



RENT STABILIZATION BOARD
Regular Meeting
Thursday, April 21, 2022
7:00 p.m.

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

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

To access this meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/85958143310?pwd=b01BUHRCV3NJM1M2aXpYeGo0dndhZz09>. 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 Meeting ID: 859 5814 3310 and Passcode: 803311. 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, email amueller@cityofberkeley.info with the Subject line in this format: "RENT BOARD MEETING PUBLIC COMMENT ITEM." Please observe a 150-word limit. 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.**

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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 DéSeana Williams, Executive Director, at (510) 981-7368. The Rent Board may take action related to any subject listed on the Agenda.

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Thursday, April 21, 2022
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. **Land Acknowledgment Statement**: The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.
3. **Introduction of recently-hired Rent Board staff** – 5 min.*
4. **Approval of Agenda** – 1 min.*
5. **Public Comment** – 2 min. per speaker for *non*-agendized items*
6. **Public Comment** – 2 min. per speaker for items on the agenda*
7. **CONSENT ITEMS** – 1 min.*
 - a. Approval of the March 17, 2022 regular meeting minutes
 - b. Approval of the April 11, 2022 special meeting minutes
 - c. Proposal to approve staff recommendations on the following requests for waivers of late registration penalties (Executive Director/Registration Unit staff)

Ministerial Waivers

Waiver No. Property Address

-- 900 BANCROFT WAY

Ministerial Waivers – Continued

<u>Waiver No.</u>	<u>Property Address</u>
--	2016 9th ST
--	3028 DEAKIN ST
--	1402/1398 CURTIS ST
--	1909 9TH ST
--	1301 BONITA AVE UNIT 1

Discretionary Waivers

<u>Waiver No.</u>	<u>Property Address</u>
None	1513 WOOLSEY ST
5021	1235 CARRISON ST

8. ACTION ITEMS

from Board Members, Committees, Executive Director or Staff

Public comment will also be heard prior to the Board's vote on each action item listed below – 1 min. per speaker.

- a. Recommendation to adopt Resolution 22-06 setting the Annual Registration Fee for fully-covered rental units for Fiscal Year (FY) 2022-2023, due on July 1, 2022 (Budget & Personnel Committee) – 10 min.*
- b. Recommendation to adopt Resolutions 22-07 and 22-08 setting the Annual Registration Fee for rental units subject to Measure MM registration requirements for FY 2022-2023, and setting a lower per-unit Annual Registration Fee for Measure MM units in affordable housing projects, both due on July 1, 2022 (Budget & Personnel Committee) – 10 min.*
- c. Recommendation to adopt Resolution 22-09 setting the Summer Rental Registration Fee for qualifying sororities and fraternities (Budget & Personnel Committee) – 5 min.*
- d. Recommendation to adopt Resolution 22-10 authorizing the pass-through of a portion of the FY 2022-2023 Annual Registration Fee for fully-covered rental units to certain tenants (Budget & Personnel Committee) – 5 min.*

9. INFORMATION, ANNOUNCEMENTS AND ARTICLES/MEDIA

from Board Members, Committees, Executive Director or Staff

NOTE: The Board may vote to move Information Items to the Action Calendar.

- a. Update on remote meeting possibilities for future public meetings – *Verbal* (General Counsel) – 5 min.*

- b. Update on City Manager's communication regarding more staff returning to onsite work the week of May 9, 2022 – *Verbal* (Executive Director) – 2 min.*
- c. Update on the City's Website Reinvention Project timeline and the Rent Board's content migration – *Verbal* (Executive Director/Board Secretary) – 2 min.*
- d. Copy of March 21, 2022 Compliance Notice mailing to owners of selected Measure MM units (Executive Director) – 2 min.*
- e. Copy of April 11, 2022 letter conveying the Board's position on Assembly Bill 2386 (Bloom) Planning and zoning: tenancy in common subject to an exclusive occupancy agreement (Chair Simon-Weisberg) – 1 min.*
- f. Copy of April 11, 2022 letter conveying the Board's position on Assembly Bill 2469 (Wicks) Housing: Statewide Rental Registry (Chair Simon-Weisberg) – 1 min.*
- g. Commissioner attendance at Board and Committee meetings updated through the 1st quarter of 2022 (Board Secretary) – 1 min.*
- h. Date to submit agenda topics/items for May's regular Rent Board meeting: **Monday, May 9th at 5:00 p.m.** NOTE: This is a hard deadline and will be enforced.

10. COMMITTEE/BOARD MEETING UPDATES AND ANNOUNCEMENTS

- a. Budget and Personnel Committee (Commissioner Chang, Chair) – 5 min.*
Next regularly-scheduled meeting: Tuesday, May 10th at 5:00 p.m.

March 29th agenda
- b. Eviction/Section 8/Foreclosure Committee (Commissioner Mendonca, Chair) – 5 min.*
Next regularly-scheduled meeting: Thursday, April 28th at 5:30 p.m.

March 24th agenda
- c. Legislation, IRA/AGA & Registration Committee (LIRA Committee) (Commissioner Kelley, Chair) – 5 min.*
Next regularly-scheduled meeting: TBA
- d. Outreach Committee (Commissioner Laverde, Chair) – 5 min.*
Next regularly-scheduled meeting: Wednesday, April 20th at 5:15 p.m.

April 20th agenda
- e. 2 x 2 Committee on Housing: Rent Board/Berkeley Unified School District (Chair TBA) – 3 min.*

Regularly-scheduled meeting date: TBA

- f. 4 x 4 Joint Committee on Housing: City Council/Rent Board – 5 min.*
(Mayor Arreguín and Chair Simon-Weisberg, Committee Co-Chairs)
Next regularly-scheduled meeting: Monday, April 18th at 3:00 p.m.

April 18th agenda packet

- g. Ad Hoc Committee on Rent Board Technology Issues (Commissioner Selawsky, Chair) – 3 min.*
Next meeting date: TBA
- h. Ad Hoc Committee on the Status of Virtual Meetings (Chair TBA) – 3 min.*
Next meeting date: TBA
- i. Updates and Announcements – 3 min.*
- j. Discussion of items for possible placement on future agenda – 5 min.*

11. ADJOURNMENT – Tonight’s meeting will be adjourned in honor of the historic appointment of Ketanji Brown Jackson to the Supreme Court.

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.

Public



Rent Stabilization Board

RENT STABILIZATION BOARD
Regular Meeting
Thursday, March 17, 2022
7:00 p.m.

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RENT STABILIZATION BOARD
Regular Meeting
Thursday, March 17, 2022
7:00 p.m.

Regular Meeting Minutes - *Unapproved*

- 1. Roll call** – Chair Simon-Weisberg called the meeting to order at 7:01 p.m.
Aimee Mueller called roll.
Commissioners present: Alpert, Chang (logged in at 7:03 p.m.), Johnson (logged in at 7:04 p.m.), Kelley, Laverde, Mendonca, Selawsky, Walker, Simon-Weisberg.
Commissioners absent: None.
Staff present: Brown, Bursell, Mueller, Siegel, Williams.
- 2. Land Acknowledgment Statement**: The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley’s landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley’s incorporation in 1878 and since the Rent Stabilization Board’s creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.

The land acknowledgment statement was played.
- 3. Approval of Agenda** – M/S/C (Selawsky/Laverde) MOTION TO APPROVE THE AGENDA AS WRITTEN. *Friendly amendment by Laverde (accepted)*: ADJOURN IN HONOR OF WOMEN’S HISTORY MONTH. 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.
- 4. Public Comment** – *non*-agendized items. There were no speakers.
- 5. SPECIAL PRESENTATION**: “Densifying Berkeley: Potential Impacts on Displacement and Equity” by the Anti-Eviction Mapping Project

Amy Lee, Katy Guimond, Alex Ferrer and Anna Ferrarie presented and took questions from the Board.

6. CONSENT ITEMS

a. Approval of February 17, 2022 regular meeting minutes

M/S/C (Alpert/Mendonca) MOTION TO APPROVE CONSENT ITEM 6.a. AS WRITTEN. 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.

7. Public Comment – items on the agenda. There was one speaker. Carole Marasovic spoke about item 5 and had questions about the data.

8. ACTION ITEMS

from Board Members, Committees, Executive Director or Staff

a. Mid-Fiscal Year 2021-2022 Budget Report and recommendation to adopt Resolution 22-03 authorizing changes to the Staffing Model (Budget & Personnel Committee)

Executive Director DéSeana Williams and Senior Planner Lief Bursell presented to and took questions from the Board.

M/S/C (Alpert/Selawsky) MOTION TO ADOPT RESOLUTION 22-03 AS WRITTEN. 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.

b. Discussion and possible action to have the Board take a position on Assembly Bill (AB) AB-2469 Housing: Statewide Rental Registry (Chair Simon-Weisberg & Vice-Chair Alpert)

Chair Simon-Weisberg reported that the authors of AB-2469 will be changing some of the text, so the Board agreed by consensus to table this item to the next meeting.

c. Discussion and possible action to have the Board take a position on AB-2297 Tenancy: fee in lieu of a security deposit (Chair Simon-Weisberg & Vice-Chair Alpert)

M/S/C (Laverde/Johnson) MOTION TO SEND A LETTER CONVEYING THE BOARD'S OPPOSITION TO AB-2297 AS WRITTEN. 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.

d. Discussion and possible action to have the Board take a position on AB-2713 Tenant protections: just cause termination: rent caps (Chair Simon-Weisberg & Vice-Chair Alpert)

M/S/C (Selawsky/Laverde) MOTION TO SEND A LETTER TO THE AUTHORS OF AB-2713 CONVEYING THE BOARD'S SUPPORT FOR THE BILL AND

ENCOURAGING THEM TO CLOSE THE LOOPHOLES IN AB 1482. 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. Discussion and possible action to recommend various amendments to the Rent Stabilization and Eviction for Good Cause Ordinance to be placed on the November 2022 general election ballot (LIRA Committee)

M/S/C (Alpert/Selawsky) MOTION THAT THE BOARD APPROVE THE PROPOSED AMENDMENTS IN CONCEPT AND FORWARD THE AMENDMENTS TO THE 4X4 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.

- f. Recommendation to adopt Resolution 22-04 calling for Alameda County Supervisors to continue the Countywide COVID-19-related Eviction Moratorium (Chair Simon-Weisberg)

M/S/C (Selawsky/Laverde) MOTION TO AUTHORIZE THE CHAIR TO SEND A LETTER TO THE ALAMEDA COUNTY BOARD OF SUPERVISORS CONVEYING THE BOARD'S SUPPORT FOR CONTINUING THE EVICTION MORATORIUM, AND ASKING THE SUPERVISORS TO LOBBY FOR ADDITIONAL FUNDING FOR ERAP. 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.

9. INFORMATION, ANNOUNCEMENTS AND ARTICLES/MEDIA

from Board Members, Committees, Executive Director or Staff

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

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

- a. Update on remote meeting possibilities for future meetings – *Verbal* (General Counsel)

General Counsel Matt Brown gave an overview of the current state of legislation pertaining to the ability to conduct meetings exclusively remotely. Commissioners Alpert and Selawsky volunteered to serve on any ad hoc committee created to discuss this.

M/S/C (Alpert/Selawsky) MOTION TO CREATE AN AD HOC COMMITTEE ON THE STATUS OF VIRTUAL MEETINGS TO BE APPOINTED BY THE CHAIR. 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.

- b. Deadline to submit comments for the City’s Housing Element Administrative Draft is April 1st (Chair Simon-Weisberg)
- c. Update regarding restoring commissioners’ access to their Rent Board email accounts – *Verbal* (Chair Simon-Weisberg/Board Secretary)
- d. Update on the City’s Website Reinvention Project timeline and the Rent Board’s content migration – *Verbal* (Executive Director/Board Secretary)
- e. Berkeley Rent Board presentation at FLEJCON Conference on March 12, 2022 – *Verbal* (Executive Director)
- f. February 23, 2022 memo from City Manager Dee Williams-Ridley regarding the California Community Housing Agency Middle Income Rental Housing Program (CalCHA) & 2020 Kittredge Street Acquisition Information (Chair Simon-Weisberg)
- g. March 12, 2022 “Community Health is Wealth Fair” event flyer (Executive Director)
- h. Date to submit agenda topics/items for the April 21st Rent Board meeting: **Monday, April 11th at 5:00 p.m.** NOTE: This is a hard deadline and will be enforced.

10. COMMITTEE/BOARD MEETING UPDATES AND ANNOUNCEMENTS

- a. Budget and Personnel Committee (Commissioner Chang, Chair)
Next regularly-scheduled meeting: Tuesday, March 29th at 5:00 p.m.

March 8th agenda
- b. Eviction/Section 8/Foreclosure Committee (Commissioner Mendonca, Chair)
Next regularly-scheduled meeting: Thursday, March 24th at 5:30 p.m.
- c. Legislation, IRA/AGA & Registration Committee (LIRA Committee) (Commissioner Kelley, Chair)
Next regularly-scheduled meeting: Tuesday, April 5th at 5:00 p.m.

