi:10.17645/up.v3i2.1218.

²⁴ Durst, N. J. (2021). Residential Land Use Regulation and the Spatial Mismatch between Housing and Employment Opportunities in California Cities. *Terner Center for Housing Innovation*. Retrieved from <http://californialanduse.org/download/Durst%20Residential%20Land%20Use%20Regulation%202020.pdf>

The City Manager's 1000 Person Plan to End Homelessness notes that the fiscal impact of land use reform "could not be quantified" at the time the report was issued.

CONTACT

Councilmember Terry Taplin (District 2), 510-983-7120, ttaplin@cityofberkeley.info

ATTACHMENTS/SUPPORTING MATERIALS

1. Cambridge, MA: Ordinance No. 2020-8
2. Assembly Bill 1763 (2019)

ORDINANCE NO. 2020-8 – First Publication

CITY OF CAMBRIDGE

In the Year Two Thousand and Twenty

AN ORDINANCE

ORDERED: That the attached proposed zoning ordinance establishing an Affordable Housing Overlay be submitted by the City Council, and that it be referred to the Committee on Ordinances and the Planning Board for public hearings, as provided in Chapter 40A, Section 5 of the Massachusetts General Laws, to wit:

ORDERED: That the Cambridge City Council amend Section 2.000, DEFINITIONS, of the Zoning Ordinance of the City of Cambridge amended to insert the following definitions alphabetically:

Affordable Housing Overlay (AHO). A set of modified development standards set forth in Section 11.207.3 of this Zoning Ordinance intended to allow incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning up to 100% of area median income.

Affordable Housing Overlay (AHO) Dwelling Unit. A dwelling unit within an AHO Project for which occupancy is restricted to an AHO Eligible Household and whose rent or initial sale price is established by the provisions of Section 11.207.3 of this Zoning Ordinance.

Affordable Housing Overlay (AHO) Eligible Household. A household whose gross household income does not exceed the amounts set forth in Section 11.207.3 of this Zoning Ordinance.

Affordable Housing Overlay (AHO) Project. The construction of a new building or buildings and/or the modification of an existing building or buildings resulting in single-family, two-family, townhouse, or multifamily dwellings within which each dwelling unit is an AHO Dwelling Unit subject to the standards and restrictions set forth in Section 11.207 of this Zoning Ordinance.

Grade. The mean finished ground elevation of a lot measured either around the entire perimeter of the building or along any existing wall facing a public street, which ground elevation is maintained naturally without any structural support.

Ground Story or Ground Floor. The lowest Story Above Grade within a building. Story. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

Story Above Grade. A Story whose highest point is more than 4 feet above the Grade.

Story Below Grade. Any Story that is lower than the Ground Story of a building.

ORDERED: That the Cambridge City Council amend of the Zoning Ordinance of the City of Cambridge, by inserting a new section 11.207, **AFFORDABLE HOUSING OVERLAY**, to read as follows:

11.207.1 Purpose and Intent

The purpose of this Section is to promote the public good by supporting the development of housing that is affordable to households earning up to 100% of area median income. The intent of this Section is to allow incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning up to 100% of area median income (referred to as “AHO Projects,” as defined in Article 2.000 of this Zoning Ordinance); to incentivize the reuse of existing buildings in order to create AHO Projects that are more compatible with established neighborhood character; to promote the city’s urban design objectives in Section 19.30 of this Zoning Ordinance while enabling AHO Projects to be permitted as-of-right, subject to non-binding advisory design consultation procedures that follow all design objectives set forth within this Zoning Ordinance and the results of the design review process shall be provided to the Cambridge Affordable Housing Trust; and to apply such standards throughout the City, to promote city planning goals of achieving greater socioeconomic diversity and a more equitable distribution of affordable housing citywide.

11.207.2 Applicability

- (a) The provisions set forth in this Section shall apply to AHO Projects, as defined in Article 2.000 of this Zoning Ordinance, in all zoning districts except Open Space Districts.
- (b) An AHO Project shall be permitted as-of-right if it meets all of the standards set forth in this Affordable Housing Overlay in place of the requirements otherwise applicable in the zoning district. Any development not meeting all of

the standards set forth in this Affordable Housing Overlay shall be subject to the requirements otherwise applicable in the zoning district, including any requirements for special permits.

11.207.3 Standards for Eligibility, Rent, and Initial Sale Price for AHO Dwelling Units

- (a) All dwelling units in an AHO Project shall comply with the standards for AHO Dwelling Units as set forth in this Section.
- (b) For all AHO Dwelling Units:
 - (i) AHO Dwelling Units shall be rented or sold only to AHO Eligible Households, with preference given to Cambridge residents, and former Cambridge residents who experienced a no-fault eviction in Cambridge in the last twelve (12) months, in accordance with standards and procedures related to selection, asset limits, and marketing established by the Community Development Department (CDD) and applicable state funding requirements.
 - (ii) AHO Dwelling Units shall be created and conveyed subject to recorded covenants approved by CDD guaranteeing the permanent availability of the AHO Dwelling Units for AHO Eligible Households.
- (c) For rental AHO Dwelling Units:
 - (i) The gross household income of an AHO Eligible Household upon initial occupancy shall be no more than one-hundred percent (100%) of AMI.
 - (ii) At least eighty percent (80%) of AHO Dwelling Units within the project shall be occupied by AHO Eligible Households whose gross household income upon initial occupancy is no more than eighty percent (80%) of AMI.
 - (iii) Rent, including utilities and any other fees routinely charged to tenants and approved by CDD, shall not exceed thirty percent (30%) of the gross household income of the AHO Eligible Household occupying the AHO Dwelling Unit or other similar standard pursuant to an applicable housing subsidy program which has been approved by CDD.

- (iv) After initial occupancy, the gross household income of an AHO Eligible Household shall be verified annually, or on such other basis required by an applicable housing subsidy program which has been approved by CDD, to determine continued eligibility and rent, in accordance with policies, standards, and procedures established by CDD.
 - (v) An AHO Eligible Household may continue to rent an AHO Dwelling Unit after initial occupancy even if the AHO Eligible Household's gross household income exceeds the eligibility limits set forth above, but may not exceed one hundred twenty percent (120%) of AMI for more than one year after that Eligible Household's gross household income has been verified to exceed such percentage, unless otherwise restricted pursuant to an applicable housing subsidy program which has been approved by CDD.
 - (vi) Notwithstanding the requirements set forth in (i) through (v) above, an owner may voluntarily choose to charge a lower rent than as provided herein for AHO Dwelling Units.
- (d) For owner-occupied AHO Dwelling Units:
- (i) The gross household income of an AHO Eligible Household upon initial occupancy shall be no more than one-hundred percent (100%) of AMI.
 - (ii) At least fifty percent (50%) of AHO Dwelling Units shall be sold to AHO Eligible Households whose gross household income upon initial occupancy is no more than eighty percent (80%) of AMI.
 - (iii) The initial sale price of an AHO Dwelling Unit shall be approved by CDD and shall be determined to ensure that the monthly housing payment (which shall include debt service at prevailing mortgage loan interest rates, utilities, condominium or related fees, insurance, real estate taxes, and parking fees, if any) shall not exceed thirty percent (30%) of the monthly income of:
 - 1) A household earning ninety percent (90%) of AMI, in the case of an AHO Dwelling Unit to be sold to an AHO Eligible Household whose income upon initial

occupancy is no more than one-hundred percent (100%) of AMI; or

- 2) A household earning seventy percent (70%) of AMI, in the case of an AHO Dwelling Unit to be sold to an AHO Eligible Household whose income upon initial occupancy is no more than eighty percent (80%) of AMI
- (e) An AHO Project meeting the standards set forth herein as approved by CDD shall not be required to comply with the Inclusionary Housing Requirements set forth in 11.203 of this Zoning Ordinance.

11.207.4 Use

- (a) In all zoning districts, an AHO Project may contain single-family, two-family, townhouse, or multifamily dwellings as-of-right. Townhouse and Multifamily Special Permit procedures shall not apply.
- (b) An AHO Project may contain active non-residential uses on the ground floor as they may be permitted as-of-right in the base zoning district or the overlay district(s) that are applicable to a lot, which for the purpose of this Section shall be limited to Institutional Uses listed in Section 4.33, Office Uses listed in Section 4.34 Paragraphs a. through e., and Retail and Consumer Service uses listed in Section 4.35 that provide services to the general public.

11.207.5 Development Standards

11.207.5.1 General Provisions

- (a) For the purposes of this Section, the phrase “District Development Standards” shall refer to the development standards of the base zoning district as they may be modified by the development standards of all overlay districts (with the exception of this Affordable Housing Overlay) that are applicable to a lot.
- (b) District Dimensional Standards shall include the most permissive standards allowable on a lot, whether such standards are permitted as-of-right or allowable by special permit. A District Dimensional Standard that is allowable by special permit shall include any nondiscretionary requirements or limitations that would otherwise apply.

- (c) An AHO Project that conforms to the following development standards shall not be subject to other limitations that may be set forth in Article 5.000 or other Sections of this Zoning Ordinance, except as otherwise stated in this Section.

11.207.5.2 Dimensional Standards for AHO Projects

11.207.5.2.1 Building Height and Stories Above Grade. For an AHO Project, the standards set forth below shall apply in place of any building height limitations set forth in the District Development Standards.

- (a) Where the District Dimensional Standards set forth a maximum residential building height of forty (40) feet or less, an AHO Project shall contain no more than four (4) Stories Above Grade and shall have a maximum height of forty-five (45) feet, as measured from existing Grade. For AHO Projects containing active non-residential uses on the ground floor, the maximum height may be increased to fifty (50) feet but the number of Stories Above Grade shall not exceed four (4) stories.
- (b) Where the District Dimensional Standards set forth a maximum residential building height of more than forty (40) feet but not more than fifty (50) feet, an AHO Project shall contain no more than six (6) Stories Above Grade and shall have a maximum height of sixty-five (65) feet, as measured from existing Grade, except as further limited below. For AHO Projects containing active non-residential uses on the ground floor, the maximum height may be increased to seventy (70) feet but the number of Stories Above Grade shall not exceed six (6) stories.
 - (i) Except where the AHO Project abuts a non-residential use, portions of an AHO Project that are within thirty-five (35) feet of a district whose District Dimensional Standards allow a maximum residential building height of forty (40) feet or less shall be limited by the provisions of Paragraph (a) above, except that if the AHO project parcel extends into that District, then the height limitation shall only extend thirty five (35) feet from the property line.
- (c) Where the District Dimensional Standards set forth a maximum residential building height of more than fifty (50) feet, an AHO Project shall contain no more than seven (7) Stories Above Grade and shall have a maximum height

of eighty (80) feet, as measured from existing Grade, except as further limited below.

- (i) Except where the AHO Project abuts a non-residential use, portions of an AHO Project that are within thirty-five (35) feet of a district whose District Dimensional Standards allow a maximum residential building height of forty (40) feet or less shall be reduced to a minimum of five (5) Stories Above Grade or a maximum height of sixty (60) feet, as measured from existing Grade, except that if the AHO project parcel extends into that District, then the height limitation shall only extend thirty five (35) feet from the property line.
- (d) The Height Exceptions set forth in Section 5.23 of this Zoning Ordinance shall apply when determining the building height of an AHO Project.

11.207.5.2.2 Residential Density

- (a) Where the District Dimensional Standards establish a maximum floor area ratio (FAR) of less than 1.00, an AHO Project shall not exceed an FAR of 2.00. Otherwise, there shall be no maximum FAR for an AHO Project.
- (b) There shall be no minimum lot area per dwelling unit for an AHO Project.

