



RENT STABILIZATION BOARD
Regular Meeting
Thursday, December 15, 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/83979216510?pwd=Z1ZqQ0xmVm82TjdDcjA0VFB3RGpHZz09>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "Rename" to rename yourself to be anonymous. To request to speak, use the "Raise Hand" icon by rolling over the bottom of the screen.

To join by phone: Dial 1-669-900-6833 and enter Meeting ID: 839 7921 6510 and Passcode: 395740. 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 a written communication for the Board's consideration and inclusion in the public record, please email amueller@cityofberkeley.info with the Subject line in this format: "RENT BOARD MEETING PUBLIC COMMENT ITEM." Please observe a 150-word limit. **Email comments must be submitted to the email address above by 5:00 p.m. on the day of the meeting in order to be included.**

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

This meeting will be conducted in accordance with Government Code Section 54953, 54956, and all current state and local requirements allowing public participation in meetings of legislative bodies. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to DéSeana Williams, Executive Director, at (510) 981-7368. The Rent Board may take action related to any subject listed on the Agenda.

RENT STABILIZATION BOARD
Regular Meeting
Thursday, December 15, 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 (Huchün-(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** – 1 min.*

4. **Public Comment** – 2 min. per speaker for *non*-agendized items*

5. **Public Comment** – 2 min. per speaker for items on the agenda*

6. **SPECIAL ORDER OF BUSINESS**
 - a. Oath of Office of Commissioners-elect:
City Clerk Mark Numainville will administer the Oath of Office to Commissioners-elect.

 - b. Comments from new Commissioners

7. **SPECIAL ORDER OF BUSINESS**
 - a. Election of Rent Board Chair:
The Executive Director conducts the election for the Board's Chair.

- b. Election of Rent Board Vice-Chair:
The newly-elected Chair conducts the election for the Board's Vice-Chair.
- c. Comments from the newly-elected Chair, Vice-Chair and Commissioners

8. CONSENT ITEMS – 1 min.*

- a. Approval of the November 17, 2022 regular meeting minutes

The following resolutions were read aloud and discussed at the November 17, 2022 Rent Board meeting but no vote occurred. The Board will vote to approve all four resolutions respectively.

- b. Resolution 22-28 acknowledging James Chang's years of service as a Rent Board Commissioner
- c. Resolution 22-29 acknowledging Paola Laverde's years of service as a Rent Board Commissioner
- d. Resolution 22-30 acknowledging Mari Mendonca's years of service as a Rent Board Commissioner
- e. Resolution 22-31 acknowledging John Selawsky's years of service as a Rent Board Commissioner
- f. Proposal to approve staff recommendations on the following requests for waivers of late registration penalties (Executive Director/Registration Unit Manager)

Ministerial Waivers

Property Address

1531 FAIRVIEW
2615 PARKER
2631 REGENT ST
1937 DELAWARE ST
1949 MILVIA
1717 LA LOMA #3
2414 BYRON
1517 WALNUT
1519 WALNUT
1110 UNIVERSITY
2836 REGENT
1716 DELAWARE #2
809 FOLGER AVE
811 FOLGER AVE
815 FOLGER AVE

814 DELAWARE
1520 LINCOLN
813 FOLGER
1104/1106 EUCLID
1035 EUCLID
1515 DWIGHT WAY

Discretionary Waivers

<u>Waiver No.</u>	<u>Property Address</u>
W5064	1850 ARCH
W5065	1536 CARLETON ST
W5066	1802 CEDAR
W5067	1222 SHATTUCK
W5068	1910 FRANCISCO

9. 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. Chair Update (Chair Simon-Weisberg) – 5 min.*
- b. Discussion and possible action regarding the possible return to in-person meetings of the Rent Board and its committees – *Verbal* (General Counsel) – 10 min.*
- c. Discussion and possible action to adopt the 2023 Regular Rent Board Meeting Schedule (Executive Director) – 10 min.*
- d. Discussion and recommendation that the Board convey its support for Assembly Bill 12, Haney [Tenancy: security deposits] (Commissioner Kelley & Chair Simon-Weisberg) – 10 min.* **TO BE DELIVERED**