March 9th agenda
- d. Outreach Committee (Commissioner Laverde, Chair)
Next regularly-scheduled meeting: Wednesday, March 16th at 5:15 p.m.

March 16th agenda
- e. 2 x 2 Committee on Housing: Rent Board/Berkeley Unified School District (Chair TBA)
Regularly-scheduled meeting date: TBA

- f. 4 x 4 Joint Committee on Housing: City Council/Rent Board
(Mayor Arreguín and Chair Simon-Weisberg, Committee Co-Chairs)
Next regularly-scheduled meeting: Wednesday, March 23rd at 3:00 p.m.

February 23rd agenda packet

- g. Ad Hoc Committee on Rent Board Technology Issues (Commissioner Selawsky, Chair)
Next meeting date: TBA

- h. Updates and Announcements

- i. Discussion of items for possible placement on future agenda

11. CLOSED SESSION: The Board met in closed session as follows:

- a. Public Employee Evaluation of Performance pursuant to California Government Code Section 54957(b)(1)

Title: Executive Director

- b. Conference with Labor Negotiators pursuant to California Government Code Section 54957.6

Agency Designated Representative: Board Chair

Unrepresented Employee: Executive Director

- c. Pursuant to California Government Code Section 54956.9(a), the Board also will convene in closed session for an update on litigation:

Williams, et al. v. Alameda County, Alameda County Board of Supervisors, City of Oakland, Oakland City Council (United States District Court for the Northern District of California Case 3:22-cv-01274-LB) – amicus brief

Upon returning from Closed Session, Chair Simon-Weisberg reported there was no action taken on items 11.a. and 11.b.

General Counsel Matt Brown reported that the Board adopted a motion to hire outside counsel to draft an amicus brief for the defendant in *Williams, et al. v. Alameda County, Alameda County Board of Supervisors, City of Oakland, Oakland City Council* (United States District Court for the Northern District of California Case 3:22-cv-01274-LB), and have the Executive Director use her independent spending authority to pay for this expense.

12. ACTION ITEM: Oral recommendation regarding proposed changes, if any, to salary and/or fringe benefits of Executive Director (Full Board) – Chair Simon-Weisberg announced that the

Board discussed the Executive Director's salary and benefits in closed session.

- 13. ACTION ITEM:** Discussion and possible approval of changes, if any, to salary and/or fringe benefits of Executive Director (Full Board)

M/S/C (Selawsky/Laverde) MOTION TO ADJUST THE SALARY OF DÉSEANA L. WILLIAMS FROM \$96.33 PER HOUR (\$200,366.40 ANNUALLY) TO \$119.17 PER HOUR (\$247,873.60 ANNUALLY), AND THAT THIS PAY ADJUSTMENT WILL TAKE EFFECT IN THE PAY CYCLE STARTING MARCH 20, 2022. 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.

General Counsel Matt Brown read the following into the record:

A motion has been made and seconded regarding the modification of an existing employment agreement with DéSeana L. Williams, Executive Director of the Berkeley Rent Stabilization Board. Pursuant to Government Code 54953(c), a summary of compensation must be orally reported prior to taking final action. Pursuant to the proposed modification to the Executive Director's employment agreement with the Board, Ms. Williams' annual salary of \$200,366.40 would be adjusted to \$247,873.60 effective during the pay cycle beginning March 20, 2022. All other terms of the employment agreement will remain the same. A copy of the amendment to the employment agreement will be made available once all the parties have signed the amendment.

Mr. Brown then read Resolution 22-04 Approving Adjustment to Compensation Package for Rent Stabilization Board Executive Director DéSeana L. Williams into the record.

M/S/C (Johnson/Mendonca) MOTION TO ADOPT RESOLUTION 22-04 AS WRITTEN. 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.

- 14. ADJOURNMENT:** M/S/C (Johnson/Mendonca) MOTION TO ADJOURN IN HONOR OF WOMEN'S HISTORY MONTH. 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.

The meeting adjourned at 12:16 p.m.

Public



Rent Stabilization Board

RENT STABILIZATION BOARD
Special Meeting
Monday, April 11, 2022
12:00 p.m.

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RENT STABILIZATION BOARD
Special Meeting
Monday, April 11, 2022
12:00 p.m.

Special Meeting Minutes - *Unapproved*

1. **Roll call** – Chair Simon-Weisberg called the meeting to order at 12:03 p.m. Aimee Mueller called roll.
Commissioners present: Chang (joined at 12:04 p.m.), Johnson, Kelley, Mendonca, Selawsky, Walker, Simon-Weisberg.
Commissioners absent: Alpert, Laverde.
Staff present: Brown, Mueller, Williams.

2. **Land Acknowledgment Statement**: The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley’s landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley’s incorporation in 1878 and since the Rent Stabilization Board’s creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.

The land acknowledgment statement was played aloud.

3. **Approval of Agenda**

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

4. **Public Comment** – *non*-agendized items. There were no speakers.

5. **Public Comment** – items on the agenda. There were no speakers.

6. **ACTION ITEMS**
from Board Members, Committees, Executive Director or Staff

- a. **Discussion and possible action to have the Board take a position on Assembly Bill (AB) AB-2469 Housing: Statewide Rental Registry** (Chair Simon-Weisberg & Vice-Chair Alpert)

M/S/C (Kelley/Selawsky) SUPPORT AB-2469 AS AMENDED. Roll call vote. YES: Chang, Johnson, Kelley, Mendonca, Selawsky, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Alpert, Laverde. Carried: 7-0-0-2.

- b. Discussion and possible action to have the Board take a position on AB-2386 Planning and zoning: tenancy in common subject to an exclusive occupancy agreement (Chair Simon-Weisberg & Vice-Chair Alpert)

M/S/C (Kelley/Selawsky) SUPPORT AB-2386. Roll call vote. YES: Chang, Johnson, Kelley, Mendonca, Selawsky, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Alpert, Laverde. Carried: 7-0-0-2.

- c. Discussion and possible action to adopt proposed Resolution 22-05 to authorize drafting letters to express the Board's positions on AB-2469 and AB-2386 (Chair Simon-Weisberg & Vice-Chair Alpert)

M/S/C (Chang/Selawsky) ADOPT RESOLUTION 22-05 AS WRITTEN. Roll call vote. YES: Chang, Johnson, Kelley, Mendonca, Selawsky, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Alpert, Laverde. Carried: 7-0-0-2.

7. ADJOURNMENT

M/S/C (Selawsky/Johnson) MOTION TO ADJOURN. Roll call vote. YES: Chang, Johnson, Kelley, Mendonca, Selawsky, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Alpert, Laverde. Carried: 7-0-0-2.

The meeting adjourned at 12:20 p.m.

Public



Rent Stabilization Board

RENT STABILIZATION BOARD

DATE: April 21, 2022

TO: Honorable Members of the Rent Stabilization Board

FROM: DeSeana Williams, Executive Director

BY: Basil Lecky, Community Service Specialist II

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
--	900 BANCROFT WAY	SUZY PAPANIKOLAS & M NICKEL	\$500	\$0.00	\$500
--	2016 9th ST	JUANA ALICIA ARAIZA	\$1,126	\$1,126	\$0.00
--	3028 DEAKIN ST	ASIF BATADA	\$750	\$750	\$0.00
--	1402/1398 CURTIS ST	JODI PINCUS	\$1,000	\$1,000	\$0.00
--	1909 9TH ST	YOOKSINE SUN	\$150	\$150	\$0.00
--	1301 BONITA AVE UNIT 1	THE EVINE 2004 TRUST	\$300	\$300	\$0.00
TOTAL			\$3,826	\$3,326	\$500

Financial Impact: Ministerial Waivers

Approval of Acting Executive Director's recommendations will decrease the Board's current accounts receivable by **\$3,326**.

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
None	1513 WOOLSEY ST	LUKE MIRATRIX	\$600	\$600	\$0
5021	1235 CARRISON ST	HUIE CK LIM 1999 FAM TRUST	\$1,500	\$750	\$750
TOTAL			\$2,100	\$1,350	\$750

Financial Impact: Discretionary Waivers

Approval of Acting Executive Director's recommendations will decrease the Board's current accounts receivable by **\$1,350**.

Name and Telephone Number of Contact Person:

DeSeana Williams, 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: None	Property address: 1513 WOOLSEY ST	Transferred: None
Exempt units (as of February 2021): None		
Owner(s): LUKE & MARY MIRATRIX	Waiver filed by: LUKE MIRATRIX	# of Units: 5
Other Berkeley rental property owned: None		

Late payment/penalty history: The property comprises of five (5) Measure MM units, which are all currently being rented. The owner paid the registration fee November 7, 2021. The late payment for the 2021/2022 annual registration fee marks the first late payment on the owners account.

Penalties Currently Under Consideration

Reason for Penalties: Late payment of 2021/22 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
FY2021-22	5	\$600.00	11/07/2021	\$600.00	\$0.00	\$0.00
Totals				\$600.00	\$0.00	\$0.00

Grounds under Regulation 884(B): (11) The Executive Director, or his or her designee, recommends that the interests of justice require that a greater or lesser amount be waived

Good cause claimed by owner: When the Owner moved to Boston, MA for work, he decided to rent out his place in Berkeley since he hoped to return someday. Since then, the owner's previous co-owner also moved, and all the units became rented. The owner has been managing the units from afar and has been experiencing difficulties getting his mail for the property, which exacerbated when he moved in the middle of COVID. The owner states that his mail may have not been getting forwarded and the address change he submitted to the City did not reach all of the different agencies within the City government. The owner states that his mail often gets misplaced for a considerable time before it is given to him, which has been slower due to COVID. As a result of all this, the owner states that he did not receive any notices about Measure MM or the new rental unit fee unit recently. Once the owner received the notice, he immediately paid the fees and is now requesting a waiver of late registration penalties. The owner states that it is difficult to keep up with his property remotely. He stated that he received the notice in the last weeks of October, and opened his mail in November, just after the deadline for payment. The owner would appreciate any accommodation that could be made.

Recommendation: Staff recommends waiving the penalty in full

Staff Analysis: Staff empathizes with the challenges faced in the rental industry as a result of Covid-19 and understands his explanation regarding not knowing about the passing of Measure MM. This compels staff to recommend a full waiver of the penalty.

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/>

Request for Waiver of Late Registration Penalties

Please Read Important Information on Page 2

Property Address: 1513 Woolsey St, Berkeley, CA 94703

Owner: Luke Miratrix

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.

Hello. When I moved to Boston, MA, for work I decided to rent out my place in Berkeley since I hoped to return someday. Since then, my previous co-owner also moved, and all the units in the place are now rented, and I have been managing it from afar.

I have unfortunately had ongoing difficulties in getting mail regarding 1513 Woolsey St., and this was exacerbated when I moved last year in the middle of Covid. It appears as if not all of my mail was getting forwarded, and in particular, it looks like my address change I submitted to the City of Berkeley did not reach all of the different agencies within the city government (as best as I can tell). (Often my mail goes to the 1513 address, and then can get misplaced for considerable time before it gets given to me; this has also been slower due to Covid, I think, as everyone, including me, is not operating at their best.)

As a result of all of this, I did not receive any notices about Measure M or the new rental unit fee until very recently. Once I received this notice, I immediately paid the fees and am now writing this application for a waiver of the fine. I try to keep up my property in Berkeley, but sometimes it is difficult doing this remotely.

As is usually the case with these things, I received this piece of mail in the last weeks of October, sat down to open and deal with my mail in the first weeks of November, just after the deadline for payment. I would really appreciate any accommodation that could be made.

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

Date: Nov 11, 2021 **Signature:** 

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: lmiratrix@gmail.com

Mailing Address: 773 Broadway #2, Somerville MA 02144

Phone Number: 510-735-7635 **Fax Number:** _____

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

Request for Waiver of Late Registration Penalties – Information

Please Read Before Completing the Waiver Request

Note: Before submitting a waiver request, you must pay all outstanding registration fees and file all registration forms

The penalties on your bill are owed under the law. The Rent Board **may** forgive some or all of the penalties when the late payment was not deliberate and the owner acts in “good faith.” Most waivers are processed by staff, based primarily on your past payment history (see Reg. 883*). But under certain circumstances (see Reg. 884*) the Rent Board will review a waiver request to determine what amount, if any, to forgive. In these discretionary reviews the Board is looking at “good cause” and the “totality of the circumstances” to determine an appropriate penalty.

Examples of good cause for a full or partial waiver of penalties include: • *you had a death or illness in the family* • *you are a new owner with no other Berkeley residential rental property* • *you didn't receive the original billing statement* • *you thought that the property or unit was exempt from registration* • *you didn't know about the requirement to pay a prorated registration fee on a previously exempt unit.*

Procedure for Discretionary Waivers: Staff will review your waiver request and make a recommendation to the Board. If a circumstance outlined in Regulation 884 applies, staff will send you a copy of the recommendation about a week before the Board meeting. You may submit a written response to the recommendation. The Board will review the staff recommendation and any response, and issue a decision. You are not required to, but may, attend and address the Board. Staff will mail you the Board's decision, which cannot be further appealed.