11.207.5.2.3 Yard Setbacks

- (a) For the purpose of this Section, the applicable District Dimensional Standards shall not include yard setback requirements based on a formula calculation as provided in Section 5.24.4 of the Zoning Ordinance, but shall include non-derived minimum yard setback requirements set forth in Article 5.000 or other Sections of this Zoning Ordinance.
- (b) Front Yards. An AHO Project shall have a minimum front yard setback of 15 feet, except where the District Dimensional Standards establish a less restrictive requirement, or may be reduced to the average of the front yard setbacks of the four (4) nearest pre-existing principal buildings that contain at least two Stories Above Grade and directly front the same side of the street as the AHO Project, or may be reduced to a minimum of ten (10) feet in the case of an AHO Project on a corner lot. Where the District Dimensional Standards set forth different requirements for residential and non-residential uses, the

non-residential front yard setback requirement shall apply to the entire AHO Project if the Ground Story contains a non-residential use as set forth in Section 11.207.4 Paragraph (b) above; otherwise, the residential front yard setback shall apply.

- (c) Side Yards. An AHO Project shall have a minimum side yard setback of seven and one-half (7.5) feet, or may be reduced to the minimum side yard setback set forth in the District Dimensional Standards for residential uses that is not derived by formula if it is less restrictive.
- (d) Rear Yards. An AHO Project shall have a minimum rear yard setback of twenty (20) feet, or may be reduced to the minimum rear yard setback set forth in the District Dimensional Standards for residential uses that is not derived by formula if it is less restrictive.
- (e) Projecting eaves, chimneys, bay windows, balconies, open fire escapes and like projections which do not project more than three and one-half (3.5) feet from the principal exterior wall plane, and unenclosed steps, unroofed porches and the like which do not project more than ten (10) feet beyond the line of the foundation wall and which are not over four (4) feet above Grade, may extend beyond the minimum yard setback.
- (f) Bicycle parking spaces, whether short-term or long-term, and appurtenant structures such as coverings, sheds, or storage lockers may be located within a required yard setback but no closer than seven and one-half (7.5) feet to an existing principal residential structure on an abutting lot.

11.207.5.2.4 Open Space

- (a) Except where the District Dimensional Standards establish a less restrictive requirement or as otherwise provided below, the minimum percentage of open space to lot area for an AHO Project shall be thirty percent (30%). However, the minimum percentage of open space to lot area may be reduced to no less than fifteen percent (15%) if the AHO Project includes the preservation and protection of an existing building included on the State Register of Historic Places.
- (b) The required open space shall be considered Private Open Space but shall be subject to the limitations set forth below and shall not be subject to the dimensional and other limitations set forth in Section 5.22 of this Zoning

Ordinance. Private Open Space shall exclude parking and driveways for automobiles.

- (c) All of the required open space that is located at grade shall meet the definition of Permeable Open Space as set forth in this Zoning Ordinance.
- (d) The required open space shall be located at Grade or on porches and decks that are no higher than the floor elevation of the lowest Story Above Grade, except that up to twenty five percent (25%) of the required open space may be located at higher levels, such as balconies and decks, only if it is accessible to all occupants of the building.
- (e) For the purpose of this Affordable Housing Overlay, area used for covered or uncovered bicycle parking spaces that are not contained within a building shall be considered Private Open Space.

11.207.5.3 Standards for Existing Buildings

A building that is in existence as of the effective date of this Ordinance and does not conform to the standards set forth in Section 11.207.5.2 above may be altered, reconstructed, extended, relocated, and/or enlarged for use as an AHO Project as-of-right in accordance with the standards set forth below. Except as otherwise stated, the required dimensional characteristics of the building and site shall be those existing at the time of the conversion to an AHO Project if they do not conform to the standards of Section 11.207.5.2. The following modifications shall be permitted as-of-right, notwithstanding the limitations set forth in Article 8.000 of this Zoning Ordinance:

- (a) Construction occurring entirely within an existing structure, including the addition of Gross Floor Area within the interior of the existing building envelope that may violate or further violate FAR limitations set forth in Section 11.207.5.2, and including any increase to the number of dwelling units within the existing building, provided that the resulting number of Stories Above Grade is not more than the greater of the existing number of Stories Above Grade or the existing height of the building divided by 10 feet.
- (b) The relocation, enlargement, or addition of windows, doors, skylights, or similar openings to the exterior of a building.

- (c) The addition of insulation to the exterior of an existing exterior wall to improve energy efficiency, provided that the resulting exterior plane of the wall shall either conform to the yard setback standards set forth in Section 11.207.5.2 above or shall not intrude more than eight (8) inches further into the existing yard setback and provided that the lot shall either conform to the open space standards set forth in Section 11.207.5.2 or shall not decrease the existing open space by more than 5% or 100 square feet, whichever is greater.
- (d) The installation of exterior features necessary for the existing structure to be adapted to meet accessibility standards for persons with disabilities, including but not limited to walkways, ramps, lifts, or elevators, which may violate or further violate of the dimensional requirements set forth in Section 11.207.5.2.
- (e) The repair, reconstruction, or replacement of any preexisting nonconforming portions of a building including but not limited to porches, decks, balconies, bay windows and building additions, provided that the repair, reconstruction or replacement does not exceed the original in footprint, volume, or area.
- (f) Any other alterations, additions, extensions, or enlargements to the existing building that are not further in violation of the dimensional requirements set forth in Section 11.207.5.2 above.

11.207.6 Parking and Bicycle Parking

The limitations set forth in Article 6.000 of this Zoning Ordinance shall be modified as set forth below for an AHO Project.

11.207.6.1 Required Off-Street Accessory Parking

- (a) There shall be no required minimum number of off-street parking spaces for an AHO Project except to the extent necessary to conform to other applicable laws, codes, or regulations.
- (b) An AHO Project of greater than 20 units, for which no off-street parking is provided shall provide or have access to either on-street or off-street facilities that can accommodate passenger pick-up and drop-off by motor vehicles and short-term loading by moving vans or small delivery trucks. The Cambridge Traffic, Parking, and Transportation Department shall certify to the Superintendent of Buildings

that the AHO Project is designed to reasonably accommodate such activity without causing significant hazard or congestion. The Cambridge Director of Traffic, Parking, and Transportation shall have the authority to promulgate regulations for the implementation of the provisions of this Paragraph.

11.207.6.2 Accessory Parking Provided Off-Site

- (a) Off-street parking facilities may be shared by multiple AHO Projects, provided that the requirements of this Section are met by all AHO Dwelling Units served by the facility and the facility is within 1,000 feet of all AHO Projects that it serves.
- (b) Off-street parking facilities for an AHO Project may be located within existing parking facilities located within 1,000 feet of the AHO Project and in a district where parking is permitted as a principal use or where the facility is a pre-existing nonconforming principal use parking facility, provided that the owner of the AHO Project shall provide evidence of fee ownership, a long-term lease agreement or renewable short-term lease agreement, recorded covenant, or comparable legal instrument to guarantee, to the reasonable satisfaction of the Superintendent of Buildings, that such facilities will be available to residents of the AHO Project.

11.207.6.3 Modifications to Design and Layout Standards for Off-Street Parking

- (a) Notwithstanding Section 6.43.2, parking spaces may be arranged in tandem without requiring a special permit, provided that no more than two cars may be parked within any tandem parking space.
- (b) Notwithstanding Section 6.43.6, owners of adjacent properties may establish common driveways under mutual easements without requiring a special permit.
- (c) Notwithstanding Paragraph 6.44.1(a), on-grade open parking spaces may be located within ten (10) feet but not less than five (5) feet from the Ground Story of a building on the same lot or seven and one-half (7.5) feet from the Ground Story of a building on an adjacent lot without requiring a special permit, provided that such parking spaces are screened from buildings on abutting lots by a fence or other dense year-round visual screen.

- (d) Notwithstanding Paragraph 6.44.1(b), on-grade open parking spaces and driveways may be located within five (5) feet of a side or rear property line without requiring a special permit, provided that screening is provided in the form of a fence or other dense year-round visual screen at the property line, unless such screening is waived by mutual written agreement of the owner of the lot and the owner of the abutting lot.

11.207.6.4 Modifications to Bicycle Parking Standards

- (a) Notwithstanding Section 6.104, long-term or short-term bicycle parking spaces may be located anywhere on the lot for an AHO Project or on an adjacent lot in common ownership or under common control.
- (b) Notwithstanding Section 6.107.5, up to 20 long-term bicycle parking spaces may be designed to meet the requirements for Short-Term Bicycle Parking Spaces, so long as they are covered from above to be protected from precipitation.
- (c) The requirement for short-term bicycle parking shall be waived where only four or fewer short-term bicycle parking spaces would otherwise be required.
- (d) The number of required bicycle parking spaces shall be reduced by half, up to a maximum reduction of 28 spaces, where a standard-size (19-dock) Public Bicycle Sharing Station is provided on the lot or by the developer of the AHO Project on a site within 500 feet of the lot, with the written approval of the City if located on a public street or other City property, or otherwise by legally enforceable mutual agreement with the owner of the land on which the station is located as approved by the Community Development Department. If additional Public Bicycle Sharing Station docks are provided, the number of required bicycle parking spaces may be further reduced at a rate of 0.5 bicycle parking space per additional Public Bicycle Sharing Station dock, up to a maximum reduction of half of the required number of spaces.
- (e) For AHO Dwelling Units created within an existing building, bicycle parking spaces meeting the standards of this Zoning Ordinance shall not be required but are encouraged to be provided to the extent practical given the limitations of the existing structure. Bicycle parking spaces shall be provided, as required by this Zoning Ordinance, for

dwelling units in an AHO Project that are constructed fully outside the envelope of the existing structure.

11.207.6.5 Transportation Demand Management

An AHO Project not providing off-street parking at a ratio of 0.4 space per dwelling unit or more shall provide, in writing, to the Community Development Department a Transportation Demand Management program containing the following measures, at a minimum:

- (a) Offering either a free annual membership in a Public Bicycle Sharing Service, at the highest available tier where applicable, or a 50% discounted MBTA combined subway and bus pass for six months or pass of equivalent value, to up to two individuals in each household upon initial occupancy of a unit.
- (b) Providing transit information in the form of transit maps and schedules to each household upon initial occupancy of a unit, or providing information and a real-time transit service screen in a convenient common area of the building such as an entryway or lobby.

11.207.7 Building and Site Design Standards for New Development

11.207.7.1 General Provisions

- (a) Except where otherwise stated, the Project Review requirements set forth in Article 19.000 of this Zoning Ordinance and any design standards set forth in Section 19.50 or elsewhere in the Zoning Ordinance shall be superseded by the following standards for an AHO Project.
- (b) The following design standards shall apply to new construction and to additions to existing structures. Except as otherwise provided, an existing building that is altered or moved to accommodate an AHO Project shall not be subject to the following standards, provided that such alterations do not create a condition that is in greater nonconformance with such standards than the existing condition.

11.207.7.2 Site Design and Arrangement

- (a) The area directly between the front lot line and the principal wall plane of the building nearest to the front lot line shall consist of any combination of landscaped area, hardscaped area accessible to pedestrians and bicyclists,

and usable spaces such as uncovered porches, patios, or balconies. Parking shall not be located within such area, except for driveway access which shall be limited to a total of thirty (30) feet of width for any individual driveway for each one hundred (100) feet of lot frontage.

- (b) Pedestrian entrances to buildings shall be visible from the street, except where the building itself is not visible from the street due to its location. All pedestrian entrances shall be accessible by way of access routes that are separated from motor vehicle access drives.
- (c) A building footprint exceeding two hundred and fifty (250) feet in length, measured parallel to the street, shall contain a massing recess extending back at least fifteen (15) feet in depth measured from and perpendicular to the front lot line and at least fifteen (15) feet in width measured parallel to the front lot line so that the maximum length of unbroken façade is one hundred fifty (150) feet.