10. 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. Rent Board Workplace Culture Retreat – *Verbal* (Executive Director) – 3 min.*
- b. Announcement of date to submit agenda topics/items for January 2023's regular Rent Board meeting (Board Secretary) – 1 min.*

11. COMMITTEE/BOARD MEETING UPDATES AND ANNOUNCEMENTS

- a. Budget and Personnel Committee (Chair TBA) – 5 min.*
Next regularly-scheduled meeting: TBA
- b. Eviction/Section 8/Foreclosure Committee (Chair TBA) – 5 min.*
Next regularly-scheduled meeting: TBA
- c. Legislation, IRA/AGA & Registration Committee (LIRA Committee)
(Commissioner Kelley, Chair) – 5 min.*
Next regularly-scheduled meeting: TBA
- d. Outreach Committee (Chair TBA) – 5 min.*
Next regularly-scheduled meeting: TBA
- 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 Task Force Committee on Housing: City Council/Rent Board – 5 min.*
(Mayor Arreguín and Chair Simon-Weisberg, Committee Co-Chairs)
Next regularly-scheduled meeting: Wed., December 14th at 2:30 p.m.

November 30th agenda packet
December 14th agenda packet
- g. Ad Hoc Committee on Rent Board Technology Issues (Chair TBA) – 3 min.*
Next meeting date: TBA
- h. Updates and Announcements – 3 min.*
- i. Discussion of items for possible placement on future agenda – 5 min.*

12. ADJOURNMENT

COMMUNICATIONS DISCLAIMER:

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



RENT STABILIZATION BOARD
Regular Meeting
Thursday, November 17, 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/89877012106?pwd=Y3VzSEFZb1FIWXdRT1JrUE1PQXQ2Zz09>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "Rename" to rename yourself to be anonymous. To request to speak, use the "Raise Hand" icon by rolling over the bottom of the screen.

To join by phone: Dial 1-669-900-6833 and enter Meeting ID: 898 7701 2106 and Passcode: 793808. 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, send it to 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.**

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

This meeting will be conducted in accordance with Government Code Section 54953, 54956, and all current state and local requirements allowing public participation in meetings of legislative bodies. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to DéSeana Williams, Executive Director, at (510) 981-7368. The Rent Board may take action related to any subject listed on the Agenda.

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

Regular Meeting Minutes - *Unapproved*

- 1. Roll call** – Vice-Chair Alpert called the meeting to order at 7:02 p.m.
Board Secretary Aimee Mueller called roll.
Commissioners present: Alpert, Chang, Johnson (logged on at 7:03 p.m.), Kelley (logged on at 7:03 p.m.), Laverde, Mendonca, Selawsky, Walker, Simon-Weisberg (logged on at 7:13 p.m.)
Staff present: Brown, Dahl, Eberhart, Ehlinger, Kim, Mueller, Williams

CLOSED SESSION: Pursuant to California Government Code Section 54957(b)(1), the Board convened in closed session for a Public Employee Evaluation of Performance:

Title: General Counsel

Following the Board's return from closed session, Chair Simon-Weisberg announced that the Board took no reportable action.

- 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 played aloud.

- 3. Approval of Agenda** – M/S/C (Alpert/Selawsky) APPROVE THE AGENDA AS WRITTEN. Roll call vote. YES: Alpert, Johnson, Kelley, Laverde, Mendonca, Selawsky, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Chang.
Carried: 8-0-0-1.

4. **Public Comment** – *non*-agendized items. Moni Law spoke about seniors, low-income tenants, and information available at the Rent Board. Matthew Lewis spoke about the eviction moratorium.