Full waiver is granted: The account is cleared, your eligibility for annual general adjustments (AGAs) is restored, and you are deemed in compliance from the date the waiver application was completed.

Partial waiver is granted: The denied amount **must** be resolved within 30 days or the waiver may be rescinded and the full amount of penalties reinstated. While any penalties remain outstanding, the property is considered not registered. This means, among other things, that you may not impose rent increases, may not evict tenants, and may be subject to tenant petitions for rent withholding.

For questions about waivers please call Allison Pretto at (510) 981-4904.

Communications Disclaimer:

This document will be included in the Rent Board's agenda packet and, as such, will become part of the City's electronic records, which are accessible through the City's website. This means that any e-mail addresses, names, addresses, and other information you provide 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, please call the Rent Board's Registration Unit at (510) 981-7368 to make that request.

* The referenced regulations can be found at:

https://www.cityofberkeley.info/Rent_Stabilization_Board/Home/Regulation_Chapter_8.aspx

**City Of Berkeley
Rent Stabilization Board**

Recommendation on Requested Waiver of Registration Penalties

Waiver No: W5021	Property address: 1235 CARRISON ST	Transferred: 09/14/2020
Exempt units (as of February 2021): Unit # 3 - OOC - Tenant		
Owner(s): HUIE C K LIM 1999 FAM TRUST	Waiver filed by: CHESTER HUIE	# of Units: 4
Other Berkeley rental property owned: None		

Late payment/penalty history: The property comprises of four (4) rented units, with one (1) of the units currently exempt. The current owner took ownership of the property in September 2020. They paid the fee March 16, 2021. This was the the owners first time owning a rent controlled property. The owner paid 2021/22 registration fee on time. The penalty is from late payment of 2020/21 registration fee.

Penalties Currently Under Consideration

Reason for Penalties: Late payment of 2020/21 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
2020/21	3	\$750.00	03/16/2021	\$1,500.00	\$0.00	\$1,500.00
Totals				\$1,500.00	\$0.00	\$1,500.00

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 did not realize that prior owner did not pay the registration fee to the Rent Board. He said he never received a copy of the billing statement from the Rent Board. The owner has since paid the registration fee of \$750 and states that the registration fee will be paid timely in the future.

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

Staff Analysis: Staff notes that the owner did not reach out to the Rent Board upon transfer of the property in September 2020. Had the owner inquired with the City of Berkeley about their rights and responsibilities earlier, they probably could have avoided accruing the 2nd penalty. As a landlord in a rent control city, the owner has an obligation to know the registration requirements of the Rent Ordinance. Therefore, staff recommends waiving 50% of the penalty, which is the 2nd penalty that was assessed.

CITY OF BERKELEY
RENT STABILIZATION PROGRAM
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WEB: <https://www.cityofberkeley.info/rent/>

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 billin 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 Huie

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: Chhuie@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.



Rent Stabilization Board

DATE: April 21, 2022

TO: Honorable Members of the Rent Stabilization Board

FROM: DéSeana Williams, Executive Director
Lief Bursell, Senior Planner

SUBJECT: Recommendation to set the Fiscal Year 2022/23 Annual Registration Fees and to Authorize Pass-through of a Portion of the Registration Fee for Fully-controlled Units to Certain Tenants.

Recommendation

That the Board adopts the following four resolutions concerning the Fiscal Year (FY) 2022/23 annual registration fees:

Proposed Resolution 22-06 – adopting the annual registration fee, due July 1, 2022, at \$250 per unit for fully-covered units. This fee is calculated based on the revenue necessary to cover recurring operational and capital expenses for the services the program provides to fully controlled rental units.

Proposed Resolution 22-07 – adopting the annual registration fee, due July 1, 2022, at \$150 per unit for partially-covered Measure MM units. This fee is calculated based on the revenue necessary to cover the expenses associated with registering and providing additional services for Measure MM units.

Proposed Resolution 22-08 – adopting a lower \$37 per unit annual registration fee, due July 1, 2022, for Measure MM units in affordable housing projects. This fee is calculated based on the revenue necessary to cover the expenses to register and provide additional services for Measure MM units associated with affordable housing projects managed by a non-profit and have an operative regulatory agreement with the City of Berkeley through its Housing Trust Fund program.

Proposed Resolution 22-10 –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 start prior to July 1, 2022, and must terminate no later than December 31, 2023, 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.

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 2022/23. However, the Board traditionally sets the fee at a meeting sometime in April or May to provide enough time to allow staff to print and mail the annual bill before but no later than the last week of 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 Budget & Personnel Committee has met four times thus far in calendar year 2022 to review various aspects of the agency's budget and staffing model and agree upon the appropriate recommendation for the FY 2022/23 registration fee levels. At their March 29, 2022 meeting, the Budget & Personnel Committee voted unanimously to recommend the Board maintain all registration fees at their current level, including the \$250 per unit for controlled rental units, \$150 per unit fee for Measure MM units, and \$37 per unit for specific affordable housing projects that are 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 month so that they may be reviewed by staff and the Budget and Personnel Committee in time for inclusion in the final FY 2022/23 budget recommendation.

Fiscal Year 2021/22 Budget Update

The Board's adopted budget anticipated collecting \$5,515,850 for the current fiscal year. As of April 5, 2022, the agency has collected \$5,567,168, and staff now project that annual revenue will come in closer to \$5,650,000. As was presented to the Board in the Mid-Fiscal Year Budget Report, actual mid-year expenditures were significantly lower than anticipated by the adopted budget.

Decreases in actual expenditure levels during the first part of FY 2021/22 were due to salary savings, the majority of capital expenditures, most notably for the 3Di system, and the upcoming tenant survey that will take place in the 2nd half of this fiscal year. Salary savings were due to turnover in five (5) positions and the vacant Deputy Director position. Staff anticipates all but the newly created Policy Director position will be filled shortly and that these savings will not be as significant during the second half of FY 2022. Staff now project that total expenditures will be around \$500,000 less than what the Board authorized in the adopted budget.

The attached March 17, 2022, Mid-Fiscal year 2021/22 Budget Report provides more detail on the status of the Board's budget. Staff will next prepare the 3rd quarter budget update for review by the Budget & Personnel Committee. The 3rd quarter budget update will be provided to the Board at its June 16, 2022, meeting as an attachment to the Budget & Personnel Committee's FY 2022/23 Budget Recommendation.

Considerations for Setting the FY 2021/22 Registration Fees

The Board will again have to balance the agency's need for revenue with the continued economic uncertainty faced by landlords and tenants who are still recovering from the COVID-

¹ See California Government Code Section 66016. Please note, however, that Staff does not recommend increasing the fee for this fiscal year.

19 pandemic. The Board should consider the following information when considering the Budget & Personnel Committee's recommendations to decide the appropriate levels for the FY 2022/23 registration fees.

Ongoing Eviction Moratoriums

On March 31, 2022, California's state-wide eviction moratorium (AB 2179) was extended through June 30, 2022. While the deadline to apply to the state for rental assistance expired for both landlords and tenants, Alameda County has received more requests than the available funds can cover. There is a backlog of requests that are slowing the processing of the applications. Berkeley's local eviction moratorium remains in place as long as the City Council declares the local state of emergency is in effect. Staff is still being contacted by tenants who are unable to pay part or all of their rent due to the economic impacts of the COVID-19, as well as landlords that are owed significant amounts of back rent and are still waiting for determinations regarding both their and their tenants' rent relief applications.

Status of the Board's Uncommitted Reserve

The Board has recently elected to adopt annual budgets that have authorized the spending down of the uncommitted reserve to avoid registration fee increases while the rental housing market is still recovering from the economic impacts of the COVID-19 pandemic. Spending down the uncommitted reserve has allowed the Board to spare landlords from fee increases while still allocating sufficient funding for important projects such as the Anti-Eviction Mapping Project upzoning analysis and the upcoming tenant survey. Staff and the Budget & Personnel Committee anticipate the Board will begin the FY 2022/23 fiscal year with around \$850,000 in uncommitted reserves. This represents a reserve of over 12%, and it is sufficient to cover two months of the program's recurring expenditures. This is adequate funding to allow the Board the flexibility to again spend down the uncommitted reserve to avoid increasing registration fees.

Measure MM Unit Registration

The agency has registered approximately 4,700 Measure MM units, including 600 Measure MM affordable housing units which pay the lower \$37 per unit fee. Thus far, the Board has received just over \$610,000 in revenue from Measure MM units. Given the success of the initial year of Measure MM registration, the Board will have more accurate projections for Measure MM revenue when adopting the FY 2022/23 budget.

Increasing Staff Capacity

The FY 2021/22 Mid-Fiscal Year Budget Report introduced several positions that the Executive Director intends to add to the staffing model. These include a Finance Manager, a Senior Housing Counselor, and a Digital Education & Social Media Coordinator. Since these are new positions that do not currently exist as City of Berkeley job classifications, they require approval by the City's Personnel Board. It will likely take some time to create and fill these new positions. This registration fee recommendation assumes that these new positions will be created and added during the FY 2022/23 fiscal year.

Personnel Costs in FY 2022/23 and Beyond

The City of Berkeley completed negotiations with several of its labor unions in the summer of 2021. As a result of these negotiations, all of the agency's employees received a 3-4% cost of living increase during the current fiscal year and are scheduled to receive an additional 3% cost of living increase at the beginning of FY 2022/23. Additionally, the City of Berkeley agreed to increase the amount it pays in retirement benefits for newer employees, which started in calendar year 2013 or after, by a total of 8% over a three to five-year period (the actual length of time

depends on the individual employee's bargaining unit). Personnel costs for salary and benefits are the agency's largest expenditure (estimated at around 72% of the budget for this fiscal year), and these increased costs, combined with the addition of the new staff positions discussed earlier, may require the Board to consider increasing registration fee levels for the FY 2023/24 registration year.

Measure MM Unit Fee Level

The Board established the initial Measure MM fee level at \$150 per unit, \$50 of which was to recover \$200,000 of implementation costs that fell within FY 2020/21. The Board also set a lower \$37 per unit fee level for affordable housing projects managed by a non-profit and within the regulatory period established by a regulatory agreement with the City of Berkeley through its Housing Trust Fund program.

Staff and the Budget & Personnel Committee recommendation is that these fee levels be maintained at \$150 and \$37 per unit for FY 2022/23. Projected revenue generated at these existing fee levels is necessary to fund Measure MM registration services (including the additional temporary worker that was added to assist Measure MM registration), the additional housing counselor position created to add capacity to serve Measure MM units, mediation services for these units, non-personnel costs (e.g., contracts and building rent), and Measure MM unit-specific outreach and analysis.

The Budget & Personnel Committee has requested that staff provide a full analysis of Measure MM implementation, including the staff impacts of providing services to Measure MM units. Staff are still developing reports in the agency's new 3Di system, and report development will likely pause temporarily as staff shifts its time and focus to the FY 2022/23 registration effort. Staff will provide a full report on Measure MM implementation next fiscal year after the necessary reporting tools in the 3Di system are finalized.

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 mainly in response to property owners' stated desire to accommodate operational inflation in smaller, real-time adjustments and avoid substantial registration fee increases in any given year.

However, in the previous two years, the Board deviated from this plan in response to the COVID-19 pandemic. Two years ago, 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. Last year, the Board again elected to utilize a portion of the uncommitted reserve to avoid raising the registration fee and avoid overly relying on Measure MM registration revenue when the registration compliance rate and the overall number of qualifying units were unknown. Since the uncommitted reserve is again projected to be well above the historic 5%-8% level at the end of FY 2021/22, the Board again has the ability to use its existing reserve to avoid raising the annual registration fee at a time when tenants and landlords in Berkeley are still struggling due to the impacts of the COVID-19 pandemic.

The following table shows the registration fee as a percentage of the 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 the second consecutive time the fee has ever been less than 1% of the average yearly rent for controlled rental units.

Fees as a percentage of rent			
Year	Fee	Mean Monthly Rent	% Annual Rent
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%
2022	\$250	\$2,177	0.96%

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 this formula, and in 2004, the voters approved 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 to 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, given 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 in 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, 2022, and must terminate no later than December 31, 2023, 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 to 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, containing 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 take the pass-through, and more low-income tenants request reimbursement. This trend continued unchanged until last year, when there was a reduction in the number of pass-throughs and reimbursement requests. The COVID-19 pandemic likely contributed to the reduced number of pass-throughs and reimbursement requests received this fiscal year. The following table lists the totals from each of the past several years:

FY 2022/23 Registration Fee Report

April 21, 2022

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Year	2016/2017	2017/2018	2018/2019	2019/2020	2020/21	2021/22
Registration Fee Charged (amount of pass-through)	\$234 (\$8 per month)	\$270 (\$11 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)
Number of Notices Property Owners Sent to Tenants	486	595	601	680	565	537 (YTD)
Number of Qualified Tenants Requesting Reimbursement	75	101	110	126	104	83 (YTD)

The Program spent just over \$10,000 on reimbursements in FY 2020/21, and staff anticipates spending around the same amount this year. The Board authorized an additional \$13,000 allocation for the passthrough program last year. There is more than sufficient funding for these reimbursements to continue in FY 2022/23, even if requests increase to pre-pandemic levels.