11.207.7.3 Building Façades

- (a) At least twenty percent (20%) of the area of building façades facing a public street or public open space shall consist of clear glass windows. For buildings located in a Business A (BA), Business A-2 (BA-2), Business B (BB) or Business C (BC) zoning district, this figure shall be increased to thirty percent (30%) for non-residential portions of the building, if any.
- (b) Building façades shall incorporate architectural elements that project or recess by at least two feet from the adjacent section of the façade. Such projecting or recessed elements shall occur on an average interval of 40 linear horizontal feet or less for portions of the façade directly facing a public street, and on an average interval of 80 linear horizontal feet or less for other portions of the façade. Such projecting or recessed elements shall not be required on the lowest Story Above Grade or on the highest Story Above Grade, and shall not be required on the highest two Stories Above Grade of a building containing at least six Stories Above Grade. The intent is to incorporate elements such as bays, balconies, cornices, shading devices, or similar architectural elements that promote visual interest and residential character, and to allow variation at the ground floor and on upper floors where a different architectural treatment may be preferable.

11.207.7.4 Ground Stories and Stories Below Grade

- (a) The elevation at floor level of the Ground Story shall be at the mean Grade of the abutting public sidewalk, or above such mean Grade by not more than four feet. Active non-residential uses at the Ground Story shall be accessible directly from the sidewalk without requiring use of stairs or a lift. The requirements of this paragraph shall not apply if it is determined by the City Engineer that a higher Ground Story elevation is necessary for the purpose of flood protection.
- (b) Where structured parking is provided within the Ground Story of a building, the portion of the building immediately behind the front wall plane shall consist of residential units, common areas, or other populated portions of the building in order to screen the provided parking over at least seventy-five percent (75%) of the length of the façade measured parallel to the street and excluding portions of the façade used for driveway access. On a corner lot, the requirements of this Paragraph shall only apply along one street.
- (c) The façade of a Ground Story facing a public street shall consist of expanses no longer than twenty-five (25) feet in length, measured parallel to the street, which contain no transparent windows or pedestrian entryways.
- (d) If the Ground Story is designed to accommodate active non-residential uses, the following additional standards shall apply:
 - (i) the height of the Ground Story for that portion of the building containing active non-residential uses shall be at least fifteen (15) feet;
 - (ii) the depth of the space designed for active non-residential uses shall be at least thirty-five (35) feet on average measured from the portion of the façade that is nearest to the front lot line in a direction perpendicular to the street, and measured to at least one street in instances where the space abuts two or more streets; and
 - (iii) that portion of the Ground Story façade containing active non-residential uses shall consist of at least thirty percent (30%) transparent glass windows or, if the use is a retail or consumer service establishment, at least thirty percent (30%) transparent glass windows, across the combined façade on both streets in the case of a corner lot.

- (e) Ground Stories shall be designed to accommodate at least one space, with a total frontage equaling at least fifty percent (50%) of the existing retail frontage, for an active non-residential use, which may include retail or consumer establishments as well as social service facilities supporting the mission of the owner of the AHO Project, on sites that are located in a Business base zoning district, and where the project site contains or has contained a retail and or consumer service use at any point within the past two years prior to application for a building permit for an AHO Project.
- (f) Private living spaces within dwelling units, including bedrooms, kitchens, and bathrooms, may only be contained within Stories Above Grade. Stories Below Grade may only contain portions of dwelling units providing entries, exits, or mechanical equipment, or common facilities for residents of the building, such as lobbies, recreation rooms, laundry, storage, parking, bicycle parking, or mechanical equipment

11.207.7.5 Mechanical Equipment, Refuse Storage, and Loading Areas

- (a) All mechanical equipment, refuse storage, or loading areas serving the building or its occupants that are (1) carried above the roof, (2) located at the exterior building wall or (3) located outside the building, shall meet the requirements listed below. Mechanical equipment includes, but is not limited to, ventilation equipment including exhaust fans and ducts, air conditioning equipment, elevator bulkheads, heat exchangers, transformers and any other equipment that, when in operation, potentially creates a noise detectable off the lot. The equipment and other facilities: (a) Shall not be located within any required setback. This Paragraph (a) shall not apply to electrical equipment whose location is mandated by a recognized public utility, provided that project plans submitted for review by the City identify a preferred location for such equipment.
- (b) When on the ground, shall be permanently screened from view from adjacent public streets that are within 100 feet of the building, or from the view from abutting property in separate ownership at the property line. The screening shall consist of a dense year-round screen equal or greater in height at the time of installation than the equipment or facilities to be screened, or a fence of equal or greater

height that is comparable in quality to the materials used on the principal facades of the building, with no more than twenty-five (25) percent of the face of the fence open with adjacent planting.

- (c) When carried above the roof, shall be set back from the principal wall plane by a dimension equal to at least the height of the equipment and permanently screened from view, from the ground, from adjacent public streets and any abutting residentially used lot or lots in a residential zoning district. The screening shall be at least seventy-five percent (75%) opaque and uniformly distributed across the screening surface, or opaque to the maximum extent permissible if other applicable laws, codes, or regulations mandate greater openness.
- (d) Shall meet all city, state and federal noise regulations, as applicable, as certified by a professional acoustical engineer if the Department of Inspectional Services deems such certification necessary.
- (e) That handle trash and other waste, shall be contained within the building or screened as required in this Section until properly disposed of.

11.207.7.6 Environmental Design Standards

- (a) This Section shall not waive the Green Building Requirements set forth in Section 22.20 of this Zoning Ordinance that may otherwise apply to an AHO Project.
- (b) Where the provisions of the Flood Plain Overlay District apply to an AHO Project, the performance standards set forth in Section 20.70 of this Zoning Ordinance shall apply; however, a special permit shall not be required.
- (c) An AHO Project shall be subject to other applicable laws, regulations, codes, and ordinances pertaining to environmental standards.
- (d) New outdoor light fixtures installed in an AHO Project shall be fully shielded and directed to prevent light trespass onto adjacent residential lots.

11.207.8 Advisory Design Consultation Procedure

Prior to application for a building permit, the developer of an AHO Project shall comply with the following procedure, which is intended to provide an opportunity for non-binding community and staff input into the design of the project.

- (a) The intent of this non-binding review process is to advance the City's desired outcomes for the form and character of AHO Projects. To promote the City's goal of creating more affordable housing units, AHO Projects are permitted to have a greater height, scale, and density than other developments permitted by the zoning for a given district. This procedure is intended to promote design outcomes that are compatible with the existing neighborhood context or with the City's future planning objectives for the area.
- (b) The City's "Design Guidelines for Affordable Housing Overlay," along with other design objectives and guidelines established for the part of the city in which the AHO Project is located, are intended to inform the design of AHO Projects and to guide the Planning Board's consultation and report as set forth below. It is intended that designers of AHO Projects, City staff, the Planning Board, and the general public will be open to creative variations from any detailed provisions set forth in such objectives and guidelines as long as the core values expressed are being served.
- (c) At least two community meetings shall be scheduled at a time and location that is convenient to residents in proximity to the project site. The Community Development Department (CDD) shall be notified of the time and location of such meetings, and shall give notification to abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the lot on which the AHO Project is proposed and to any individual or organization who each year files with CDD a written request for such notification, or to any other individual or organization CDD may wish to notify.
 - (i) The purpose of the first community meeting shall be for the developer to share the site and street context analysis with neighborhood residents and other interested parties prior to building design, and receive feedback from community members.
 - (ii) The purpose of the subsequent community meeting(s) shall be to present preliminary project designs, answer questions from neighboring residents and other interested members of the public, and receive feedback on the design. The date(s), time(s), location(s), attendance, materials presented, and comments received at such

meeting(s) shall be documented and provided to CDD.

- (d) Following one or more such community meeting(s), the developer shall prepare the following materials for review by the Planning Board. CDD shall review to certify that the submitted written and graphic materials provide the required information in sufficient detail. All drawings shall be drawn to scale, shall include a graphic scale and north arrow for orientation, and shall provide labeled distances and dimensions for significant building and site features.
- (i) A context map indicating the location of the project and surrounding land uses, including transportation facilities.
 - (ii) A context analysis, discussed with CDD staff, including existing front yard setbacks, architectural character, and unique features that inform and influence the design of the AHO Project.
 - (iii) An existing conditions site plan depicting the boundaries of the lot, the locations of buildings, open space features, parking areas, trees, and other major site features on the lot and abutting lots, and the conditions of abutting streets.
 - (iv) A proposed conditions site plan depicting the same information above as modified to depict the proposed conditions, including new buildings (identifying building entrances and uses on the ground floor and possible building roof deck) and major anticipated changes in site features.
 - (v) A design statement on how the proposed project attempts to reinforce existing street/context qualities and mitigates the planned project's greater massing, height, density, &c.
 - (vi) Floor plans of all proposed new buildings and existing buildings to remain on the lot.
 - (vii) Elevations and cross-section drawings of all proposed new buildings and existing buildings to remain on the lot, depicting the distances to lot lines and the heights of surrounding buildings, and labeling the proposed materials on each façade elevation.

- (viii) A landscape plan depicting and labeling all hardscape, permeable, and vegetated areas proposed for the site along with other structures or appurtenances on the site.
 - (ix) Plans of parking and bicycle parking facilities, as required by Section 6.50 of this Zoning Ordinance.
 - (x) Materials palettes cataloguing and depicting with photographs the proposed façade and landscape materials.
 - (xi) Existing conditions photographs from various vantage points on the public sidewalk, including photos of the site and of the surrounding urban context.
 - (xii) Proposed conditions perspective renderings from a variety of vantage points on the public sidewalk, including locations adjacent to the site as well as longer views if proposed buildings will be visible from a distance.
 - (xiii) A dimensional form, in a format provided by CDD, along with any supplemental materials, summarizing the general characteristics of the project and demonstrating compliance with applicable zoning requirements.
 - (xiv) A brief project narrative describing the project and the design approach, and indicating how the project has been designed in relation to the citywide urban design objectives set forth in Section 19.30 of the Zoning Ordinance, any design guidelines that have been established for the area, and the “Design Guidelines for Affordable Housing Overlay.”
 - (xv) Viewshed analysis and shadow studies that show the impact on neighboring properties with existing Solar Energy Systems.
 - (xvi) An initial development budget that shows anticipated funding sources and uses including developer fee and overhead.
- (e) Within 65 days of receipt of a complete set of materials by CDD, the Planning Board shall schedule a design consultation as a general business matter at a public meeting and shall give notification to abutters, owners of land directly opposite on any public or private street or

way, and abutters to the abutters within three hundred feet of the property line of the lot on which the AHO Project is proposed and to any individual or organization who each year files with CDD a written request for such notification, or to any other individual or organization CDD may wish to notify. The materials shall be made available to the public in advance, and the Planning Board may receive written comments prior to the meeting from City staff, abutters, and members of the public.

- (f) At the scheduled design consultation, the Planning Board shall hear a presentation of the proposal from the developer and oral comments from the public. The Board may ask questions or seek additional information from the developer or from City staff.
- (g) The Planning Board shall evaluate the proposal for general compliance with the requirements of this Section, for consistency with City development guidelines prepared for the proposal area and the “Design Guidelines for Affordable Housing Overlay,” for appropriateness in terms of other planned or programmed public or private development activities in the vicinity, and for consistency with the Citywide Urban Design Objectives set forth in Section 19.30. The Board may also suggest specific project adjustments and alterations to further the purposes of this Ordinance. The Board shall communicate its findings in a written report provided to the developer and to CDD within 20 days of the design consultation.
- (h) The developer may then make revisions to the design, in consultation with CDD staff, and shall submit a revised set of documents along with a narrative summary of the Planning Board’s comments and changes made in response to those comments.
- (i) The Planning Board shall review and discuss the revised documents at a second design consultation meeting, which shall proceed in accordance with Paragraphs (c) and (d) above. Following the second design consultation, the Planning Board may submit a revised report and either the revised report or if there are no revisions the initial report shall become the final report (the “Final Report”). Any additional design consultations to review further revisions may occur only at the discretion and on the request of the developer or the Cambridge Affordable Housing Trust.