5. **Public Comment** – items on the agenda. Matthew Lewis spoke again about the eviction moratorium, and thanked the outgoing commissioners for their service. Ms. Omowale Fowles spoke about the annual general adjustment increase and how it intersects with the eviction moratorium. Former councilmember Cheryl Davila expressed her appreciation for outgoing Commissioners Laverde and Mendonca, and commented on the length of the tenant survey. Ms. Omowale Fowles spoke in appreciation of outgoing Commissioners Laverde and Mendonca. Moni Law thanked outgoing Commissioners Chang, Laverde, Selawsky, and Mendonca for their service. Negeene Mosaed thanked the outgoing commissioners for their service, highlighting Commissioners Laverde and Mendonca. Nathan Mizell thanked the outgoing commissioners and expressed his hopes for joining the Board if he is elected. Ida Martinac expressed her gratitude to several commissioners for their help during her campaign, and for their service and humanity. Krista Gulbransen, Executive Director of the Berkeley Property Owners Association, expressed her appreciation for the service of the outgoing commissioners and wished them the best.

6. **CONSENT ITEMS**

- a. Approval of the October 20, 2022 regular meeting minutes

M/S/C (Laverde/Selawsky) APPROVE THE CONSENT ITEM AS WRITTEN.
Roll call vote. YES: Alpert, Johnson, Kelley, Laverde, Mendonca, Selawsky, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Chang.
Carried: 8-0-0-1.

7. **SPECIAL ORDER OF BUSINESS**

- a. Presentation of honorary Resolution 22-28 and gift to Commissioner James Chang (To be delivered at the meeting)

Vice-Chair Alpert read aloud Resolution 22-28 in appreciation of James Chang's years of service.

- b. Presentation of honorary Resolution 22-29 and gift to Commissioner Paola Laverde (To be delivered at the meeting)

Commissioner Kelley read aloud Resolution 22-29 in appreciation of Paola Laverde's years of service.

- c. Presentation of honorary Resolution 22-30 and gift to Commissioner Mari Mendonca (To be delivered at the meeting)

Chair Simon-Weisberg read aloud Resolution 22-30 in appreciation of Mari Mendonca's years of service.

- d. Presentation of honorary Resolution 22-31 and gift to Commissioner John Selawsky (To be delivered at the meeting)

Commissioner Johnson read aloud Resolution 22-31 in appreciation of John Selawsky's years of service.

Following statements by Commissioners Chang, Laverde, Mendonca, and Selawsky, commissioners and staff expressed their memories of and appreciation for the outgoing commissioners' dedicated service to the Board. The Board Secretary showed an example of the gifts that had been custom-engraved for each outgoing commissioner.

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 – no speakers.

- a. Chair Update (Chair Simon-Weisberg) – Chair Simon-Weisberg announced that there are many community members on strike due to unaffordable housing for Cal Employees and students. She also mentioned that legislation will be going to Council in the near future, including the Habitability Plan, Demolition Ordinance, and Relocation Ordinance. No action was taken.
- b. Discussion and possible action regarding outreach efforts for the Tenant Survey (Commissioner Kelley & Commissioner Laverde)

M/S/C (Laverde/Kelley) APPROVE RESOLUTION 22-32 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.

9. INFORMATION, ANNOUNCEMENTS AND ARTICLES/MEDIA

from Board Members, Committees, Executive Director or Staff

All items below were briefly mentioned or discussed. Underlined items have additional comments.

- a. Update on changes to the eviction moratorium – B.M.C. Section 13.110 – Verbal (General Counsel) – The Board had an extensive discussion on this item following an update from General Counsel Brown and Staff Attorney Ehlinger.

- b. Update on Council's recent action to adopt a Land Acknowledgement Recognizing Berkeley as the Ancestral, Unceded Home of the Ohlone People (Executive Director)
- c. COVID Amnesty and Administrative Correction Cycle report (Executive Director/Registration Unit Manager)
- d. Copy of 2023 Annual General Adjustment (AGA) and Security Deposit postcard to landlords and tenants (Executive Director)
- e. Date to submit agenda topics/items for December's regular Rent Board meeting: **Monday, December 5th 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) – Committee Chair Chang said that the Committee's work on the budget has already been discussed.

Next regularly-scheduled meeting: TBA

November 7th agenda

- b. Eviction/Section 8/Foreclosure Committee (Commissioner Mendonca, Chair) – Committee Chair Mendonca said that most of the Committee's membership is leaving the Board, and hopes that the 4 x 4 Committee can continue some of her Committee's work until the new Board is seated.