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. There is no unique designation for 40% of the AMI that staff is aware of. The household income by household size 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. HUD income limits have not yet been updated for 2022.

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 that 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. Staff and the Budget & Personnel Committee recommend the mitigation pass-through for low-income tenants be adopted with this standard again for FY 2022/23. Staff will update income limits for 2022 as soon as HUD publishes them.

Staff and the Budget and Personnel Committee also recommend that reimbursement for the pass-through continue to be limited to the current registration year, which is consistent with the Board's practice for the past three 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 \$250² and the fee for partially covered units subject to Measure MM at \$150 per unit. The committee also recommends 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 continue in FY 2022/23.

Name and Telephone Number of Contact Person

DéSeana Williams, Executive Director (510) 981-6903

Attachment – FY 2021/22 Mid-Fiscal Year Budget Report

² This would be the fifth year in a row that the fee for fully covered units would be set at \$250.

RESOLUTION 22-06

SETTING THE FISCAL YEAR 2022/2023 ANNUAL REGISTRATION FEE FOR FULLY COVERED UNITS; DUE JULY 1, 2022

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 Executive Director and Rent Stabilization Board believe that new recurring annual revenues of at least \$5,700,000 in FY 2023 will be necessary to meet the Program's operating needs; 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 8 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 40% and average rents of controlled units have increased by approximately 73% 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 0.96% 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 22-06

SETTING THE FISCAL YEAR 2022/2023 ANNUAL REGISTRATION FEE FOR FULLY-COVERED UNITS; DUE JULY 1, 2022 (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 both FY 2021 and FY 2022 the Board adopted a fee of \$250 to cover only necessary operational costs; and

WHEREAS, because of salary related savings in FY 2022, 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 2022.

NOW THEREFORE, BE IT RESOLVED that the annual FY 2023 registration fee for fully covered rental units, due July 1, 2022, is hereby set at \$250 per unit; and,

BE IT FURTHER RESOLVED that the 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 2022.

Dated: April 21, 2022

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: _____
DéSeana Williams, Executive Director

RESOLUTION 22-07

SETTING THE FISCAL YEAR 2022/2023 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2022

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 2023 will be necessary to meet the Program's operating needs; 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 22-07

SETTING THE FISCAL YEAR 2022/2023 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2022 (Page 2)

WHEREAS, in FY 2022 the Board adopted a total fee of \$150, \$100 to cover the additional expenses associated with registering and providing services for partially exempt Measure MM units during FY 2022, and \$50 to cover expenses associated with registering and providing services in FY 2021; and

WHEREAS, a little over 4,000 units have registered under Measure MM thus far FY 2022; and

WHEREAS, the Executive Director and Rent Stabilization Board believe that \$650,000 in annual revenue will be necessary to register and provide services to Measure MM units in FY 2023; 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 \$150 per unit fee for partially exempt Measure MM 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 2022.

NOW THEREFORE, BE IT RESOLVED that the annual FY 2023 registration fee for partially exempt Measure MM units, due July 1, 2022, is hereby set at \$150 per unit; and,

BE IT FURTHER RESOLVED that Rent Stabilization Program staff will continue to 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 2023; and,

BE IT FURTHER RESOLVED that the Rent Stabilization Board will consider all data and information gathered on the impacts and expenses associated with providing services to partially exempt Measure MM units in FY 2023 when setting the registration fee levels for FY 2024.

RESOLUTION 22-07

SETTING THE FISCAL YEAR 2022/2023 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2022 (Page 3)

Dated: April 21, 2022

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: _____
DéSeana Williams, Executive Director

RESOLUTION 22-08

SETTING THE FISCAL YEAR 2022/2023 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, 2022

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 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

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 22-08

SETTING THE FISCAL YEAR 2022/2023 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, 2022 (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, in FY 2022 the Board adopted a total fee of \$37, \$25 to cover the additional expenses associated with registering and providing services for these partially exempt Measure MM units during FY 2022, and \$12 to cover expenses associated with registering and providing services in FY 2021; 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 approximately 500 units in affordable housing projects have registered under Measure MM thus far 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

RESOLUTION 22-08

SETTING THE FISCAL YEAR 2022/2023 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, 2022 (Page 3)

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 \$37 per unit fee for partially exempt Measure MM 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 of 2022.

NOW THEREFORE, BE IT RESOLVED that the annual FY 2023 registration fee, due July 1, 2022, for partially-exempt Measure MM units owned by a limited partnership and having a managing general partner that qualifies as a 501(c)(3) non-profit organization that are in a housing project within the regulatory period established by a regulatory agreement with the City of Berkeley through its Housing Trust Fund program.

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 2023; and,

BE IT FURTHER RESOLVED that the Rent Stabilization Board will consider all data and information gathered on the impacts and expenses associated with providing services to partially exempt Measure MM units in affordable housing projects in FY 2023 when setting the registration fee levels for these units in FY 2024.

Dated: April 21, 2022

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: _____
DéSeana Williams, Executive Director

RESOLUTION 22-10

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2022/2023 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 2023 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 consider 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 9.3% 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 22-10

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2022/2023 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 2023 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 2023, 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 2023 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, 2022, and, regardless of when first collected, shall terminate no later than December 31, 2023, 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 22-10

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2022/2023 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.

Dated: April 21, 2022

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: _____
DéSeana Williams, Executive Director



Rent Stabilization Board
Office of the Executive Director

DATE: March 17, 2022

TO: Honorable Members of the Berkeley Rent Stabilization Board

FROM: Honorable Members of the Budget & Personnel Committee
By: DéSeana Williams, Executive Director
Lief Bursell, Senior Planner

SUBJECT: Mid-Fiscal Year 2021-2022 Budget Report

Recommendation

That the Board review the mid-fiscal year budget report and adopt Resolution 22-03 to adjust the agency's staffing model by converting the vacant Deputy Director position to a new Policy Director position, which will serve as the lead staff person for the Board's policy projects and initiatives.

Background

On June 17, 2021, the Board adopted a staffing model and budget with a maximum expenditure authorization for Fiscal Year (FY) 2021/22. Prior to adopting the budget, the Board voted to keep the annual registration fee for fully-covered units at \$250 per unit and to set the Measure MM unit fee at \$150 per unit¹. Due to the ongoing impacts of the COVID-19 pandemic on the rental market, the Board chose to maintain the fully-covered unit fee at \$250 per unit, which has remained at that level since FY 2018/19 and to utilize its uncommitted reserve to pay for any expenses that were not covered by FY 2021/22 revenue. The Board also set a lower Measure MM registration fee of \$37 per unit for 100% 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 Board's adopted budget anticipated spending down the uncommitted reserve by around \$550,000 this fiscal year. The Board has maintained a larger than expected uncommitted reserve balance over the past several fiscal years primarily due to staff turnover and unexpected vacancies in several previously-budgeted positions. This reserve has given the Board the

¹ The Measure MM fee included a base fee of \$100 per unit to cover the FY 2021/22 costs, and an additional \$50 fee to recover FY 2020/21 implementation costs. Similarly, the \$37 per unit affordable housing project fee includes a \$25 base fee and an additional \$12 to recover FY 2020/21 costs.

flexibility to avoid fee increases while still funding important projects such as the upcoming tenant survey and the Anti-Eviction Mapping Project's (AEMP) upzoning impact analysis. The Board's established reserve policy is to maintain an uncommitted reserve that covers all expenditures for between one and two months or 8%-16% of recurring expenditures. Although the Board has previously chosen to go below this 8% reserve level to limit the extent of fee increases, it has maintained a two-month or 16% reserve in recent years. The year's adopted budget anticipated ending this fiscal year with approximately \$332,000 in its uncommitted reserve, which is approximately 6% of recurring expenditures. The Board determined that decreasing the reserve below its minimum 8% level was an acceptable trade-off to avoid increasing the fully-covered fee that applies to between 19,000 and 20,000 units at a time when the economy and rental housing market are still impacted by the COVID-19 pandemic and both local and statewide eviction moratoriums.

The Board also voted to incorporate a formal mid-fiscal year budget review as a permanent part of the Board's annual budget process. The Board utilized a mid-fiscal year budget review process for the first time last fiscal year and it successfully allowed the Board to pivot to respond to the passage of Measure MM and hire an additional Housing Counselor position. This additional counseling position has helped to respond to inquiries related to the Measure MM implementation, as well as the increased services the agency is providing to Measure MM units.

FY 2020/21 Year-End Fund Balance

The staff has reviewed the final reports from the Finance Department on the Board's FY 2020/21 revenues and expenditures. The Board's year-end FY 2020/21 revenue was \$4,998,516 and total expenditures were \$5,059,050. \$52,083 in expenditures owed for services provided in FY 2020/21 was carried over to FY 2021/22 – this is not surprising as the last invoices of the year for work completed in June are often not submitted in time to process payment until July or August and, therefore, these expenditures must be accounted for in the following fiscal year. For this reason, the Board's year-end fund balance is higher on a cash basis than an accrual basis, which accounts for expenses that were incurred even if they are yet paid for.

The Board's total FY 2020/21 year-end fund balance was \$1,435,979 (on an accrual basis). The Board's capital reserve ended the year at \$495,500, which left its uncommitted reserve at \$940,479. This is 16.7% of projected recurring expenditures. Please note that these numbers are still preliminary because they have not yet been audited. The City of Berkeley contracts with an outside auditor to review its financial statements, and an audit of the Board's FY 2020/21 financial statements should be ready to review sometime in March or April of 2022.

As discussed in the FY 2021/22 budget recommendation, the outside auditor's report will show that the Rent Board's FY 2020/21 revenue is \$328,327 lower than the numbers that were provided to the Board and are being discussed here. This is due to a malfunction in the agency's online payment system that resulted in \$328,327 in FY 2020/21 revenue being deposited as FY 2019/20 revenue. For budgetary purposes, it is more accurate to count this revenue in FY 2020/21, even though it is accounted for elsewhere in the Board's audited financial statements.

Fiscal Year 2021-2022 Revenue Collection

The Board's adopted budget anticipated the agency collecting \$5,515,850 in revenue for the current fiscal year. As of December 31, 2021, the agency has collected \$5,434,941, well on pace to reach or exceed the amount. At the mid-fiscal year point, 298 delinquent fully-covered unit accounts owed a total of \$176,000 in current year fees. Overall, collection for fully-covered units is slightly lower than last year as the number of delinquent accounts is higher and owes about \$75,000 more than at the midpoint of last year.

When the Board adopted its FY 2021/22 budget, the main area of uncertainty was the rate of compliance and the overall total number of Measure MM units that would register during the initial registration year for Measure MM units. The Board chose a conservative estimate of 50% compliance rate for the initial year and the adopted budget only anticipated \$300,000 (\$350,000 including late registration penalties) in revenue. Actual Measure MM revenue at mid-year is \$616,724, with a total of 4,570 units registering, including 598 units paying the lower \$37 per unit, affordable housing fee. As of the mid-year, 270 outstanding Measure MM accounts owe just over \$125,000 in current year registration fees. Recently, staff sent out a second round of penalty bills to both Measure MM and fully-covered properties.² Overall there are approximately \$300,000 in unpaid registration fees³ and the number of delinquent accounts is higher than normal, which is not unexpected given the COVID-19 impacts and the addition of the new Measure MM registration requirements.

At the request of the Budget & Personnel Committee, the attached mid-fiscal year budget update spreadsheet identifies in separate rows what revenue comes from Measure MM registration fees and what revenue comes from fully-covered unit registration fees.

Administration of the Fair Chance Ordinance

On December 14, 2020, the Board agreed in principle to administer the recently-passed Ronald V. Dellums Fair Chance Access to Housing Ordinance (B.M.C. Chapter 13.106) on behalf of the City after receiving a letter from Mayor Arreguín requesting that the agency do so "subject to the negotiation of an agreement between the City administration and the Board regarding the specific roles and responsibilities in ordinance implementation".

Staff submitted a proposed budget that estimated \$10,350 in startup costs and \$105,500 in ongoing personal costs to administer the Ordinance. As part of their FY 2021/22 adopted budget, the City Council agreed to transfer \$115,850 in funds from the City of Berkeley general fund and that the Board staff would bill them only the actual costs to run the program.

² The Board adopted Resolution 21-19 on July 15, 2022, which created an amnesty period to allow property owners the opportunity to pay the Board's Registration Fee for FY 2020/2021 without penalty. Resolution 21-19 gives a 90-day amnesty to owners of fully-covered units if they were financially impacted by COVID-19; and a 120-day amnesty for Measure MM units without consideration of COVID-19 financial hardship.