- (j) The Final Report from the Planning Board shall be provided to the Superintendent of Buildings to certify compliance with the procedures set forth herein.

11.207.9 Implementation of Affordable Housing Overlay

- (a) The City Manager shall have the authority to promulgate regulations for the implementation of the provisions of this Section 11.207. There shall be a sixty-day review period, including a public meeting, to receive public comments on draft regulations before final promulgation.
- (b) The Community Development Department may develop standards, design guidelines, and procedures appropriate to and consistent with the provisions of this Sections 11.207 and the above regulations.

11.207.10 Enforcement of Affordable Housing Overlay

The Community Development Department shall certify in writing to the Superintendent of Buildings that all applicable provisions of this Section have been met before issuance of any building permit for any AHO Project, and shall further certify in writing to the Superintendent of Buildings that all documents have been filed and all actions taken necessary to fulfill the requirements of this Section before the issuance of any certificate of occupancy for any such project.

11.207.11 Review of Affordable Housing Overlay

- (a) Annual Report. CDD shall provide an annual status report to the City Council, beginning eighteen (18) months after ordination and continuing every year thereafter. The report shall contain the following information:
 - (i) List of sites considered for affordable housing development under the Affordable Housing Overlay, to the extent known by CDD, including site location, actions taken to initiate an AHO Project, and site status;
 - (ii) Description of each AHO Project underway or completed, including site location, number of units, unit types (number of bedrooms), tenure, and project status; and
 - (iii) Number of residents served by AHO Projects.
- (b) Five-Year Progress Review. Five (5) years after ordination, CDD shall provide to the City Council, Planning Board and

the Affordable Housing Trust, for its review, a report that assesses the effectiveness of the Affordable Housing Overlay in increasing the number of affordable housing units in the city, distributing affordable housing across City neighborhoods, and serving the housing needs of residents. The report shall also assess the effectiveness of the Advisory Design Consultation Procedure in gathering meaningful input from community members and the Planning Board and shaping AHO Projects to be consistent with the stated Design Objectives. The report shall evaluate the success of the Affordable Housing Overlay in balancing the goal of increasing affordable housing with other City planning considerations such as urban form, neighborhood character, environment, and mobility. The report shall discuss citywide outcomes as well as site-specific outcomes.

Passed to a second reading as amended at the City Council meeting held on September 14, 2020 and on or after October 5, 2020 the question comes on passage to be ordained.

Attest:- Anthony I. Wilson
City Clerk

Assembly Bill No. 1763

CHAPTER 666

An act to amend Section 65915 of the Government Code, relating to housing.

[Approved by Governor October 9, 2019. Filed with Secretary
of State October 9, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1763, Chiu. Planning and zoning: density bonuses: affordable housing.

Existing law, known as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development within the jurisdictional boundaries of that city or county with a density bonus and other incentives or concessions for the production of lower income housing units, or for the donation of land within the development, if the developer agrees to construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents and meets other requirements. Existing law provides for the calculation of the amount of density bonus for each type of housing development that qualifies under these provisions.

This bill would additionally require a density bonus to be provided to a developer who agrees to construct a housing development in which 100% of the total units, exclusive of managers' units, are for lower income households, as defined. However, the bill would provide that a housing development that qualifies for a density bonus under its provisions may include up to 20% of the total units for moderate-income households, as defined. The bill would also require that a housing development that meets these criteria receive 4 incentives or concessions under the Density Bonus Law and, if the development is located within ½ of a major transit stop, a height increase of up to 3 additional stories or 33 feet. The bill would generally require that the housing development receive a density bonus of 80%, but would exempt the housing development from any maximum controls on density if it is located within ½ mile of a major transit stop. The bill would prohibit a housing development that receives a waiver from any maximum controls on density under these provisions from receiving a waiver or reduction of development standards pursuant to existing law, other than as expressly provided in the bill. The bill would also make various nonsubstantive changes to the Density Bonus Law.

Existing law requires that an applicant for a density bonus agree to, and that the city and county ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for a density bonus for at least 55 years, as provided. Existing law requires that the rent for

lower income density bonus units be set at an affordable rent, as defined in specified law.

This bill, for units, including both base density and density bonus units, in a housing development that qualifies for a density bonus under its provisions as described above, would instead require that the rent for at least 20% of the units in that development be set at an affordable rent, defined as described above, and that the rent for the remaining units 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.

Existing law, upon the request of the developer, prohibits a city, county, or city and county from requiring a vehicular parking ratio for a development meeting the eligibility requirements under the Density Bonus Law that exceeds specified ratios. For a development that consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in specified law, and that is a special needs housing development, as defined, existing law limits that vehicular parking ratio to 0.3 spaces per unit.

This bill would instead, upon the request of the developer, prohibit a city, county, or city and county from imposing any minimum vehicular parking requirement for a development that consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families and is either a special needs housing development or a supportive housing development, as those terms are defined.

By adding to the duties of local planning officials with respect to the award of density bonuses, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 65915 of the Government Code, as amended by Chapter 937 of the Statutes of 2018, is amended to read:

65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an

additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city and county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students. For purposes of this clause, “lower income students” means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student under this clause shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education that the student is enrolled in, as described in subclause (I), or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver, from the college or university, the California Student Aid Commission, or the federal government shall be sufficient to satisfy this subclause.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (d) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this section means one rental bed and its pro rata share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

(G) One hundred percent of the total units, exclusive of a manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total units in the development may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), (D), (E), (F), or (G) of paragraph (1).

(3) For the purposes of this section, "total units," "total dwelling units," or "total rental beds" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(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.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(D) Four incentives or concessions for projects meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. Subject to paragraph (3), an applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical

environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(3) A housing development that receives a waiver from any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall not be eligible for, and shall not receive, a waiver or reduction of development standards pursuant to this subdivision, other than as expressly provided in subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f).

(f) For the purposes of this chapter, “density bonus” means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the city, county, or city and county shall not impose any maximum controls on density.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19

25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32

28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government before the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The childcare facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the childcare facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

(4) “Childcare facility,” as used in this section, means a child daycare facility other than a family daycare home, including, but not limited to, infant centers, preschools, extended daycare facilities, and schoolage childcare centers.

(i) “Housing development,” as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, “housing development” also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, “study” does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) “Development standard” includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) “Maximum allowable residential density” means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Except as provided in paragraphs (2), (3), and (4), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of low-income or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager’s unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) Notwithstanding paragraphs (1) and (8), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, and the development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose any minimum vehicular parking requirement. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(5) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(6) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(7) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(8) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county

shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(9) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.



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www.nclt.org
nclt@nclt.org

April 21st, 2021

Dear City of Berkeley 4x4 Committee members,

Thank you for your interest in SB-1079 and the inspiring story of Jocelyn Foreman was able to exercise her rights as a tenant under SB-1079 to keep her home, despite her landlord going into fore-closure.

Jocelyn and I look forward to sharing more at the committee meeting and we have also attached info about the signing ceremony for Jocelyn's home happening Friday April 23rd. A live stream will be available and also recorded for later viewing.

Per the Committee's request I have attached background information about SB-1079 and the state-wide efforts to see its implementation fully funded that California Community Land Trust Network is leading.

Links that contain further SB-1079 resources:

- 1) SB-1079 legislative text
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1079
- 2) A KQED article about the process. We can now report that we were successful! <https://www.kqed.org/news/11868037/grandma-challenges-real-estate-giant-in-early-test-of-new-california-law>
- 3) A page from the CA CLT Network containing much background info about SB-1079 info, and statewide efforts <https://www.cacltnetwork.org/sb-1079-implementation/>

In addition, I have attached to the PDF the following background materials:

- 1) Information on the signing ceremony and celebration for Jocelyn Fri Apr 23rd at 3pm
- 2) Map of state-wide and Bay Area foreclosures in process as of April 2021. Currently over 6,000 statewide. Note this is the tip of the iceberg - due to the moratorium this is only non-traditional / non-GSE backed loans which is a fraction of the state's mortgages.
- 3) CA CLT Network's SB-1079 presentation slides (sp/eng)
- 4) Los Angeles City Council's support resolution providing support for Sen Skinner's bill.

We look forward to speaking with at the next 4x4 meeting,

Best,

Ian Winters
Northern California Land Trust



Sustainable
Economies
Law Center



Berkeley Community Leader Marshals a Movement, Saves Her Home - California's First Purchase Out of Foreclosure Under SB 1079

EVENT: Friday, April 23, 3pm, Malcolm X School, 1731 Prince Street, Berkeley, CA
CONTACT: Mwende Hinojosa mwende@theselc.org

Despite the covid-19 moratorium, there are currently 6,218 homes across the state in foreclosure, with a 4% increase over the past three months. This is a crisis which impacts all of California. But one woman, Berkeley Unified School District Family Liaison, Jocelyn Foreman, is making history as the first renter in California to purchase her home through the new state law SB 1079, passed thanks to State Rep. Nancy Skinner. Jocelyn touches the lives of thousands with her work, and now her community is lined up to support her groundbreaking effort to keep her home. When the house Jocelyn rented sold at auction last month, Wedgewood, Inc., the company synonymous with artificial housing scarcity thanks to [the organizing efforts of Moms4Housing](#), placed the winning bid of \$600,000. Jocelyn wanted to stay in her home, so after 45 days of fundraising and months of tireless organizing, she matched the winning bid, resulting in the first purchase under SB 1079.

What is SB 1079? Sen. Nancy Skinner introduced SB 1079 last year to reduce pandemic profiteering resulting from foreclosure auctions. Before the law was passed, the [Sustainable Economies Law Center](#) bolstered it by adding a 45-day hold period in which tenants, potential owner-occupants, nonprofits, cooperatives, and others can purchase the property by either matching or exceeding the auction's winning bid.

But how does a tenant find \$600,000 in 45 days? They don't. In Jocelyn's case, it was fearless leadership and close collaboration with her team [Jocelyn's Corner](#) that yielded a partnership with the [Northern California Land Trust](#). That partnership is what will allow the home to be converted to permanently affordable ownership housing. An acquisition on this tight timeline would not have been possible without the innovative support of the [National Housing Trust](#), which is providing the intermediate bridge financing.

Jocelyn's [community fundraising](#) includes nearly 1000 individual donors in an online campaign fiscally sponsored by [Berkeley Public Schools Fund](#), grants from the [Fund for an Inclusive California](#) at Common Counsel Foundation and the [Kataly Foundation](#). Fundraising efforts continue, with every dollar making the house and needed repairs more affordable for Jocelyn in the long term.

But most tenants do not have this kind of support. That is why the [California Community Land Trust Network](#) (CCLTN) stresses the need to *fund* SB 1079. CCLTN is a coalition of

more than 30 community land trusts throughout California [fighting to fully fund](#) the Home for Homeowners, Not Corporations Act with a minimum investment of **\$103.5 million** to empower land trusts and allied groups to purchase homes that are in foreclosure. All the original co-signers for SB 1079, along with several more advocacy organizations, have signed on to CCLTN's demand because they believe that **homes are for communities, not corporations**.