Next regularly-scheduled meeting: TBA

October 27th agenda

- c. Legislation, IRA/AGA & Registration Committee (LIRA Committee) (Commissioner Kelley, Chair) – Committee Chair Kelley announced that the next meeting is scheduled for December 14.

Next regularly-scheduled meeting: Wed., December 14th at 5:00 p.m.

- d. Outreach Committee (Commissioner Laverde, Chair) – Committee Chair Laverde reported that the Committee heard a presentation on the tenant survey. The Committee may not meet again until February after the new Board is seated.

Next regularly-scheduled meeting: Wed., November 16th at 5:30 p.m.

November 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 Task Force Committee on Housing: City Council/Rent Board – Chair Simon-Weisberg announced that the Committee will be meeting on November 30. (Mayor Arreguín and Chair Simon-Weisberg, Committee Co-Chairs)
Next regularly-scheduled meeting: TBA

October 26th agenda packet (Revised)

- 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 – Commissioner Johnson announced that he plans to do some outreach with community groups to address potential issues with single family homes being rented to LGBTQ+ residents.

11. ADJOURNMENT – M/S/C (Kelley/Laverde) ADJOURN THE MEETING IN HONOR AND RECOGNITION OF COMMISSIONERS CHANG, LAVERDE, SELAWSKY, AND MENDONCA, AND IN SUPPORT OF THOSE ON STRIKE. 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 11:05 p.m.

RESOLUTION 22-28

IN APPRECIATION OF JAMES CHANG FOR EIGHT YEARS OF OUTSTANDING SERVICE AS A RENT BOARD COMMISSIONER

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

WHEREAS, James Chang was elected to the Berkeley Rent Stabilization Board by the voters in November 2014; and

WHEREAS, from the beginning of his tenure on the Board, James has demonstrated great leadership, enthusiasm, and passion on a broad spectrum of interconnected issues related to affordable housing and maintaining a livable community; and

WHEREAS, because of this passion, combined with indefatigable energy, he was chosen by his peers to serve as the Chair of the Budget and Personnel Committee, the Habitable and Sustainable Housing Committee, the Outreach Committee, and the Ad Hoc Committee on Rent Stabilization Board Technology Issues; and

WHEREAS, James also served as a member of the Resilience & Sustainability Committee and the Eviction/Section 8/Foreclosure Committee; and

WHEREAS, through his work on the Outreach Committee, James created momentum and enthusiasm for the prioritization of the Board’s 2022 Tenant Survey in order to capture and better understand the unique features of the current housing climate; and

WHEREAS, James has continued to demonstrate his commitment and passion by leading the Budget and Personnel Committee as they considered vital modifications to staffing, changes to the Commissioners’ monthly stipends, and the Board’s rent tracking database; and

NOW, THEREFORE BE IT RESOLVED that the Rent Stabilization Board hereby wishes to express its gratitude to James Chang for his eight years of service and dedication to the City of Berkeley Rent Stabilization Board.

NOW, THEREFORE BE IT RESOLVED that the Rent Stabilization Board wishes James the very best in his future endeavors.

Dated: November 17, 2022

Adopted by the Rent Stabilization Board by the following vote:

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director

RESOLUTION 22-29

IN APPRECIATION OF PAOLA LAVERDE FOR EIGHT YEARS OF OUTSTANDING SERVICE AS A RENT BOARD COMMISSIONER

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

WHEREAS, Paola Laverde was elected to the Berkeley Rent Stabilization Board in November of 2014 and has served with distinction as Commissioner for eight years; and

WHEREAS, Paola demonstrated steadfast commitment as a member of the Budget and Personnel Committee, Eviction/Section 8/Foreclosure Committee, Habitable and Sustainable Housing Committee, IRA/AGA/Registration Committee, Outreach Committee, 4 x 4 Joint Task Force Committee on Housing, Ad Hoc Committee to Fill the Board Vacancy, Ad Hoc Committee on the Effects of Costa-Hawkins, and as a member of the Ad Hoc Committee on Real Property Negotiations; and