³ There are also nearly one million dollars in penalty fees still outstanding between fully-covered and partially covered units.

The agency has set up Fair Chance Ordinance and is now actively administering it, but other than some limited counseling on the Ordinance, the administration has taken far fewer resources than initially anticipated. As of December 31, 2021, the agency has not yet billed the City's general fund related to the Fair Chance Ordinance and does not anticipate billing for a significant amount unless there are active cases that arise and require full evidentiary hearings. Year-end 2021/22 revenue projections have been reduced by \$100,000 to reflect the anticipated reduction in compensation for administering the Fair Chance Ordinance.

Fiscal Year 2021-2022 Mid-Year Expenditures & Updated Projections

As of December 31, 2021, the Board has expended a total of \$2,312,414. Actual mid-year expenditures are significantly less than what was anticipated in the Board's adopted budget due to salary savings and because the bulk of capital expenditures, mostly for the 3Di Rent Tracking System (RTS) replacement, will take place in the 3rd and 4th quarter. Salary expenditures were down in the 1st half of the year due to the turnover of five positions and the vacant Deputy Director position. Staff now project that total FY 2021/22 expenditures will be around \$550,000 less than what the Board authorized in the adopted budget.

A preliminary mid-year budget update is attached to this report and provides details on actual expenditures by budget line-item. The staff has also updated the projected year-end projections with updated projections on personnel expenditures, accounted for any changes or additions to the Board's contracts with outside vendors, and reduced spending from the Board's capital reserve.

As discussed earlier in this report, the actual year-end numbers for FY 2020/21 are not yet final and are pending final review by the City of Berkeley's contracted outside auditor.

Current Agency Priorities

The Rent Board's adopted FY 2022 Budget continues to prioritize the Rent Board's five core services⁴ or areas of work, which are:

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

In addition to the agency's ongoing "core" work, the Board's adopted budget included the following priority projects and initiatives (current status in parenthesis):

⁴ 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.

- Complete the initial registration of Measure MM units. (Mostly complete)
- Provide increased service to Measure MM units. (Ongoing – there have been 9 mediation requests and just under 200 counseling cases involving Measure MM units)
- Prepare and execute a phased office reopening and begin to provide more in-person services to clients. (In progress)
- Provide outreach and assistance to tenants and landlords on laws and requirements for evictions as state and local eviction moratoriums come to an end. (*In progress*)
- Fully transition from the agency’s existing RTS Database to the agency’s new integrated software platform being developed by 3Di. (*In progress*)
- Recruit, select, hire and train a new permanent Executive Director. (**Complete**)
- Create and hire a new General Counsel position that reports directly to the Board. (**Complete**)
- Implement and administrate the City’s Fair Chance Housing Ordinance. (**Complete**)
- Complete a survey of tenants and begin scoping a study/survey of property owners. (*In progress*)
- Use the 2nd and 4th Wednesdays to work on agency-wide improvement areas identified in the executive transition survey. (Ongoing)
- Continue work to improve the Demolition Ordinance to reach the appropriate balance of allowing new construction, while protecting sitting tenants and mitigating the overall loss of housing affordability. (*In progress*)
- Work with the City of Berkeley to revamp and improve the Relocation Ordinance. (In progress)
- Monitor development projects including the creation of new ADUs that impact the tenancies or services to existing tenants. (Ongoing)
- Continue to monitor Short-Term Rental Ordinance compliance to prevent the loss of long-term rentals. (Ongoing)
- Continue studying and memorializing the impacts of Costa-Hawkins on Berkeley and other cities in the state. (Ongoing)
- Implement a two-phase project to recreate all Rent Board web content (including PDFs) and transfer to the new website CMS, and expand integration with the City’s public records portal. Implementing and administratively improving the launch of the 3Di platform to effectively capture and report Measure MM unit registration. (*In progress*)
- Developing the 3Di platform to replace the existing Rent Tracking System (RTS) and case management system. (*In progress*)
- Implement redesign of a new agency website. (**Nearly complete**, new website scheduled to launch in March of 2022)
- Providing input to the Planning Department and HHCS Department on planned revisions to Berkeley’s Demolition Ordinance and Relocation Ordinance. (*In progress*)
- Continue working with local and regional groups to develop a coordinated and effective response to the housing crisis. (Ongoing)

- Work with the City of Berkeley IT Department to enhance agency cyber security.
(Ongoing)

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

- Select a vendor to complete the scanning of all property files and other agency files.
- Provide enhanced training for staff and Board members
- Recruit, select, hire and train a new permanent Executive Director.
- Providing input to the 4x4 Committee and City Council on implementation of the Fair Chance and “TOPA” Ordinance.
- Working with City Council to assist with the adoption of the Tenant Opportunity to Purchase Act (TOPA).

As the agency continues with the launch and implementation of its two priority projects, the Measure MM implementation and the RTS and case management replacement project, these are large, time-intensive projects that impact staff in all the work units. Additionally, the administratively heavy involvement of staff in the City of Berkeley’s website overhaul has further stretched staff resources. These larger, agency-wide projects are particularly administratively intense 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 continuing to work on the data migration and transition of RTS and case management, as well as the launch of the registration for fully-covered units in 3Di.

The launch and data migration phase of the 3Di system transition 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 full data migration and complete module launch have been completed.

It is important to note that the initiatives/projects listed above do not impact all work units equally. For example, the increased volume of client contacts directly related to Measure MM and the data migration with 3Di has impacted mainly the Registration Unit and the Public Information Unit. The city of Berkeley’s website overhaul project has deeply impacted the Administrative and Planning 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 25.0 Full-time Equivalent (FTE) career positions. Thus far in FY 2022, the agency has successfully recruited and hired a permanent Executive Director,

as well as added and hired for the new General Counsel position. Additionally, the former temporary position of Associate Planner has been made permanent and the staff person who filled the temporary position has been appointed to the permanent position.

After the recent hiring of a new PIU Manager, there are currently three (3) vacant positions within the agency. All vacancies are indicated in the adopted organizational chart attached to this report. Two of our permanent staff members are also on temporary leave but are expected to return sometime within the next six months.

Filling Vacancies

The three current vacancies are the Deputy Director position, a Senior Management Analyst that serves as the Registration Unit manager, and a Staff Attorney II position. Staff estimate that a new Registration Unit manager will be hired as soon as April, and the Staff Attorney II position will be filled sometime within the 2nd Quarter of 2022.

The FY 2021 mid-fiscal year report stated that the agency has adapted to operating without a Deputy Director has not had an active staff person in that role for several years. After reviewing the agency's needs and the Board's desire for a senior staff person to work on housing policy issues, staff recommends the Board remove the Deputy Director position from the staffing model and create and hire a new Policy Director position.

Part of the justification for creating the Deputy Director position was to hire and train a successor to the agency's previous Executive Director. Now that a new Executive Director is in place, succession planning is no longer a priority. The only benefit to having a Deputy Director is that this position serves as the backup to the Executive Director in case of emergency, vacation, or extended absence. Now that the agency's new General Counsel position has been filled by its former Acting Executive Director, there is an experienced senior staff person that reports directly to the Board and can back up the Executive Director when necessary.

The Board's adopted budget states that the Board is interested in pursuing a candidate to increase capacity to provide direction regarding several policy initiatives the Board is interested in adopting. Most of the policy issues the Board has raised recently are in the areas of housing and land use planning. A Deputy Director is an operations-focused position, and these policy areas require a staff person with a background and education in those areas. The proposed Policy Director would be created with the specific policy areas the Board is focusing on in mind.

The conversion of the vacant Deputy Director position is the only change staff is proposing to the staffing model at present, but there are several additional changes that staff recommends the Board consider implementing in FY 2022/23.

Future Staffing Model Changes

Given the imperative to increase capacity to further broaden how we provide service both internally and externally, there is a need to separate internal functions within certain units and introduce more focused functions in others. To achieve this, the staff is recommending the Board consider the creation of a total of three new positions in the next fiscal year. These positions are a Finance Manager, Senior Housing Counselor, and a Digital Education and Social Media Coordinator.

Finance Manager

Currently, payroll, finance, and budgetary functions are splintered between several work units. The Finance Manager would take over supervision of these tasks. In addition, the Finance Manager will be the first step to creating a finance unit that will also be responsible for contracting and purchasing activities. The Rent Board's current staffing model and organizational structure have limited capacity to handle these functions efficiently. An independent and financially-focused unit will allow for increased resources in other units that are currently handling these functions, offer more streamlined processes, and provide a centralized unit to be accountable for these functions which will further stabilize the organization and benefit overall productivity.

Senior Housing Counselor

There is a need to create a higher-level counselor position in the Public Information Unit (PIU). PIU staff are essential for the provision of core Rent Board services including education, counseling, and conducting community outreach. The PIU housing counselors must possess a niche, in-depth knowledge, and understanding of the Ordinance, state and local laws, and the intersections of multiple community agencies and resources related to rental housing. A Senior Housing Counselor would provide an additional and necessary layer to the unit where responsibility will be dedicated to highly specialized cases, research, and special projects. Moreover, adding this layer will allow the current housing counselors to continue to improve response times and increase regular counseling availability to consistently provide nuanced and detailed assistance with our clients' unique housing situations.

Digital Education and Social Media Coordinator

For years, the Board has expressed an interest in increasing the agency's social media presence and adapting our outreach program to include popular applications such as Twitter and LinkedIn. Additionally, as the Rent Board aligns with the City of Berkeley's new website platform, there will be an increased need to centralize the management of our print, web, and digital outreach to ensure clear, consistent, and accurate messaging. The Digital Education and Social Media Coordinator will also take on the responsibility to increase our digital education presence that

will update the community more broadly on important affordable housing matters, legislation, and resources that not only inform but benefit those we serve.

Budget & Personnel Committee Recommendation

Having reviewed a similar report and hearing staff's presentation, on March 8, 2022, the Budget & Personnel Committee unanimously recommended that the full Board authorize a staffing model adjustment to convert the vacant Deputy Director position to a new Policy Director position. If the Board adopts this change, staff will take the appropriate steps to work with the Human Resource Department to create and then advertise for the position.

The Budget & Personnel Committee will continue to discuss the other positions mentioned in this report at future meetings before bringing any additional recommendations to the Board.

Next Steps

After reviewing the mid-fiscal year budget report and making changes to the current staffing model, the Board also needs to provide input on additional programs or initiatives they would like considered for inclusion in the FY 2022/23 budget. Starting at their March 29, 2022 meeting, the Budget & Personnel Committee will review the initial budget projections for the next fiscal year and then begin working on a recommendation for the setting of the FY 2022/23 registration fee. The Board should anticipate considering the registration fee recommendation at either its regular meeting on April 21, 2022 or at a special meeting during the first week of May. If there are no new major increases proposed to the agency's expenditures, the Board may be able to again avoid any significant increase to next year's registration fees.

Conclusion

Staff has prepared Resolution 22-03, which the Board must adopt to convert the vacant Deputy Director Position to a new Policy Manager position. Staff awaits the Board's direction on the Budget & Personnel Committee's recommendation, as well as its feedback on the other potential future changes to the staffing model that are identified in this report.

Attachments:

1. Mid-Fiscal Year Budget Update Spreadsheet
2. Adopted Fiscal Year 2021/2022 Staffing Model & Organization Chart
3. Proposed Resolution 22-03 Adjusting Staffing Model to Convert the Vacant Deputy Director Position to a New Policy Director Position.