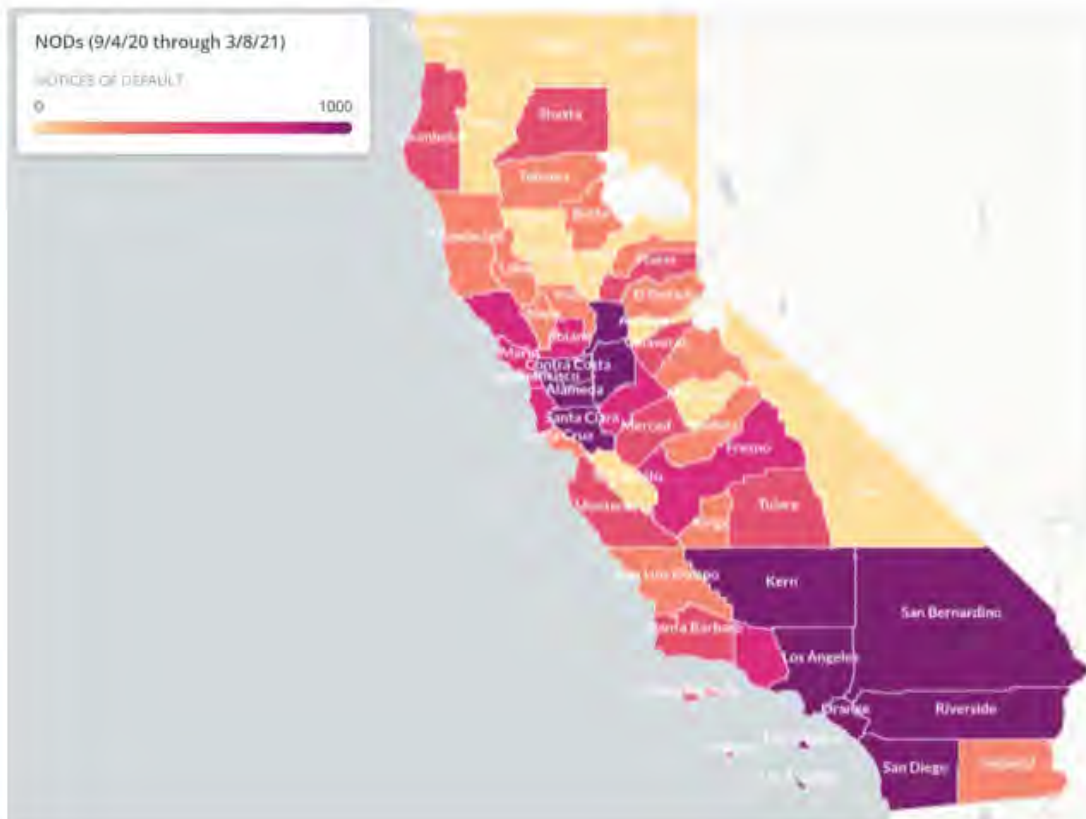
In Jocelyn's words, "This is my effort to make it stop, and not just stop for me, stop for many. How many people - how many women are single and caring for their children in situations like this and then just have to go? I'm not doing that anymore."

"This is the first step in proof of concept for SB1079's ability to prevent homelessness in the face of foreclosure. The California CLT Network has a \$103.5 million funding request with the State, which would enable families across the state to stay in their homes." **Ian Winters, California Community Land Trust Network**

"The stars have aligned for Jocelyn Foreman but not everyone can organize and mobilize this level of support while also managing an imminent and direct threat to their housing. If this law is going to serve as intended, we need SB 1079 acquisition funding. We need to transform this intention into a viable tool." **Christine Hernandez, Radical Real Estate Law School at the Sustainable Economies Law Center**

"When I introduced and passed SB 1079, my purpose was to give individual homeowners the ability to compete against corporate [purchasers]," **Nancy Skinner, State Representative**

(refer to first paragraph: a graph of the thousands of notices of default in CA during pandemic)



Legend

Notices of Default - April 14 2021

Owner Occ?

- > Notice of Default - more than 66% owner occupied
- > Notice of Default - 33% to 66% owner occupied
- > Notice of Default - less than 33% owner occupied

Number of features

- > 829
- 600
- 400
- 200
- < 2

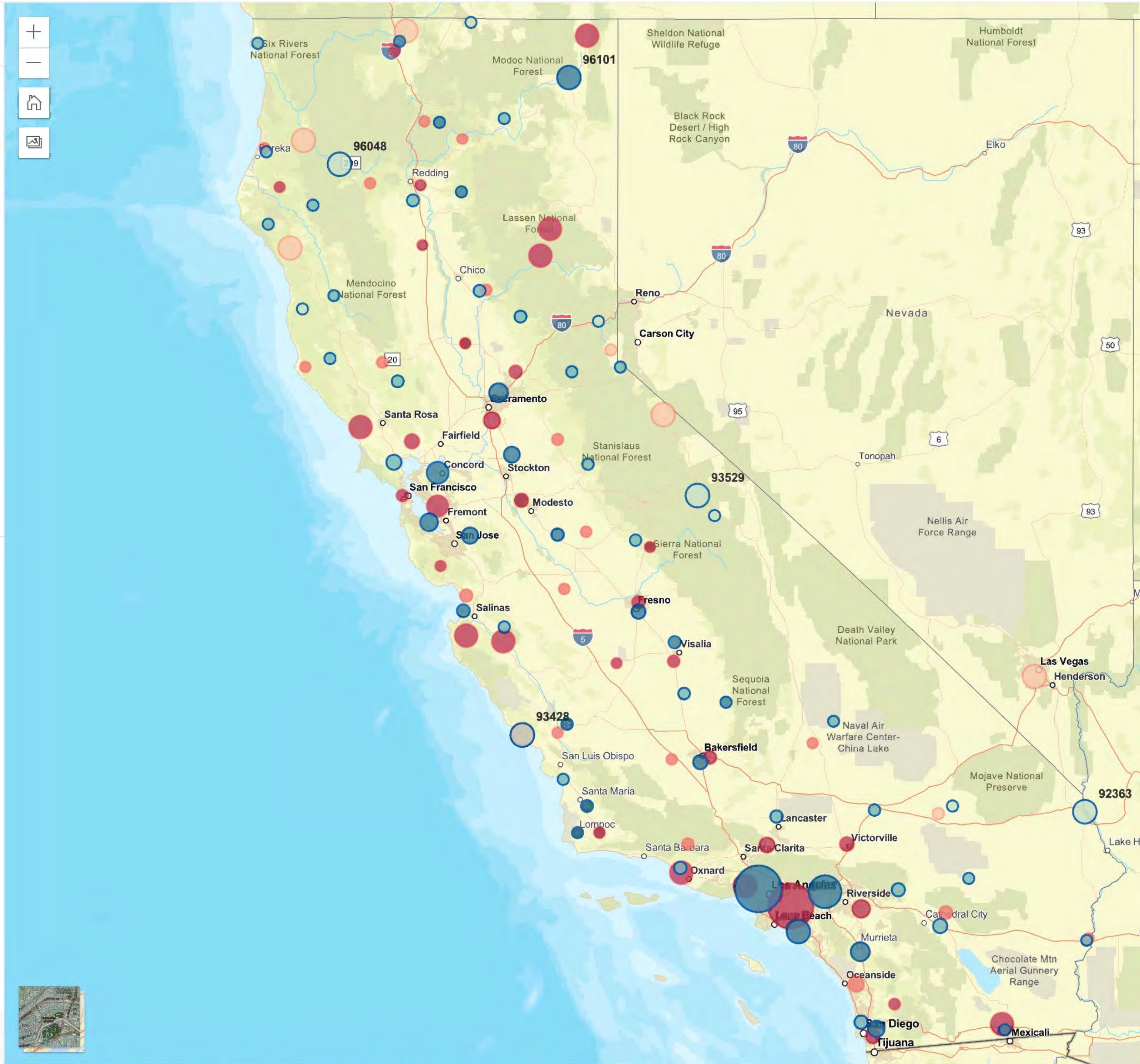
Notices of Sale - April 14, 2021

Owner Occ?

- > Notices to Sell - more than 66% owner occupied
- > Notices to Sell - 33% to 66% owner occupied
- > Notices to Sell - less than 33% owner occupied

Number of notices to sell

- > 589
- 450
- 300
- 150
- < 2



Legend

Notices of Default - April 14 2021

Owner Occ?

- > Notice of Default - more than 66% owner occupied
- > Notice of Default - 33% to 66% owner occupied
- > Notice of Default - less than 33% owner occupied

Number of features

- > 24
- 18
- 13
- 7
- < 2

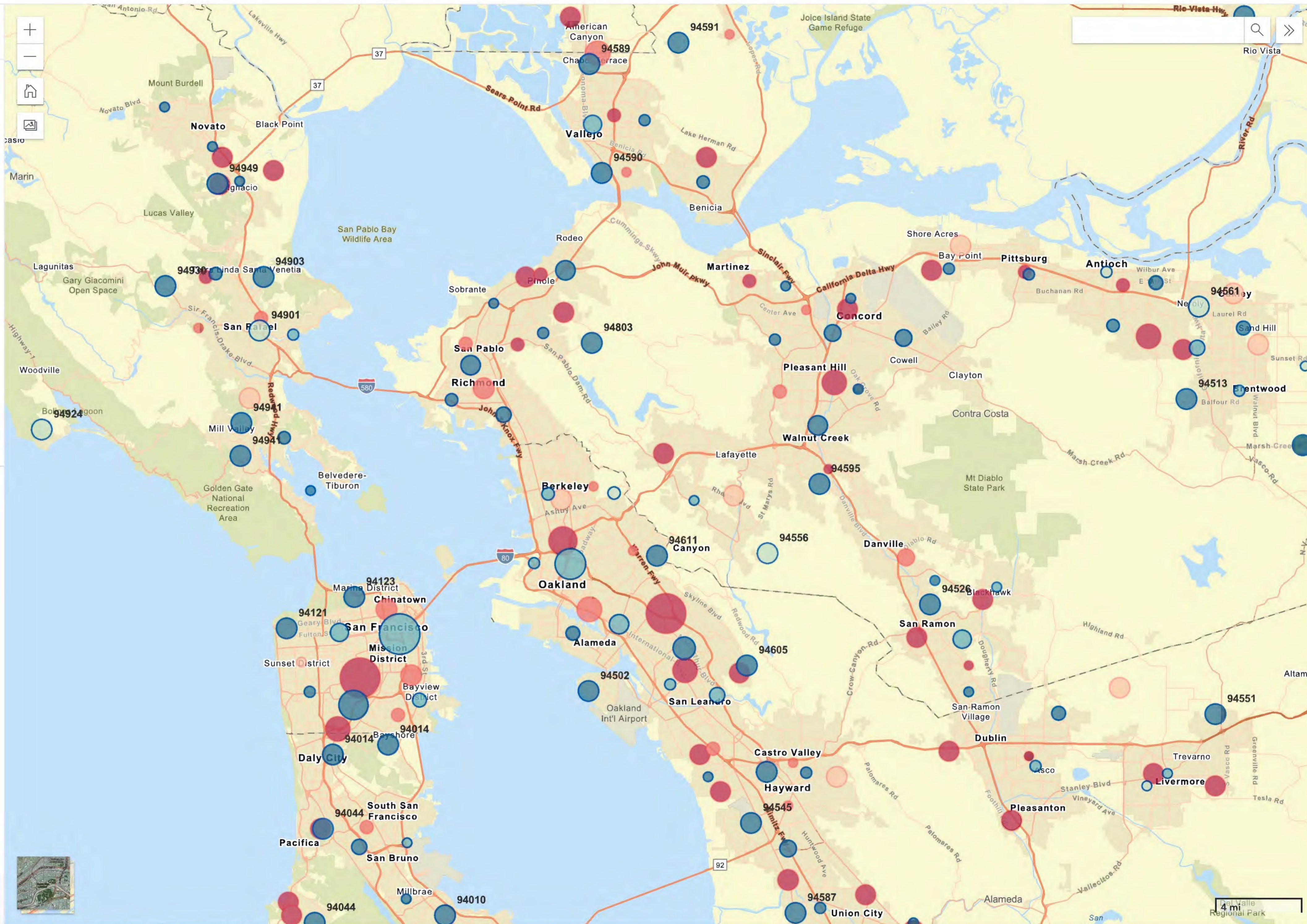
Notices of Sale - April 14, 2021

Owner Occ?