WHEREAS, Paola not only served as Chair of the Outreach Committee and Co-Chair of the 4 x 4 Joint Task Force Committee on Housing, she was elected by her peers to serve as Chair of the Board in 2019 and 2020; and

WHEREAS, Paola served as Chair during a period of great transition for the Board and provided exceptional leadership and courage during a difficult time for the agency; and

WHEREAS, Paola also initiated the Board’s search for the current Executive Director; and

WHEREAS, Paola has been instrumental in the successful implementation of the 2022 Tenant Survey, and the establishment of the Board’s Land Acknowledgment Statement honoring the ancestral and unceded land of the Chochenyo-speaking Ohlone people, on whose territory the rental housing units regulated by the Rent Stabilization Board are built; and

WHEREAS, in addition to using her voice as an advocate for calm reason and fair and compassionate administration of the law, Paola is a strong voice in the preservation and recognition of Berkeley’s diverse history and community.

NOW, THEREFORE BE IT RESOLVED that the Rent Stabilization Board hereby wishes to express its gratitude to Paola Laverde for eight years of service and dedication to the City of Berkeley Rent Stabilization Board.

NOW, THEREFORE BE IT RESOLVED that the Rent Stabilization Board wishes Paola the very best in her future endeavors.

Dated: November 17, 2022

Adopted by the Rent Stabilization Board by the following vote:

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director

RESOLUTION 22-30

**IN APPRECIATION OF MARI MENDONCA FOR HER THREE YEARS OF
OUTSTANDING SERVICE TO THE BERKELEY RENT STABILIZATION BOARD
AND THE CITY OF BERKELEY**

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

WHEREAS, Mari Mendonca was appointed to the Berkeley Rent Board in October of 2019 to fulfill the remainder of Commissioner Christina Murphy's term, and was then elected by the voters to serve on the Board in November of 2020; and

WHEREAS, Mari has served for three years as a Rent Board Commissioner with dedication and empathy deeply informed and inspired by her lived experience; and

WHEREAS, Mari has consistently demonstrated her commitment to the tenants of Berkeley by advocating on their behalf during tumultuous and unprecedented times; and

WHEREAS, in furtherance of her unwavering commitment to raising the voices of marginalized communities and acknowledging the challenges they have endured, Mari's advocacy led to the passing of Rent Board Resolution 20-12 Affirming That Black Lives Matter, which the Board passed by unanimous vote in June of 2020, that named the history, struggle and rights of those whose identities and freedoms have been denied and the work we must do to restore and honor them; and

WHEREAS, in an effort to foster greater communication between renters and landlords across Berkeley communities, Mari collaboratively worked with tenant unions and tenant organizations to implement policies that benefit renters across Berkeley; and

WHEREAS, Mari served as Chair of the Eviction/Section 8/Foreclosure Committee, and as a member of the Outreach Committee and the 4 x 4 Joint Task Force Committee on Housing; and

WHEREAS, Mari has been a respected colleague and partner in working towards more just and equitable housing policy for all Berkeley residents;

NOW, THEREFORE BE IT RESOLVED that the Berkeley Rent Stabilization Board hereby thanks Mari Mendonca for her years of service and her commitment to the City of Berkeley.

RESOLUTION 22-30

**IN APPRECIATION OF MARI MENDONCA FOR HER THREE YEARS OF
OUTSTANDING SERVICE TO THE BERKELEY RENT STABILIZATION BOARD
AND THE CITY OF BERKELEY (Page 2)**

NOW, THEREFORE BE IT FURTHER RESOLVED that the Berkeley Rent
Stabilization Board wishes Mari Mendonca the very best in her future endeavors.