**Rent Stabilization Program
FUND 440
Preliminary FY 2021 Year-End & FY 2022 Mid-Year Budget Update**

Code	Description	Adopted FY 2021	Actual Year-End FY 2021	Adopted FY 2022	Mid-Year FY 2022	Projected FY 2022
11-01	Monthly Employees	2,482,000	2,325,298	2,850,000	1,108,336	2,500,000
11-03	Hourly Employees	0	0	0	0	0
13-01	Overtime	5,000	477	2,000	177	1,000
27-20	Benefits	1,620,000	1,550,686	1,800,000	672,318	1,600,000
30-12	Stipends	53,500	51,800	53,500	26,900	53,500
30-23	Misc. Legal Expenses	360,000	225,683	20,000	8,485	65,000
30-36	Temp. Agency Employees	0	801	5,000	11,013	25,000
30-38	Misc. Professional Services	410,000	336,739	410,000	192,636	586,241
30-42	Office Equip. Mtc. Svcs. / Furniture	13,000	6,796	13,000	5,044	13,000
30-43	Bldg. & Structures Mtc. Svc.	400	392	500	202	500
30-51	Bank Credit Card Charges	25,000	7,615	25,000	10,020	25,000
40-10	Professional Dues & Intern Fees	3,000	2,060	3,000	139	3,000
40-31	Telephones	5,000	7,292	5,000	3,696	5,000
40-50	Printing and Binding	25,000	24,798	35,000	12,180	35,000
40-62	Meals & Lodging	1,000	0	1,000	0	1,000
40-63	Registration Fees/Training	12,000	0	12,000	1,393	12,000
40-61/64	Transportation & Commercial Travel	5,000	12	3,000	51	3,000
40-70	Advertising/public access	30,000	33,720	45,000	23,016	45,000
40-80	Books & Publications	13,000	13,207	13,000	6,571	13,000
50-10	Rental of Land / Buildings	355,000	336,232	375,000	171,468	375,000
51-10	Postage	25,000	26,798	40,000	3,703	30,000
51-20	Messenger / Delivery	500	0	500	0	500
55-11	Office Supplies	15,000	12,346	13,500	5,689	13,500
55-50	Food and Water	2,000	704	1,000	459	1,000
70-43	Office Equipment and Furniture	5,000	0	5,000	0	5,000
70-44	Computers, Printers, Software	10,000	2,767	12,000	606	12,000
75-25	PC Replacement/City Software Licences	50,709	50,709	74,305	37,152	74,305
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**	5,531,209	5,022,031	5,822,405	2,303,054	5,502,646
	Special Projects (RTS Upgrade, online registration, training)	565,000	37,019	453,130	9,360	290,900
	Annual Capital Reserve	0	0	0	0	0
	Total Authorized Fund Expenditures*	6,096,209	5,059,050	6,275,535	2,312,414	5,793,546
	Fully-covered Unit Revenue			5,000,000	4,816,700	4,920,000
	Measure MM Revenue			350,000	616,724	650,000
	Fair Chance Ord. Administration			115,850	0	0
	Misc. (Project review, Settlements, Admin. Fees)			50,000	1,517	3,000
	Total Authorized Fund Revenue*	4,850,000	4,998,516	5,515,850	5,434,941	5,573,000
	Annual Surplus/Shortfall	(1,246,209)	(60,534)	(759,685)	3,122,527	(220,546)
	<i>Previous FY Carryover Expenditures</i>				52,083	52,083
	FUND BALANCE (cash basis)	289,938	1,488,035	728,350	3,850,877	1,267,489
	FUND BALANCE (accrual basis)	289,938	1,435,979	676,294	3,798,821	1,267,516
	TOTAL UNCOMMITTED OPERATIONAL FUND BALANCE	254,938	940,479	399,294	3,763,821	907,316

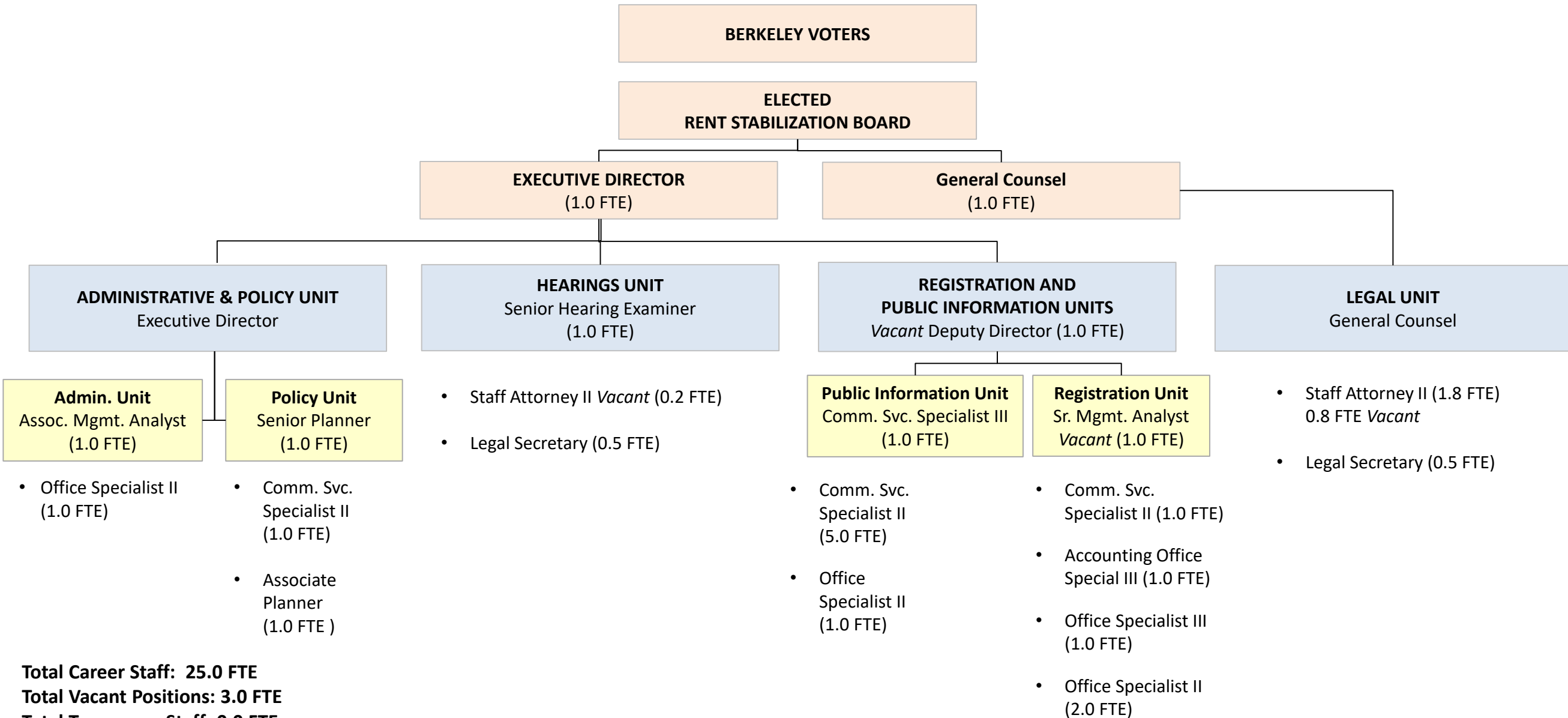
* Note: this report only reflects charges & revenues against the Rent Board Fund (Fund 440) and does not include services charged to or received from other funds

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

Adopted Berkeley Rent Stabilization Program 2021/22 Organization Chart

Career and Temporary Positions FY 2021/22

Sorted by Division Supervision



RESOLUTION 22-03

ADJUSTING THE FISCAL YEAR 2021-2022 STAFFING MODEL POSITION DETAIL TO CONVERT THE VACANT DEPUTY DIRECTOR POSITION TO A NEW POLICY DIRECTOR POSITION

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

WHEREAS, the Rent Stabilization Board operates based on 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 Budget and Personnel Committee met twelve times in the fiscal year 2020-21 to monitor the budget and the Program's progress meeting the goals established by the Board; and

WHEREAS, the Board completed a formal, mid-fiscal year budget review for the first time on February 18, 2021, and added a new Housing Counselor position to respond to the increased demand for services resulting from the passage of Measure MM; and

WHEREAS, on May 6, 2021, 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 for full-covered units at \$250 per unit and to set the Measure MM fee at \$150 per unit; and,

WHEREAS, on June 1, 2021, the Budget and Personnel Committee and the Acting Executive Director met and discussed a line-item operating budget and staffing model for FY 2022 for the Board's review and consideration; and,

WHEREAS, on June 17, 2021, the Board adopted Resolution 21-13, authorizing the Fiscal Year 2021-2022 staffing model and maximum expenditure level; and the proposed operating budget (including contracts) for FY 2021-2022 authorizes new expenditures totaling \$6,275,535, which includes both recurring operational and capital needs; and

RESOLUTION 22-03

ADJUSTING THE FISCAL YEAR 2021-2022 STAFFING MODEL POSITION DETAIL TO CONVERT THE VACANT DEPUTY DIRECTOR POSITION TO A NEW POLICY DIRECTOR POSITION (Page 2)

WHEREAS, with the adoption of Resolution 21-13, the Board also added a formal, mid-fiscal year review as a permanent part of its budget process going forward, to assess revenues, reserves, and the need for staffing model and/or programmatic changes; and

WHEREAS, after performing the mid-fiscal year budget review in February and March of 2022 and examining the current workload and filled positions along with the goals and objectives for FY 2021-2022 articulated by the Board, the Executive Director, and the Budget & Personnel Committee, the Board believes that it is necessary to convert the vacant Deputy Director Position to a new Policy Director Position; and

WHEREAS, the Deputy Director Position was initially created in 2010 to backup and assist the Executive Director with day to day operations; work on special projects, and as a succession planning tool to help identify and train a potential successor to the Board's previous Executive Director; and

WHEREAS, Board has recently hired a new Executive Director and created a new General Counsel position that reports directly to the Board and can back up the Executive Director when the need arises, and

WHEREAS, the Board has identified several policy initiatives, such as the need to study the continued impacts of Costa Hawkins, improving Berkeley's tenant Relocation Ordinance, and working with local and regional groups to develop a coordinated and effective response to the housing crisis; and

WHEREAS, the Deputy Director position is more operationally focused and the majority of the Board's identified policy initiatives require policy expertise, particularly in the areas of housing and land use planning; and

WHEREAS, the creation of a new Policy Director position that can lead the Board's policy initiatives will improve the agency's ability to accomplish the goals outlined in the Board's adopted budget.

RESOLUTION 22-03

ADJUSTING THE FISCAL YEAR 2021-2022 STAFFING MODEL POSITION DETAIL TO CONVERT THE VACANT DEPUTY DIRECTOR POSITION TO A NEW POLICY DIRECTOR POSITION (Page 3)

NOW, THEREFORE, BE IT RESOLVED that the Board directs staff to eliminate the vacant Deputy Director position and create a new permanent Policy Director position; and

BE IT FURTHER RESOLVED THAT this change to the staffing model will not cause the Board to exceed the overall spending level totaling \$6,275,535 it previously authorized for the Fiscal Year 2021-2022.

Dated: March 17, 2022

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: _____
DéSeana Williams, Executive Director

Distributed at the Meeting



FY 2022 Mid-Fiscal Year Budget Review

Budget & Personnel Committee
and Executive Director

FY 2022 Adopted Budget



Maintaining \$250 Per Unit Fee



Implementing Measure MM



Utilizing Uncommitted Reserve

Measure MM
Mid-Year
Registration
Update

4,570 registered Measure MM
units, 892 claimed exempt

598 units from 100%
affordable housing projects

\$616,724 total revenue

FY 2021-22 Revenue Collection

- Adopted FY 2022 Revenue = \$5,515,850
- Actual Mid-Fiscal Year Revenue = \$5,434,941
- Updated Projected Revenue = \$5,573,000





FY 2021-22 Expenditures

- Authorized Expenditures = \$6,275,535
- Actual Expenditures = \$2,312,414 (Mid-Fiscal Year)
- Updated Projected Expenditures = \$5,793,546

Impact to Uncommitted Reserve

	Start of Fiscal Year	End of Fiscal Year	Change
Adopted	\$940,479	\$399,924	-540,555
Updated Projection	\$940,479	\$907,316	-33,163

+\$507,000 increase above adopted budget

Five Core Rent Board Services



OUTREACH



COUNSELING



HEARINGS &
MEDIATIONS



REGISTRATION &
RENT CEILING
RECORDS



POLICY,
ADMINISTRATIVE,
AND LEGAL
SUPPORT

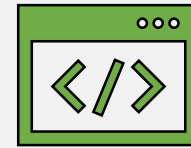
Large Agency Wide Projects



MEASURE MM
IMPLEMENTATION



RTS TO 3DI
DATABASE TRANSITION



WEBSITE REDESIGN
& CONTENT MIGRATION

Current Staffing Model

25.0 Full time equivalent (FTE)
Career Positions



3.0 FTE Vacant

VACANT POSITIONS

Deputy
Director

Staff Attorney
II

Registration
Unit Manager

Budget & Personnel Committee Staffing Model Recommendation

Convert Vacant
Deputy Director



To New Policy
Director Position

Potential New
Positions
Under
Consideration
for FY 2023



Finance Manager



Senior Housing Counselor



Digital Education & Social
Media Coordinator

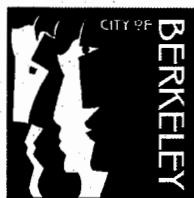


Next Steps

- Collect Input
- Prepare Recommendation for FY 23 Registration Fee
- Set Fee no later than 1st week of May

Questions





Rent Stabilization Board
Legal Unit

DATE: April 21, 2022

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 2022/23 Registration Year

Recommendation

That the Board adopt Resolution 22-09 to authorize a Summer Rental Period registration fee of \$70.00 as well as procedures for sororities and fraternities for the pending 2022/23 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/liason 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 29, 2022 committee meeting, the Budget & Personnel Committee approved the continuance of the \$70 Fraternity/Sorority Summer Registration Fee. The attached Resolution, which has been continually been re-adopted since 2010 is attached.

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 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.