- > Notices to Sell - more than 66% owner occupied
- > Notices to Sell - 33% to 66% owner occupied
- > Notices to Sell - less than 33% owner occupied

Number of notices to sell

- > 10
- 8
- 6
- 4
- < 2



California Community Land Trust Network and funding SB 1079

How to invest now to stem the tide of the exacerbated housing
crisis due to COVID 19 - January 30th, 2021

La Red de Fideicomisos de Tierras Comunitarias de California (CA CLT) y la financiación del SB 1079

Cómo invertir ahora para frenar la crisis de la vivienda que ha empeorado debido a COVID 19 30 de enero de 2021

Joining the CACLTN in this ask are:

- *Oakland Mayor Libby Schaaf*
- *Richmond City Council Member Melvin Willis*
- *Richmond City Council Member Claudia Jimenez Gordon*
- *Former Richmond City Council Member Jael Myrick*
- *Somos Mayfair, Victor Vasquez*
- *Contra Costa Budget Justice, Dan Geiger*
- *Richmond Our Power Coalition, Katherine Ramos*
- *Ensuring Opportunities Campaign, Mariana Moore*
- *Oakland City Council Member Carroll Fife*

Se unen a esta petición del CACLTN:

- California Reinvestment Coalition, Kevin Stein*
- Safe Return Project, Challa Bonner*
- People's Land and Housing Alliance, James Huynh & Leslie*
- Richmond Community Foundation, Jim Becker*
- CD Tech, Susana Coracero*
- Eden Community Land Trust, Renee Badruzzaman*
- Inclusive Action, Rudy Espinoza*
- Sustainable Economies Law Center, Jay Cumberland*

Who are the California Community Land Trust Network?

The California Community Land Trust Network is a membership organization representing the interests of the over 30 community land trusts throughout the state of California and collectively over \$220 million of community assets. Our work is centered on the preservation of existing affordable housing, stemming the tide of displacement with a focus on the resident ownership of housing and community control of land through Community Land Trusts (CLTs).



¿Qué es la Red de Fideicomisos de Tierras Comunitarias de California (CACLTN)?

La Red de Fideicomisos de Tierras Comunitarias de California es una organización de miembros que representa los intereses de más de 30 fideicomisos de tierras comunitarias (CLTs) en todo el estado de California y colectivamente más de \$220 millones de dólares de fondos activos comunitarios. Nuestro trabajo se centra en la preservación de las viviendas asequibles existentes, frenando la gran cantidad de desplazamientos con un enfoque en la propiedad de los residentes de las viviendas y el control comunitario de la tierra a través de los Fideicomisos de Tierras Comunitarias (CLTs).



What is a Community Land Trust?

Community Land Trust has the same meaning as Revenue and Taxation Code Section 402.1 paragraph (a)(11)(C)(ii).

ii) “Community land trust” means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that satisfies all of the following:

(I) Has as its primary purposes the creation and maintenance of permanently affordable single-family or multifamily residences.

(II) All dwellings and units located on the land owned by the nonprofit corporation are sold to a qualified owner to be occupied as the qualified owner’s primary residence or rented to persons and families of low or moderate income.

(III) The land owned by the nonprofit corporation, on which a dwelling or unit sold to a qualified owner is situated, is leased by the nonprofit corporation to the qualified owner for the convenient occupation and use of that dwelling or unit for a renewable term of 99 years.

¿Qué es un Fideicomiso de Tierras Comunitarias (CLT)?

CLT = Community Land Trust

El término "Community Land Trust" tiene el mismo significado que la Sección 402.1 del Código de Ingresos e Impuestos 402.1 párrafo (a)(11)(C)(ii).

ii) Por "fideicomiso comunitario de tierras" se entiende una corporación sin fines de lucro constituida de conformidad con el artículo 501(c)(3) del Código de Impuestos Internos que cumple todos los requisitos siguientes

(I) Tiene como propósitos principales la creación y el mantenimiento de residencias unifamiliares o multifamiliares permanentemente asequibles.

(II) Todas las viviendas y unidades situadas en el terreno propiedad de la corporación sin fines de lucro se venden a un propietario calificado para que las ocupe como residencia principal o las alquile a personas y familias de ingresos bajos o moderados.

(III) El terreno propiedad de la corporación sin fines de lucro, en el cual se encuentra una vivienda o unidad vendida a un propietario calificado, es arrendado por la corporación sin fines de lucro al propietario calificado para la ocupación y uso conveniente de esa vivienda o unidad por un término renovable de 99 años.

What is a Community Land Trust?

A nonprofit organization that acquires **LAND** & stewards it in perpetual **TRUST** for the benefit of low-income **COMMUNITIES**



¿Qué es un *Community Land Trust* (CLT)?

Fideicomisos de Tierras Comunitarias (CLT, por sus siglas en inglés)

Una organización sin fines de lucro que adquiere **TERRENOS** y los administra en **FIDEICOMISO** perpetuo en beneficio de las **COMUNIDADES** de bajos ingresos.



RESIDENT CONTROL OF BUILDINGS

**SINGLE-FAMILY
HOME**



**LIMITED EQUITY
HOUSING COOPERATIVE**

[LEHC]



CONDOMINIUM



**MULTIFAMILY
RENTAL**



99 YEAR GROUND LEASE

COMMUNITY OWNERSHIP OF LAND

LOS RESIDENTES CONTROLAN LAS PROPIEDADES

HOGAR
UNIFAMILIAR



COOPERATIVA DE
VIVIENDA DE
CAPITAL LIMITADO
(LEHC)