Dated: November 17, 2022

Adopted by the Rent Stabilization Board by the following vote:

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director

RESOLUTION 22-31

IN APPRECIATION OF JOHN SELAWSKY FOR EIGHT YEARS OF OUTSTANDING SERVICE TO THE BERKELEY RENT STABILIZATION BOARD AND THE CITY OF BERKELEY

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

WHEREAS, John Selawsky was elected to the Berkeley Rent Board in November of 2014 and has served with honor as Commissioner for eight years; and

WHEREAS, John is a 35-year resident of Berkeley and served on the Berkeley School Board for 12 years prior to being elected a Rent Board Commissioner; and

WHEREAS, John also currently serves on the Board of Library Trustees; and

WHEREAS, John served with fairness, dedication, and balance as Chair of the Rent Board in 2017 and 2018, Chair of the Budget and Personnel Committee, Co-Chair of the 4 x 4 Joint Task Force Committee on Housing, and as a member of the Eviction/Section 8/Foreclosure Committee, the IRA/AGA/Registration Committee, the Resilience and Sustainability Committee, the Ad Hoc Committee on Short-Term Rentals, the Ad Hoc Committee to Fill the Board Vacancy, the Ad Hoc Committee on Real Property Negotiations, the Ad Hoc Committee on Paperless Agendas, and the Ad Hoc Committee on Rent Board Technology Issues; and

WHEREAS, John's lifelong commitment to the environment informed his role in the development of the Board's paperless agenda policy which instituted a more efficient and cost-effective process that reduced the Board's carbon footprint; and

WHEREAS, John has been a consistent and reasoned advocate and voice for Berkeley's landlords and tenants;

WHEREAS John has dedicated his time and energy to improve the lives and safety of all tenants in Berkeley and to help make Berkeley a leader in rent control and tenants' rights and protections;

NOW, THEREFORE BE IT RESOLVED that the Berkeley Rent Stabilization Board hereby thanks John Selawsky for his years of service, for his commitment to the City of Berkeley, and for his leadership on the Rent Stabilization Board, and

NOW, THEREFORE BE IT FURTHER RESOLVED that the Berkeley Rent Stabilization Board wishes John Selawsky the very best in his future endeavors.

RESOLUTION 22-31

IN APPRECIATION OF JOHN SELAWSKY FOR EIGHT YEARS OF OUTSTANDING SERVICE TO THE BERKELEY RENT STABILIZATION BOARD AND THE CITY OF BERKELEY (Page 2)

Dated: November 17, 2022

Adopted by the Rent Stabilization Board by the following vote:

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director



Rent Stabilization Board

RENT STABILIZATION BOARD

DATE: December 15, 2022

TO: Honorable Members of the Rent Stabilization Board

FROM: DéSeana Williams, Executive Director

BY: Amanda Eberhart, Registration Unit Manager

SUBJECT: Request for waiver of late registration penalties

Recommendation:

That the Board approves 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
	1531 FAIRVIEW	MARIA HERNANDEZ	586.00	586.00	
	2615 PARKER	PATRICA LEBLANC	750.00	750.00	
	2631 REGENT ST	ANDREW WEN	4,000.00	4,000.00	
	1937 DELAWARE ST	STEPHEN SWAN	1,350.00	675.00	675.00
	1949 MILVIA	ABDULGHAFFAR MAHRAT	1,750.00	1,750.00	
	1717 LA LOMA #3	ROSSETTE & JAMES WINKLER	300.00	300.00	
	2414 BYRON	SAMUEL BUCHER	300.00	150.00	150.00
	1517 WALNUT	BRIEN BROTHERS LLC	1,500.00	1,200.00	300.00
	1519 WALNUT	BRIEN BROTHERS LLC	1,500.00	1,200.00	300.00
	1110 UNIVERSITY	HYON KIM	1,250.00	1,250.00	
	2836 REGENT	MARY ENGLE	500.00	400.00	100.00
	1716 DELAWARE #2	LILY LEE	450.00	225.00	225.00
	809 FOLGER AVE	DAVID WILSON	300.00	300.00	
	811 FOLGER AVE	DAVID WILSON	300.00	300.00	
	815 FOLGER AVE	DAVID WILSON	300.00	300.00	
	814 DELAWARE	DARIA HEPPS	150.00	150.00	
	1520 LINCOLN	DIANE MOROF & PHILLIP MACHINGURA	300.00	300.00	
	813 FOLGER	DAVID WILSON	300.00	300.00	
	1104/1106 EUCLID	LAURIE ZOLOTH	2,000.00	1,200.00	800.00
	1035 EUCLID	GRETA WU	750.00	750.00	
	1515 DWIGHT WAY	GELSO INVESTMENTS V LLC	300.00	150.00	150.00
TOTAL			19,386.00	16,686.00	2,700.00

Financial Impact: Ministerial Waivers

Approval of Executive Director’s recommendations will decrease the Board’s current accounts receivable by **\$16,686.00**.