For the current 2021/22 registration year, the seasonal fee remained at \$70 per room. The agency collected \$7,280 in registration fees from eighteen (18) chapters registering one hundred four (104) rooms. Six chapters registered a total of forty-four (44) rooms as fully rent-controlled and paid \$11,000 in registration fees. In total, the agency collected \$18,280 in registration fees. Thirteen (13) chapters claimed all rooms were exempt. Two chapters failed to report or file any fees or forms and one chapter was late in payment. These three chapters are under review.

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 22-09

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2022/23 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 22-09

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2022/2023 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, 2020 and 2021, 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 22-09

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2022/2023 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; and

WHEREAS, on May 6, 2021 the Board set the summer rental fee at \$70 per unit for the current 2021/22 fiscal year; and

WHEREAS, on March 29, 2022 the Budget & Personnel Committee recommended the summer rental fee be maintained at \$70 per unit.

NOW, THEREFORE, BE IT RESOLVED that for the 2022/2023 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 15, 2022, through August 16, 2022; 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 22-09 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,

RESOLUTION 22-09

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2022/2023 FISCAL YEAR (Page 4)

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,

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, 21-08 and the sororities listed in Board Resolution 17-06, 18-07, 19-10, 20-08 and 21-08; and,

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,

RESOLUTION 22-09

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2022/2023 FISCAL YEAR (Page 5)

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 2022/2023 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,

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: April 21, 2022

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: _____
DeSeana Williams, Executive Director



Rent Stabilization Board
Office of the Executive Director

ACTION REQUIRED: Please read and provide the required information for Measure MM covered units.

March 21, 2022

[OWNER NAME]
[OWNER ADDRESS]
[OWNER ADDRESS]

Re: Compliance Notice: Required registration information for Measure MM covered units

Dear [OWNER NAME]:

As you know, Berkeley voters adopted Measure MM at the November 2020 general election. Measure MM required landlords of certain residential rental units to register with our agency.

We have received your payment for the registration fees owed but you have not provided all tenancy information required by either the "Registration Statement for Partially Covered Units" or the "Tenancy Registration Form for Partially Covered Units" for one or more rental units. The Board recently adopted changes to Regulations 801 and 1311 to make clear that ***rental properties covered by Measure MM will remain out of compliance if property owners fail to submit these prescribed forms to provide information regarding the rental units and tenancies at these properties.*** Please be advised that your rental property is not currently in compliance with the registration requirements of the Rent Ordinance. Property owners who remain out of compliance ***will not be able to evict tenants from any unit at the rental property until you have filed all the forms for each tenancy on the property.***

We urge you to file these forms as soon as possible so that you are not restricted by anything associated with your properties being out of compliance with the Rent Ordinance. You can find the necessary forms here: https://www.cityofberkeley.info/Rent_Stabilization_Board/Home/Forms.aspx. Alternatively, go to the online Rent Registry at <https://rentregistry.cityofberkeley.info>. You can use the APN/PIN information provided in the Rent Registry Notice that accompanied your billing statement to update the tenancy information of the unit.

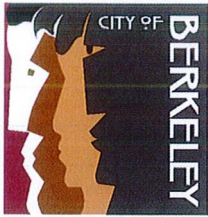
The Board requires owners of Measure MM properties to file tenancy information once a year at the time they pay registration fees for these rental units. You will receive another bill in May. At that time, you will again need to file a Tenancy Registration Form for Partially Covered Units for each unit at the property.

If you have any questions or difficulty filing these forms online, please contact our Registration Unit at (510) 981-7368, Ext. 2, or via email at rentregistry@cityofberkeley.info. Staff are available Mondays, Tuesdays, Thursdays and Fridays from 9am - 2pm to answer your questions. We are closed on Wednesdays.

Sincerely,

A handwritten signature in blue ink, appearing to read "DéSeana Williams".

DéSeana Williams
Executive Director



Rent Stabilization Board

Public

April 11, 2022

Hon. Cecilia M. Aguiar-Curry, Chair
Committee on Local Government
California State Assembly
Sacramento, CA 95814

Re: Assembly Bill 2386 (Bloom) Planning and zoning: tenancy in common subject to an exclusive occupancy agreement. SUPPORT

Dear Chair Aguiar-Curry,

The City of Berkeley's Rent Stabilization Board (Board) supports Assembly Bill (AB) 2386 Planning and zoning: tenancy in common subject to an exclusive occupancy agreement. AB 2386 would allow local governments to establish regulations for the proper management of TICs, which have the same characteristics as common interest developments, but unlike common interest developments, are developed without any local regulatory oversight. Such oversight is important to ensure consistency with local jurisdictions' existing land use authority. AB 2386 protects local control without infringing on landlords or prospective homeowners' rights to enter into TICs.

AB 2386 would also enable local governments to create regulations for the protection of prospective buyers who, without proper disclosures and knowledge of existing law could inadvertently violate the Ellis Act as it relates to the rights of displaced former tenants. AB 2386 is a reasonable proposal that deserves serious consideration.

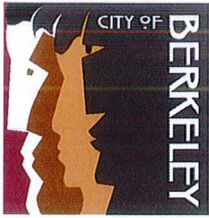
The Board appreciates your leadership and work on behalf of all Californians and urges the members of the Committee to pass the bill.

Sincerely,

A handwritten signature in blue ink, appearing to read "Leah Simon-Weisberg".

Leah Simon-Weisberg, Chairperson
City of Berkeley Rent Stabilization Board

C: Hon. Richard Bloom, AD-50



Rent Stabilization Board

Public

April 11, 2022

The Honorable Buffy Wicks
California State Assembly
State Capitol
Sacramento, California

Re: AB 2469 – Support if Amended

Dear Assembly Member Wicks:

As Chair of the City of Berkeley's Rent Stabilization Board, I am writing to share with you the Board's recent action to support AB 2469 if amended as described below. As you know, the Rent Board, an elected body, administers Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance.

The Board supports the creation of a statewide rental registry as proposed by AB 2469. Such a registry would provide critical information to policymakers, tenants, and others about trends in rent increases, evictions, and other elements of the rental housing market in California that would be extremely helpful in crafting solutions to protect tenants. For that reason, we strongly urge that the measure be expanded to include all rental properties, not just those owned by a corporation or limited liability company. This change would ensure that information about all rental units is captured in the registry and that all tenants have the same protections that the bill provides when a landlord fails to register.

Similarly, we believe the data that will be collected will be more valuable if it is reported annually. We understand that it is your intent to amend the bill to increase the reporting frequency from every five years to every year.

Thank you for authoring this important legislation. We would be pleased to support it with the amendments described above. If you have any questions or concerns, please do not hesitate to contact the Board's Legislative Advocate, Brian Augusta, at baugusta@piadvocates.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Leah Simon-Weisberg".

Leah Simon-Weisberg, Chair
City of Berkeley Rent Stabilization Board

Commissioner Attendance at Rent Stabilization Board Meetings: Through Q1 of 2022

2021	Soli ALPERT	James CHANG	Xavier JOHNSON	Andy KELLEY	Paola LAVERDE	Mari MENDONCA	John SELAWSKY	Leah SIMON-WEISBERG	Dominique WALKER
January 20	Present	Present	Present	Present	Present	Present	Present	Present	Present
February 17	Present	Present	Present	Present	Present	Present	Present	Present	Present
March 17	Present	Present	Present	Present	Present	Present	Present	Present	Present
April 21									
May 19									
June 16									
July 21									
August 18									
September 15									
October 20									
November 17									
December 15									

* = Absent *with* compensation

** = Absent due to a medical reason

Bold and italicized = Special Meeting

**Commissioner Attendance at Rent Stabilization Board COMMITTEE Meetings:
January-March 2022 (Q1)**

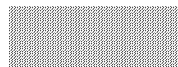
COMMITTEES	Soli ALPERT	James CHANG	Xavier JOHNSON	Andy KELLEY	Paola LAVERDE	Mari MENDONCA	John SELAWSKY	Leah SIMON- WEISBERG	Dominique WALKER
<i>Budget & Personnel</i>									
Tuesday, February 15, 2022		Present					Present	Present	Present
Tuesday, March 8, 2022		Present					Present	Present	Present
Tuesday, March 29, 2022		Present					Present	Present	Absent
<i>Eviction / Section 8 / Foreclosure</i>									
Thursday, March 24, 2022					Present	Present	Present		Absent
<i>IRA / AGA / Registration</i>									
Wednesday, January 12, 2022	Present		Present	Present				Present	
Wednesday, February 9, 2022	Present		Present	Present				Present	
Wednesday, March 9, 2022	Present		Present	Present				Present	
<i>Outreach</i>									
Wednesday, January 19, 2022		Present		Present	Present	Present			
Wednesday, February 16, 2022		Present		Present	Present	Present			
Wednesday, March 16, 2022		Present		Present	Present	Present			
<i>4 x 4 Joint Committee on Housing (City Council/Rent Board)</i>									
Tuesday, January 11, 2022	Present		Present	Present				Present	
Wednesday, February 23, 2022	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 2022 (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>									
Monday, January 24, 2022							Present	Present	

^ = Meeting cancelled due to lack of a quorum

* = Absent with compensation



= Not a member of this Committee at this time

Public



RENT STABILIZATION BOARD
BUDGET & PERSONNEL COMMITTEE MEETING

Tuesday, March 29, 2022

5:00 p.m.

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

Pursuant to Government Code Section 54953(e)(3), City Council Resolution 70,030-N.S., and Berkeley Rent Stabilization Board (Rent Board) Resolution 21-29, this meeting of the Rent 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://us06web.zoom.us/j/82496867959?pwd=R UdLL21YbWh5KzNUUTFKZWV Oa k1HUT09>. 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: 824 9686 7959 and Passcode: 449731. 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 amueller@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 DéSeana Williams, Executive Director of the Rent Board, at 510-981-7368 (981-RENT). The Committee may take action related to any subject listed on the Agenda.



RENT STABILIZATION BOARD
BUDGET & PERSONNEL COMMITTEE MEETING

Tuesday, March 29, 2022 – 5:00 p.m.

AGENDA

1. Roll Call
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-Chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*
3. Approval of Agenda
4. Public Comment
5. Approval of the March 8, 2022 Meeting Minutes (Attached to Agenda)
6. Review, Discussion and Possible Action regarding Status Quo FY 2023 Budget Projections (See attached Spreadsheet)
7. Discussion and Possible Action on the Process to Adopt the FY 2022/23 Registration Fee for Fully Covered and Measure MM units
8. Discussion and Possible Action on Rent Board Commissioner CPI Stipend Increase
9. Future Agenda Items
10. Scheduling of Next Meeting
11. Adjournment

STAFF CONTACT: DéSeana Williams, Executive Director (510) 981-7368

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



RENT STABILIZATION BOARD
EVICITION / SECTION 8 / FORECLOSURE COMMITTEE MEETING

Thursday, March 24, 2022

5:30 p.m.

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

Pursuant to Government Code Section 54953(e)(3), City Council Resolution 70,030-N.S., and Berkeley Rent Stabilization Board (Rent Board) Resolution 21-29, this meeting of the Rent Board's **Eviction/Section 8/Foreclosure 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://us06web.zoom.us/j/86109304385?pwd=UlpCbWZpVnpMVzQ2Q0ZoOUN5V0NtUT09>. 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: 861 0930 4385 and Passcode: 321033. 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 msiegel@cityofberkeley.info with the Subject line in this format: "PUBLIC COMMENT ITEM FOR EVICITION/SECTION 8 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 rules of procedure and decorum will apply for meetings conducted by teleconference or videoconference.

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



Rent Stabilization Board

RENT STABILIZATION BOARD
EVICTIION / SECTION 8 / FORECLOSURE COMMITTEE MEETING

Thursday, March 24, 2022 – 5:30 p.m.

AGENDA

1. Roll call
2. Approval of the Agenda
3. Land Acknowledgment Statement: The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.
4. Approval of Minutes of the December 9, 2021 meeting
5. Public Comment
6. Election of Committee Chair
7. Presentation by Eviction Defense Center on Tenant Protection Ordinance Activities
8. Future Agenda Items
9. Confirm next meeting date (Commissioners: please bring calendars to meeting)
10. Adjournment

STAFF CONTACT: Matthew Siegel – (510) 981-4903

COMMITTEE: Paola Laverde, Mari Mendonca (Chair), John Selawsky, Dominique Walker

Public



**RENT STABILIZATION BOARD
OUTREACH COMMITTEE MEETING**

Wednesday, April 20, 2022

5:15 p.m.

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

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

To access this meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/89090202321?pwd=cGxPa0IxSllvVi95dmZQcWhWTVBOQT09>. 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: 890 9020 2321 and Passcode: 140743. 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 3:15 p.m. on the day of the Committee meeting in order to be included.**

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Rent Stabilization Board

Public

RENT STABILIZATION BOARD OUTREACH COMMITTEE MEETING

Wednesday, April 20, 2022 – 5:15 p.m.