CONDominio



ALQUILER
MULTIFAMILIA
R

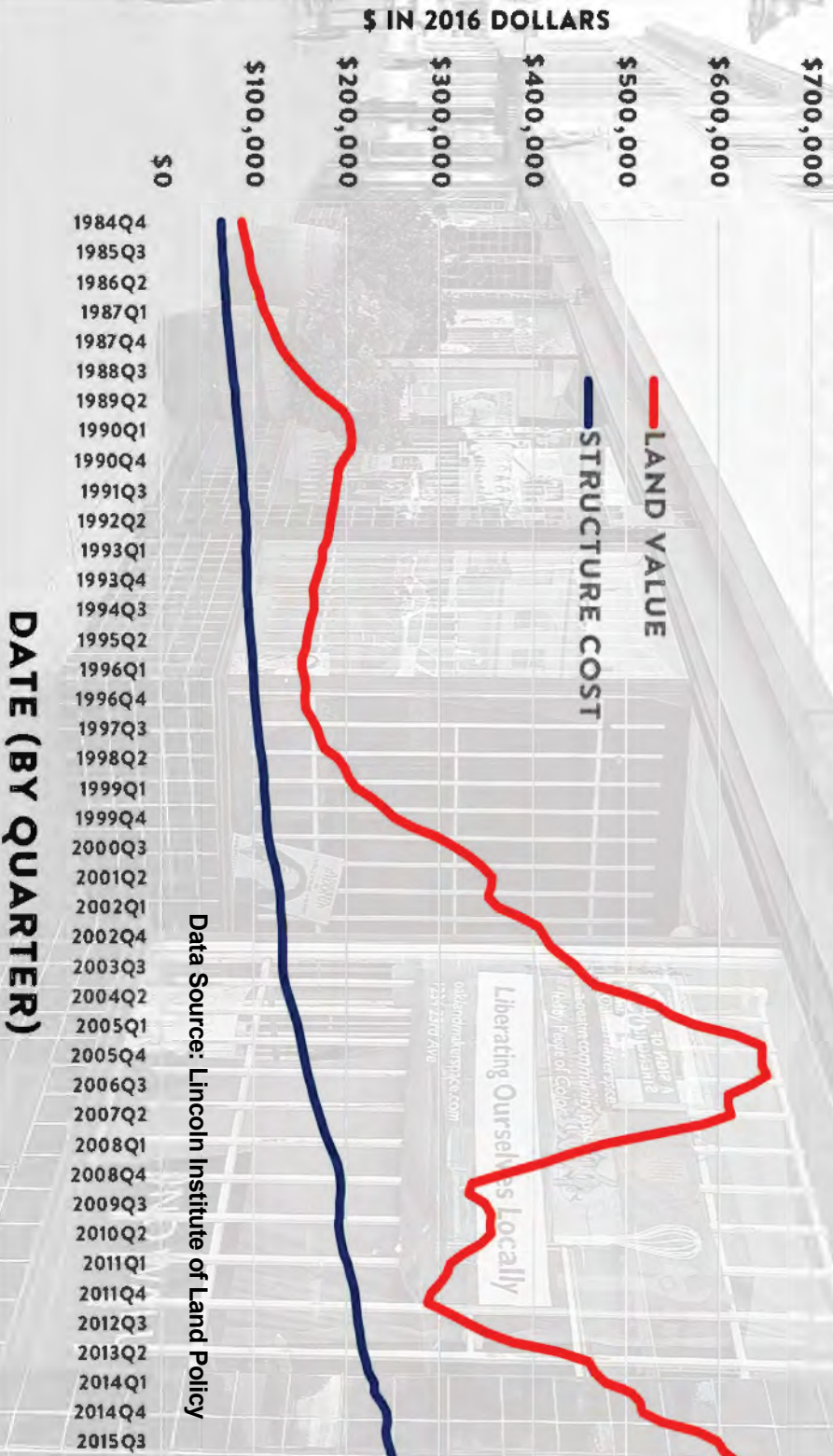


ALQUILER DEL TERRENO POR 99 AÑOS

LA COMUNIDAD ES DUEÑA DEL TERRENO

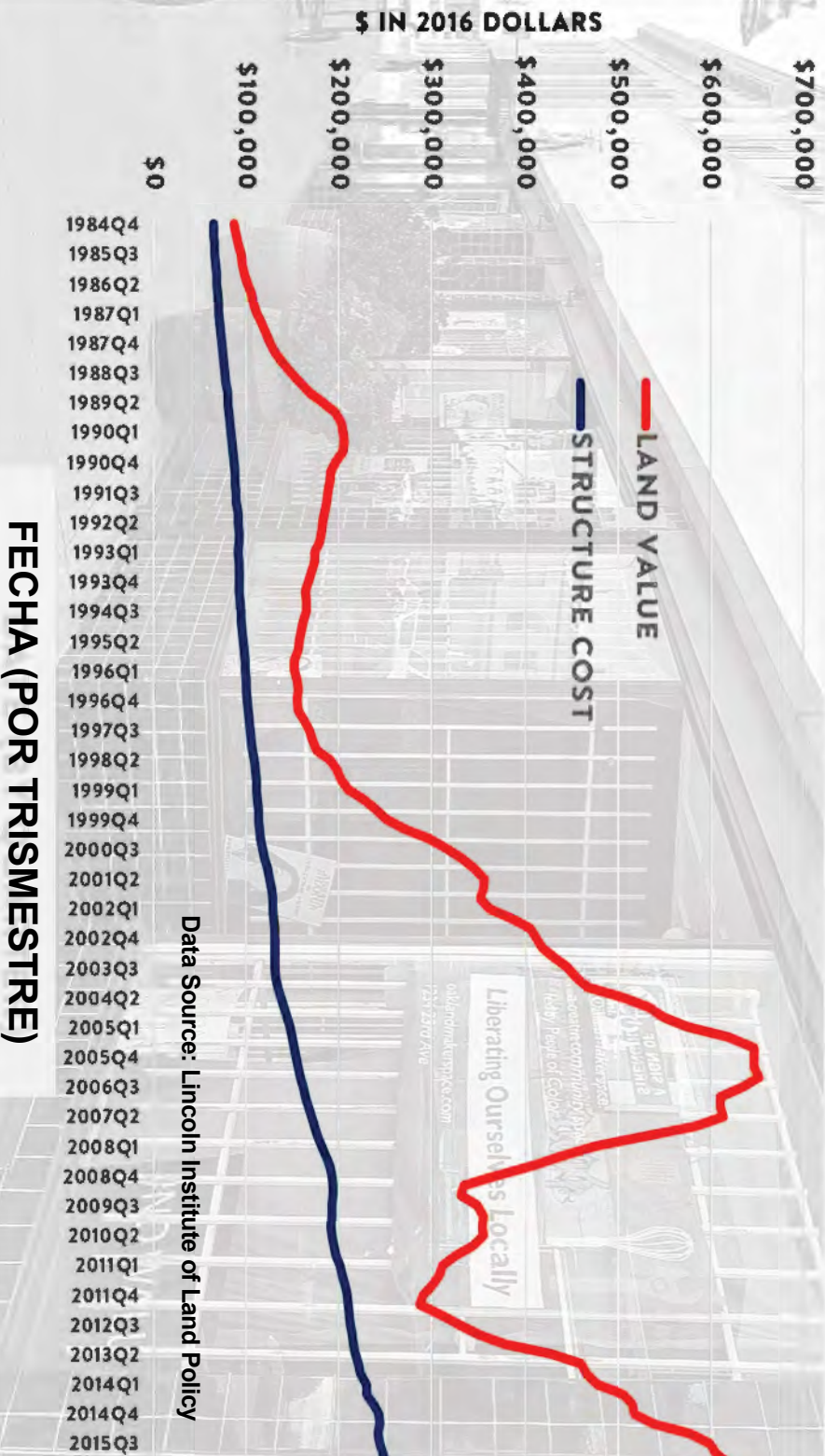
Why a Community Land Trust?

LAND VS. HOUSING COST IN OAKLAND (1984-2016)



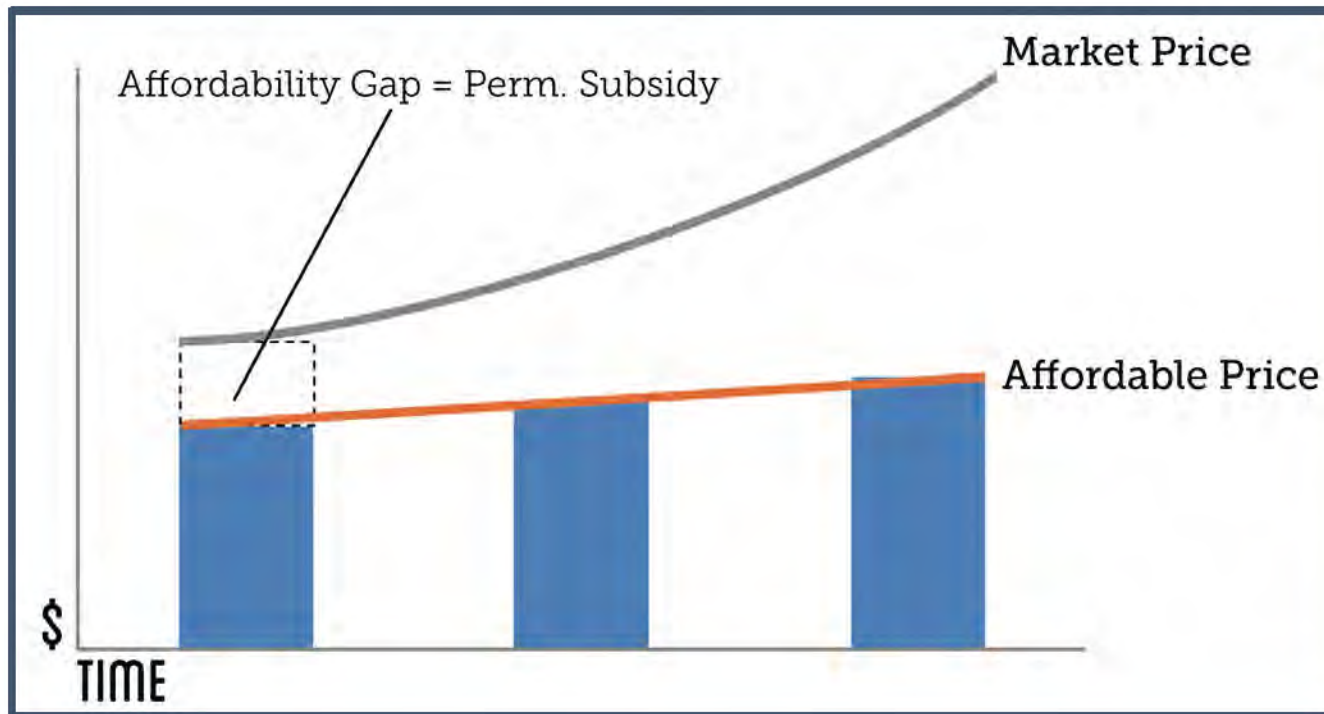
¿Por qué un *Community Land Trust*?

COSTO DEL TERRENO vs. VIVIENDA EN OAKLAND (1984-2016)



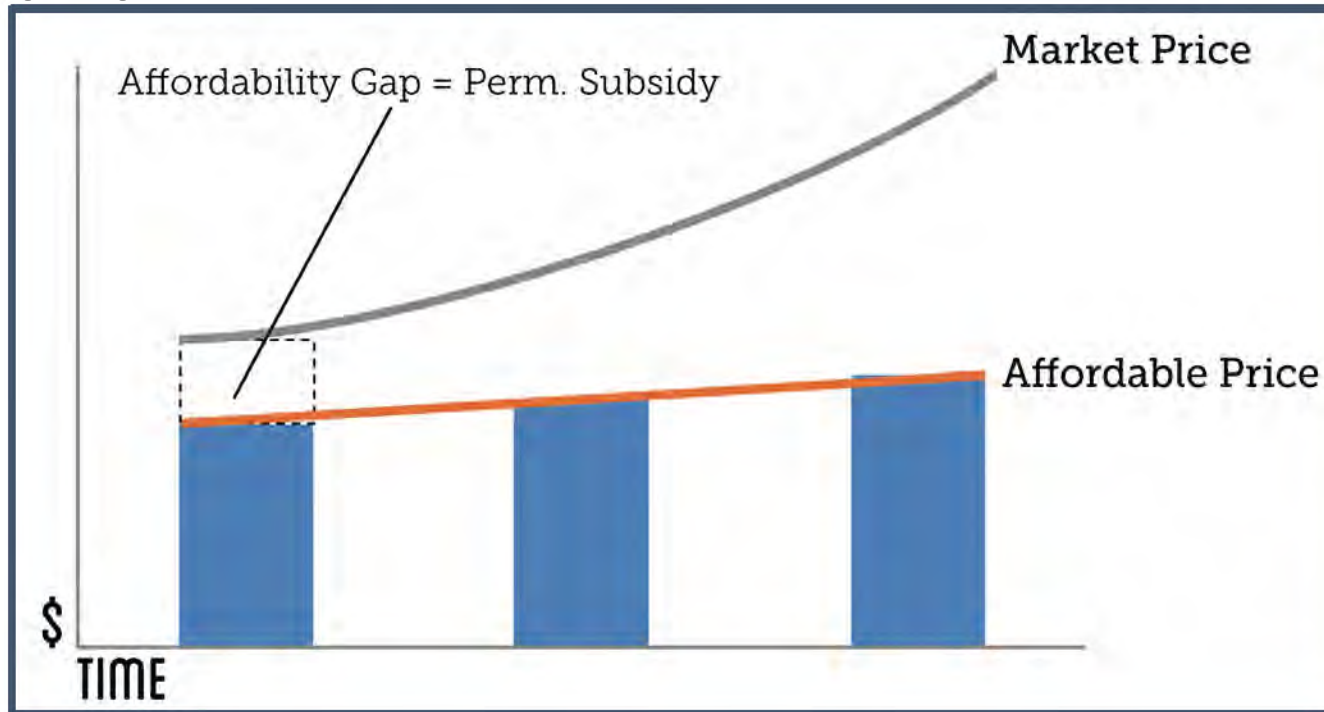
Stewardship of Public Subsidy

CLT Homes Remain Affordable in Perpetuity with a One-Time Subsidy



Gestión de la subvención pública

Las viviendas CLT siguen siendo asequibles a perpetuidad con una subvención única



What is SB 1079?

SB 1079, which went into effect January 1, 2021, was written with the work of CLTs in mind;

- the intent of the bill is to make it easier for CLTs and other not-for-profit affordable housing providers to intervene in the foreclosure auction process in order to keep homeowners and tenants in small 1-4 unit buildings from losing their housing and potentially becoming homeless.
 - In this way it is structured similarly to existing Revenue and Taxation Code provisions for Chapter 8 tax sales, except that rather than allowing tax defaulted properties to be removed from County auctions, SB 1079 allows a qualified buyer (either a nonprofit affordable housing organization or the residents themselves) to beat the highest offer of an investor-buyer.
 - To operationalize the intent of this bill, CLTs would need access to financing to be able to “out-bid” the investor-buyers - WHICH IS WHY WE NEED A STATE SUBSIDY TO ACCOMPLISH THE INTENT OF THIS GREAT BILL.
-

¿Qué es el SB 1079?

SB 1079, que entró en vigor el 1 de enero de 2021, fue escrito con el trabajo de los CLTs en mente;

- la intención del proyecto de ley es hacer más fácil que los CLTs y otros proveedores de vivienda asequible sin fines de lucro puedan intervenir en el proceso de subasta de ejecución hipotecaria con el fin de ayudar a los propietarios e inquilinos en pequeños edificios de 1 a 4 unidades, y protegerlos de perder su vivienda y potencialmente quedarse sin hogar.
- En tal sentido, está estructurado de manera similar a las disposiciones existentes del Código de Ingresos y Tributación –Capítulo 8– para el impuesto a las ventas, excepto que, en lugar de permitir que las propiedades con incumplimiento de impuestos sean retiradas de las subastas del Condado, SB 1079 permite que un comprador calificado (ya sea una organización de vivienda asequible sin fines de lucro o los propios residentes) supere la oferta más alta de un comprador-inversionista.
- Para poner en práctica la intención de este proyecto de ley, los CLTs necesitarían acceso a financiación para poder superar la oferta más alta de un comprador-inversionista.

**ESE ES EL MOTIVO POR EL QUE NECESITAMOS UNA SUBVENCIÓN DEL ESTADO
PARA LOGRAR LA INTENCIÓN DE ESTE GRAN PROYECTO DE LEY.**

WHAT DOES THE CACLTN ENVISION?

1. **The State should create a targeted fund to support the implementation of SB 1079 in the amount of \$103.5 million for the first year, with the funding going up 20% per year until 2026.**
 2. **This funding would be primarily used for pre-development, acquisition, and rehabilitation of at-risk housing.**
 3. **A start-up cost of \$2.5 million will be used to develop the Foreclosure Intervention Housing Preservation Program, along with regional partners (such as CDFIs), that can be broadly implemented by CLTs, allowing us to quickly acquire and preserve foreclosed properties.**
-

¿CUÁL ES LA VISIÓN DEL CACLTN?

1. El Estado debe crear un fondo específico para apoyar la aplicación del SB 1079 en la cantidad de \$103.5 millones de dólares para el primer año, con un aumento de 20% por año en la financiación hasta 2026.
 2. Esta financiación se utilizaría principalmente para el pre-desarrollo, la adquisición y la rehabilitación de viviendas en riesgo.
 3. Un costo inicial de \$2.5 millones de dólares se utilizará para desarrollar el Programa de Intervención en la Ejecución Hipotecaria para la Preservación de la Vivienda, junto con socios regionales (como CDFIs), que puede ser ampliamente implementado por los CLTs, lo que nos permite adquirir rápidamente y preservar las propiedades que han tenido Ejecución Hipotecaria.
-

annual increase	20%	
	Total annual appropriation	1 time startup amount
2021-2022	\$103,500,000	\$2,500,000
2022-2023	\$124,200,000	
2023-2024	\$149,040,000	
2024-2025	\$178,848,000	
2025-2026	\$214,617,600	
2026 - completing re-use period	\$0	
2027-completing reuse period	\$0	
total appropriation	\$770,205,600	
IMPACT SUMMARY		
cost per unit range / 50% reuse / 80% AMI cap	\$208,918	\$273,200
# of households served	3,687	2,819
# persons served, 3 person occupancy	11,060	8,458
# persons served over 99 years	77,420	
# households over 99 years	25,807	
cost per household over 99 years	\$29,845	

Incremento anual	20%	
	Total de apropiación anual	Cantidad única inicial
2021-2022	\$103,500,000	\$2,500,000
2022-2023	\$124,200,000	
2023-2024	\$149,040,000	
2024-2025	\$178,848,000	
2025-2026	\$214,617,600	
2026 - completar periodo de re-uso	\$0	
2027- completar periodo de re-uso	\$0	
Apropiación total	\$770,205,600	
RESUMEN DEL IMPACTO		
costo por unidad / 50% re-uso / 80% AMI límite	\$208,918	\$273,200
# de hogares servidos	3,687	2,819
# personas servidas, (3 personas por hogar)	11,060	8,458
# personas servidas durante 99 años	77,420	
# hogares durante 99 años	25,807	
costo por hogar durante 99 años	\$29,845	

LEGACY OF THE STATE DURING COVID 19

- We estimate that in the first year of this program, we will be able to preserve **between 238-311 homes**, second year is 292-382 homes, third year is 458-598 homes, fourth year is 552-722 homes, fifth year is 711-930 homes.
 - Which will provide permanently affordable homes to approximately **750-900 Californians in the first year** based on the average of a 3 person occupancy.
 - For every unit acquired and rehabilitated with the SB 1079 fund in the first year of investment, an average of 14 households will have the chance at sustainable homeownership over the first 99 years of CLT stewardship (given the average length of tenure at seven years), which amounts to **4,200 Californians**.
 - The number of households served over 5 years **3,687**
 - The number of Californians served, 3 person occupancy over 5 years **11,060**
 - The number of households served over 99 years after the 5 year investment **25,807**
 - The number of Californians served over 99 years after the 5 year investment **77,420**
 - Cost per household over 99 years is the modest amount of **\$29,845**
-

LEGADO DEL ESTADO DURANTE COVID-19

- Calculamos que en el primer año de este programa podremos conservar entre **238 y 311 viviendas**, el segundo año entre 292 y 382 viviendas, el tercer año entre 458 y 598 viviendas, el cuarto año entre 552 y 722 viviendas y el quinto año entre 711 y 930 viviendas.
 - Lo que proporcionará viviendas asequibles de forma permanente a aproximadamente **750-900 californianos en el primer año**, basados en un promedio de ocupación de 3 personas.
 - Por cada unidad adquirida y rehabilitada con el fondo SB 1079 en el primer año de inversión, un promedio de 14 hogares tendrán la oportunidad de ser propietarios de una vivienda sostenible durante los primeros 99 años de gestión de la CLT (dada la duración promedio de la tenencia de siete años), lo que equivale a **4,200 californianos**.
 - Número de hogares atendidos durante 5 años: **3,687**
 - Número de californianos atendidos, con una ocupación de 3 personas durante 5 años: **11,060**
 - Número de hogares atendidos durante 99 años después de la inversión de 5 años: **25,807**
 - Número de californianos atendidos durante 99 años luego de la inversión de 5 años: **77,420**
 - Costo por hogar en 99 años es la modesta cantidad de **\$29,845** dólares
-

California is in crisis and *this will help*

- A. **Approximately 35% of Americans are poised to lose their homes in the next two months without major intervention from the state or federal government[1]**
- B. **The homelessness crisis is substantially catalyzing the spread of COVID 19[2]**
- C. **There are currently almost 6,000 properties in California that are in some stage of foreclosure.[3] While alarming, this number is still lower than it is expected to become, since many homeowners are still protected by mortgage forbearance related to protections enacted by the federal government.**

[1]<https://www.msn.com/en-us/news/us/35-of-americans-could-lose-their-home-in-next-two-months-census-report-says/ar-BB1c3xWa?fbclid=IwAR1opVZaOySJp3DBQxtWINJgxW8IHFwEMU5mGm1LtzNvFvCLxPRyDiz4CXs>

[2]https://www.npr.org/2020/12/01/940816002/researcher-finds-evictions-are-associated-with-more-than-10-000-death-from-covid?fbclid=IwAR1E4I94HAc8G5Q7Uueh8MFF-5vWenfu5EuHdDn8XGwP3ZAb8Rd_uRoRjg8

[3] <https://national.propertyradar.com/>

California está en crisis y *esto ayudará*

- A. Aproximadamente el 35% de los estadounidenses están a punto de perder sus casas en los próximos dos meses si no hay una intervención importante del gobierno estatal o federal[1].**
- B. La crisis de las personas sin hogar está empeorando mucho la propagación de COVID 19[2].**
- C. Actualmente hay casi 6,000 propiedades en California que se encuentran en alguna fase de ejecución hipotecaria[3]. Aunque es alarmante, esta cifra sigue siendo menor de lo que se espera que sea, ya que muchos propietarios todavía están protegidos por la exención hipotecaria relacionada con las protecciones que dio el gobierno federal.**

[1]<https://www.msn.com/en-us/news/us/35-of-americans-could-lose-their-home-in-next-two-months-census-report-says/ar-BB1c3xWa?fbclid=IwAR1opVZaOySjp3DBQxtWINJqxW8IHFwEMU5mGm1LtzNvFvCLxPRyDiz4CXs>

[2]https://www.npr.org/2020/12/01/940816002/researcher-finds-evictions-are-associated-with-more-than-10-000-death-from-covid?fbclid=IwAR1E4I94HAc8G5Q7Uueh8MFF-5vWenfu5EuHdDn8XGwP3ZAb8Rd_uRoRjg8

[3] <https://national.propertyradar.com/>

Draft Language

California Community Land Trust Network’s proposed language for budget trailer bill to fund implementation of SB 1079


THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SEC. 1. Chapter 8.6 (commencing with Section 50709) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

50720. (a) The Foreclosure Intervention Housing Preservation Program is hereby established for the purpose of funding the acquisition of one to four unit properties purchased by eligible bidders in trustee sales pursuant to Section 2924m of the Civil Code. The purpose of this program is to preserve affordable housing and to promote resident ownership or nonprofit organization ownership of residential real property. The program will be comprised of a Loan Fund to support eligible property acquisitions by eligible bidders.

(b) “Department” means the Department of Housing and Community Development.

(c) The department shall adopt guidelines for the operation of the program. The guidelines shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The guidelines shall not be subject to the requirements of Chapter 8.3 (commencing with Section 50705) of Part 2 of Division 31 of the Health and Safety Code....



Borrador del lenguaje: ¿comentarios?

Lenguaje propuesto por la Red de Fideicomisos de Tierras Comunitarias de California (CACLT) para el proyecto de ley sobre el presupuesto para financiar la implementación del SB 1079

EL PUEBLO DEL ESTADO DE CALIFORNIA PROMULGA LO SIGUIENTE:

SEC. 1. Se agrega el capítulo 8.6 (que comienza con la Sección 50709) a la Parte 2 de la División 31 del Código de Salud y Seguridad, para que diga:

50720. (a) Por la presente se establece el Programa de Intervención en Ejecuciones Hipotecarias para financiar la adquisición de propiedades de 1 a 4 unidades compradas por postores elegibles en ventas de fideicomisarios de conformidad con la Sección 2924m del Código Civil. El propósito de este programa es preservar la vivienda asequible y promover la propiedad de residentes o de organizaciones sin fines de lucro de bienes inmuebles residenciales. El programa estará compuesto por un Fondo de Préstamos para apoyar las adquisiciones de propiedades elegibles por parte de postores elegibles.

(b) "Departamento" se refiere a el Departamento de Vivienda y Desarrollo Comunitario.

(c) El departamento adoptará normas para el funcionamiento del programa. Las normas no estarán sujetas a los requisitos del Capítulo 3.5 (que comienza con la Sección 11340) de la Parte 1 de la División 3 del Título 2 del Código de Gobierno. Las normas no estarán sujetas a los requisitos del Capítulo 8.3 (que comienza con la Sección 50705) de la Parte 2 de la División 31 del Código de Salud y Seguridad....

MOTION PASSED BY LA BOARD OF SUPS

AGN. NO.MOTION BY SUPERVISORS HILDA L. SOLIS AND HOLLY MITCHELL

Support of State Budget Proposal to Fund the Foreclosure Intervention Housing Preservation Program implementing SB1079 On January 1st, 2021 Senate Bill (SB)1079 (Chapter 202, Statutes of 2020) went into effect. This bill was otherwise known as the “Housing For Homeowners, Not Corporations Act” sought to preference home ownership for the people of California over corporate investors by modifying the State’s foreclosure auction process to reduce the advantage big corporations purchasing many homes in bulk at a single auction. Specifically, the bill prohibits foreclosure trustees from bundling properties for sale at a foreclosure auction and instead requires that each property be bid on separately. Additionally, the bill provides tenants, prospective owner-occupants, nonprofit affordable housing providers (including community land trusts), and public entities 45-days to purchase residential properties of 1-4 units if they can match or exceed the highest bid at a foreclosure auction. These provisions sunset on January 1, 2026.

QUESTIONS?



¿PREGUNTAS?



MOTION BY SUPERVISORS HILDA L. SOLIS

April 20, 2021

AND HOLLY MITCHELL

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MOTION

MITCHELL	_____
KUEHL	_____
HAHN	_____
BARGER	_____
SOLIS	_____

The intent of this bill is laudable, but its application is uncertain since individuals and organizations that want to purchase a foreclosed property at auction must have the financial resources to do so and within a short period of time. A coalition of approximately 30 community-based advocates, led by the California Community Land Trust Network, have proposed a State Budget Proposal (Budget Proposal) to fund implementation of SB 1079 by providing \$770.0 million over five years for the “Foreclosure Intervention Housing Preservation Program.” The proposal is seeking \$103.5 million in Fiscal Year 2021-22.

Despite the State’s current foreclosure and eviction moratorium, there are approximately 6,000 properties in some stage of foreclosure in the State, and over 1,000 of them are in Los Angeles alone. Once the moratorium is lifted, we expect to see a sharp increase in these already alarming numbers. This Budget Proposal would help avert a repeat of the devastating 2008 foreclosure crisis by providing multiple years of financing, routed through regional Community Development Financing Institutions, so that eligible would-be homeowners would be able to meet SB 1079’s 45-day timeline

The Governor’s May Revision will be released soon, and the Legislature’s budget subcommittees are working on their final proposals and recommendations for the Fiscal Year 2021-22 State Budget. The Budget Proposal put forth by the California Community Land Trust Network to fund the Foreclosure Intervention Housing Preservation Program should be one of the proposals under consideration as part of those discussions.

WE, THEREFORE, MOVE that the Board of Supervisors support the California Community Land Trust Network’s \$770.0 million Budget Proposal, or similar proposals, to fund implementation of the Foreclosure Intervention Housing Preservation Program.

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