AGENDA

1. Roll call (2 min)
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchium-(Hooch-yoon)), the ancestral and unceded land of the Chochoenyó (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*
3. Approval of the Agenda (2 min)
4. Approval of the minutes of March 16, 2022 meeting (5 min)
5. Public Comment (5 min)
6. Staff Update regarding Social Media (5 min)
7. Staff Update on Website Revamp and New 3Di Case Management/
Public Platform (10 min)
8. Discussion/possible action regarding 2022 Tenant Survey (15 min)
 - a. Staff Report on Vendor Contract with Social Science Research Center, CSU Fullerton
 - b. Next Steps: Board Action Required

9. Discussion/possible action regarding the Fair Chance Ordinance (10 min)
 - a. Promotion Video for the New Law, Ron Dellums Fair Chance Ordinance
<https://www.youtube.com/watch?v=wp8CVZdKUV0>
(JustCities and HipHopforChange supporting Housing for All, Fair Chance Ordinance)
 - b. Webinar Monday May 9th 5pm - 6:30pm, Hosted by Berkeley Property Owners Association and Co-Presenters JustCities and Berkeley Rent Board
10. Staff Report on Status of Eviction Moratorium/Ellis Act (5 min)
11. Staff Report: Recent and Upcoming Webinars, Workshops, Events (5 min)
12. Schedule Next Meeting Date (2 min)
13. Future Agenda Items (5 min)
14. Adjournment (2 min)

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

Monday, April 18, 2022 – 3:00 p.m.

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

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

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

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

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

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



4x4 Committee on Housing
City Council and Rent Board

AGENDA

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

Monday, April 18, 2022 – 3:00 p.m.

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

COMMITTEE MEMBERS:

Mayor Jesse Arreguín

City Councilmember Kate Harrison

City Councilmember Rigel Robinson

City Councilmember Terry Taplin

Rent Board Chairperson Leah Simon-Weisberg

Rent Board Vice-Chairperson Soli Alpert

Rent Board Commissioner Xavier Johnson

Rent Board Commissioner Andy Kelley



4x4 Committee on Housing
City Council and Rent Board

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

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

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

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

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To join by phone: Dial 1-669-900-6833 and enter Webinar ID: 897 5080 6233 and Passcode: 073996. 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.**

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4x4 Committee on Housing
City Council and Rent Board

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

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

Minutes To Be Approved

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

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

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

There were no public speakers.

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

There were no public speakers.

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

There were no public speakers.

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

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

There were no public speakers.

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

The meeting adjourned at 5:01 p.m.

COMMITTEE MEMBERS:

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

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



Planning & Development Department
Land Use Planning Division

DATE: April 18, 2022

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

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

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

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

1. Summary of Existing Demolition Ordinance Provisions

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

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

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

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

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

2. Impact of SB 330 on Local Demolition Controls

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Draft Amendments to Demolition Ordinance

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

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

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

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

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

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

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

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

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

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

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

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

Next Steps

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

ATTACHMENTS:

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

ATTACHMENT 1 – STATE LAW EXCERPTS

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

.....

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) For purposes of this paragraph:

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

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

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

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

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

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

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

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

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

Govt. Code section 65915 (Density Bonus Law)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Govt. Code section 7060 et seq (Ellis Act)

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

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

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

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

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

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

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

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

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

7060.1

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

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

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

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

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

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

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

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

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

7060.2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7060.3

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

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

7060.4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7060.5

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

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

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

7060.6

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

7060.7

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **Sections:**

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

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

9 **23C.08.030 Building Relocations**

10 **23C.08.040 Imminent Hazards**

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

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

17 **[Alternative A]**

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

24 **[Alternative B]**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

131 **23C.08.030 Building Relocations**

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

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

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

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

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

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

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

150 **23C.08.040 Imminent Hazards**

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

157



4x4 Committee on Housing
City Council and Rent Board

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

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

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

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

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

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

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

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

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



4x4 Committee on Housing
City Council and Rent Board

AGENDA

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

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

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

COMMITTEE MEMBERS:

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

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



4x4 Committee on Housing
City Council and Rent Board

Minutes - Unapproved

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

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

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

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

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

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

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

COMMITTEE MEMBERS:

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

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



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: November 18, 2020

TO: Members of the Planning Commission

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

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

BACKGROUND

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

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

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

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

Demolition Ordinance

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

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

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

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

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

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

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

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

Demolition Ordinance

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

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

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

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

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

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

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

Demolition Ordinance

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

PROPOSED AMENDMENTS

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

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

1. Reference State Law

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

2. Ensure Compliance with the BMC

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

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

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

3. Clarify Use Permit Conditions that Pertain to Tenants

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

Demolition Ordinance

4. Extend the definition of “dwelling unit”

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

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

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

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

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

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

NEXT STEPS

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

ATTACHMENTS

1. Ordinance
2. Public Hearing Notice

1 **Clean Copy**

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

5 Sections:

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

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

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

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

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

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

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

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

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

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

- 29 1. The building containing the unit(s) is hazardous or unusable and is
30 infeasible to repair as determined by the Chief Building Official and Zoning
31 Officer;
- 32 2. The demolition will result in no net loss in protected units, as defined in
33 Government Code section 66300(d)(2)(E)(ii);
- 34 3. The demolition would not be materially detrimental to the public interest of
35 the affected neighborhood and the City, taking into the account the housing
36 needs of the neighborhood, the City, and the region; or
- 37 4. Denial of the demolition permit would conflict with state law applicable to
38 the City of Berkeley, as a charter city, including but not limited to the Ellis Act
39 (Government Code section 7060 *et seq.*).

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

42 E. A Use Permit issued pursuant to this Section shall require the applicant to comply
43 with the following conditions:

- 44 1. The applicant shall provide all tenants with notice of the application to
45 demolish the building no later than the date it is submitted to the City, including
46 notice of their rights under Chapter [13.76](#). Any existing residents must be allowed
47 to occupy their units until six months before the start of construction activities.
- 48 2. The applicant shall provide assistance with moving and relocation
49 assistance equivalent to the requirements set forth in Chapter [13.84](#) or
50 Government Code section 66300(d)(2)(D)(i), whichever requires greater
51 relocation assistance to displaced households; provided, however, that any
52 project that is carried out or funded by the state or federal government shall be
53 subject to applicable provisions of the California Relocation Act (Government
54 Code section 7260 *et seq.*) and/or the Uniform Relocation Assistance and Real
55 Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-
56 4655).
- 57 3. Any tenant of a protected unit that is demolished shall have the right of
58 first refusal to rent any new protected units designated to replace the units that
59 were demolished, consistent with the requirements of Government Code section
60 66300(d)(2)(D)(ii), if applicable, and subject to any applicable eligibility
61 requirements for affordable units.

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

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

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

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

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

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

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

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

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

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

98 **23C.08.030 Building Relocations**

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

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

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

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

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

110 **23C.08.040 Imminent Hazards**

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

117

118

Red-Lined Version

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120

121

122

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

123 Sections:

124

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

125

~~—General Requirement~~

126

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

127

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

128

129

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

130

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

131

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

132

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

133

134

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

135

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

136

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

137

Requirement

138

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

139

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

140

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

141

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

142

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

143

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

144

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

145

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

NOVEMBER 18, 2020

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

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

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

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

LOCATION: Citywide.

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

PUBLIC COMMENT

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

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

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

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

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

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

COMMUNICATION ACCESS

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

FURTHER INFORMATION

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

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

ATTACHMENT 4 - EXISTING DEMOLITION ORDINANCE

[RECODIFIED IN THE BASELINE ZONING ORDINANCE AS SECTION 23.326]

Sections:

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

23C.08.020 Elimination of Dwelling Units through Demolition

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

23C.08.035 Private Right of Action

23C.08.040 Elimination of Residential Hotel Rooms

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

23C.08.060 Building Relocations

23C.08.070 Limitations Section

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

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

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

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

Section 23C.08.020 Elimination of Dwelling Units through Demolition

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 23C.08.035 Private Right of Action

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

Section 23C.08.040 Elimination of Residential Hotel Rooms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 23C.08.060 Building Relocations

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

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

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

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

Section 23C.08.070 Limitations

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

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

ORDINANCE NO.

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

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

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

Chapter 23.326 DEMOLITION AND DWELLING UNIT CONTROLS

Sections:

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

23.326.010 Chapter Purpose.

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

23.326.020 General Requirements.

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

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

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

23.326.030 Eliminating Dwelling Units through Demolition.

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

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

2. *Limitation.*

(a) Demolition is not allowed if:

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

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

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

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

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

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

4. *Replacement Units*

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


[Alternative B]

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

5. *Occupied Units.*

(a) *Applicability.*

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

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

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

(c) *General Requirements.*

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

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

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

(d) *Sitting Tenants Rights.*

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

iii. Income restrictions do not apply to displaced tenants.

iv. *Exception.*

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

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

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

5

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

23.326.040 Eliminating Dwelling Units through Conversion and Change of Use.

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

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

2. One of the following is true:

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

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

B. *Limitations.*

1. Demolition is not allowed if:

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

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

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

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

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

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

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

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

D. Effect of Eliminating a Dwelling Unit.

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

(a) The building is demolished; or

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

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

E. Exceptions.

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

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

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

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

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

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

23.326.050 Private Right of Action.

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

23.326.060 Elimination of Residential Hotel Rooms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23.326.070 Demolitions of Non-Residential Buildings.

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

B. *Accessory Buildings.*

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

C. *Landmarks Preservation Commission Review.*

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

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

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

2. The demolition:

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

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

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

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

23.326.080 Building Relocations.

A. *Treatment of Building Relocation.*

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

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

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

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

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

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

23.326.090 Limitations.

A. *Unsafe, Hazard, or Danger.*

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

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

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

MEMORANDUM

DATE: April 18, 2022

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

FROM: Rent Board Vice-Chairperson Soli Alpert

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

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

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

Remodel of Existing Structures

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

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

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

SB 330

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

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

Section 1954.52(b)

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

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

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

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

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



Rent Stabilization Board
Legal Unit

MEMORANDUM

DATE: April 18, 2022

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

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

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

Summary

The Legislation, IRA/AGA & Registration Committee has discussed potential amendments to the Rent Stabilization and Eviction for Good Cause Ordinance to propose to the full Board at each meeting since October 13, 2020. At its March 9, 2022 meeting, the Committee recommended the amendments articulated in this memorandum. The amendments are designed to ensure that the Ordinance better serves its purpose; namely the prevention of arbitrary, discriminatory or retaliatory evictions, in order to maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. In light of both the ongoing housing crisis and the continuing threat to housing stability posed by the COVID-19 pandemic, these proposed amendments enhance the ability of the Board and City Council to preserve the public peace, health and safety, and the availability of housing for low and fixed income households, people of color, students, people with disabilities, and older residents.

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

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

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

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

Background and Need for Rent Stabilization Board Action:

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

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

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

Proposed Language:

Chapter 13.76 is amended as follows:

Section 13.76.040

DEFINITIONS

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

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

Section 13.76.050

APPLICABILITY

I. Newly constructed rental units, as defined in Section 13.76.040Q. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

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

Background and Need for Rent Stabilization Board Action:

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

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

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

¹ See B.M.C. Section 13.76.120C.

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

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

Proposed Language:

Section 13.76.130

GOOD CAUSE REQUIRED FOR EVICTION

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement. Notwithstanding any contrary provision in this chapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

- a. The landlord has unreasonably withheld consent to the subtenancy; and
- b. The tenant remains an actual occupant of the rental unit; and
- c. The number of tenants and subtenants actually occupying the rental unit does not exceed ~~the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater~~ the maximum number of occupants legally allowed under Section 503(b)(2) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922, except where prohibited by law.
- d. Withholding of consent by the landlord shall be deemed to be unreasonable where:
 - (i) ~~The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy~~ tenant has made a written request to the landlord to either sublet the unit and/or add additional occupants, and the landlord has failed to respond in writing within fourteen (14) days of the tenant's request;
or

(ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information, and the proposed new subtenant or additional occupant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and or

~~(iii) The proposed new subtenant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and~~

(iv) The landlord has not articulated in writing a well-founded reason for refusing consent. A landlord's reasonable denial may not be based on the proposed occupant's lack of credit worthiness or income if that occupant will not be legally obligated to pay some or all of the rent to the landlord.

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

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

3. Eliminating "Decontrol" clause from ordinance

Background and Need for Rent Stabilization Action:

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

² BMC Section 13.76.060Q.

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

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

Proposed Language:

Section 13.76.060

RENT STABILIZATION BOARD

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

CONCLUSION

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

These are the initial matters the Board has discussed, but this memo is not meant to be an exhaustive list of items the Board wishes to have Council consider placing on the November ballot. The Legislation, IRA/AGA & Registration Committee has informed legal staff that there may be other items they will request that the Board and Council support. Time is of the essence as Council will have to place these matters on an agenda soon in order to meet any ballot measure deadlines. Staff awaits this Committee's instruction on how it wishes to proceed.