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
W5064	1850 ARCH	ARCH STREET VILLAGE LLC	2,500.00	2500.00	
W5065	1536 CARLETON ST	LEENA JANARDANAN & RANJEET MANKIKAR	500.00	500.00	
W5066	1802 CEDAR	SAM COHEN	1,000.00	250.00	750.00
W5067	1222 SHATTUCK	FRAN ARCHER	500.00	500.00	
W5068	1910 FRANCISCO	BREDA COURTNEY	668.00	668.00	
TOTAL			5,168.00	4,418.00	750.00

Financial Impact: Discretionary Waivers

Approval of Executive Director’s recommendations will decrease the Board’s current accounts receivable by **\$4,418.00**.

Name and Telephone Number of Contact Person:

DéSeana 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: W5064	Property address: 1850 ARCH ST BERKELEY	Transferred: 09/30/2019
Exempt units (as of February 2021): Unit # 5A - OWNUSE - Owner		
Owner(s): ARCH STREET VILLAGE LLC	Waiver filed by: PROPERTY MANAGER	# of Units: 11
Other Berkeley rental property owned: 1862 ARCH ST BERKELEY CA 94709		

Late payment/penalty history: No late payment made in the last 5 registration cycles.

Registration Date or Year	Units requiring registration at that time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Paid
-	-	-	-	-	-	-
Totals (penalties previously assessed)				\$0.00	\$0.00	\$0.00

Penalties Currently Under Consideration

Reason for Penalties: New Property Manager						
Registration Date or Year	Unit(s) registered late at this time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Due
FY 2022-23	11	-	-	\$2,500.00	-	-
Totals				\$2,500.00	\$0.00	\$0.00

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

Good cause claimed by owner: The new Property manager was able to pay the registration fees for the other units they manage, unfortunately had technical difficulties making the payment for this property.

Recommendation: Staff recommends waiving 100% of the penalties.

Staff Analysis: Rent Board Records show that currently Turning Point Investments owns 4 properties in the City of Berkeley totaling 39 units. Rent Board Records also show that for this property, the property manager has not made any late payments in the last five fiscal years. The waiver states that during the 22/23 registration cycle, a newer property manager was assisting in registering the property. Unfortunately, they were unable to complete the payment for this property and penalty fees were charged to the account. After reviewing the other properties under their purview, only one property remains out of compliance at this time.

BERKELEY RENT BOARD
FOUNDED 1974

Public
CITY OF BERKELEY
RENT STABILIZATION PROGRAM
2125 Milvia Street, Berkeley, CA 94704
PHONE: (510) 981-7368 • FAX: (510) 981-4910
WEB: <https://rentboard.berkeleyca.gov>

Late
- no late payments

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

Property Address: 1850 Arch Street Berkeley CA 94709 *multi family dwelling*

Owner: Turning Point Investments LLC *11 units*

Date of acquisition, if new owner: 7/30/19 *\$ 2500 penalties*

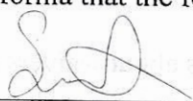
Name & relationship of person filing request, if not owner: Sierra Anaya, Millennium Flats, Inc (Property Manager)

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 the circumstances 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, I am a beginner property manager with Millennium Flats, Inc. working on behalf of the property owners, Turning Point Investments LLC. This is my first time assisting with rent board fees, and using your online portal. I was able to successfully pay for fees at 1862 Arch Street, the property also managed next door. I am hopeful that this shows our good faith in intending to pay on time, despite being new to the process and coming across some technical difficulties with the website. After entering the tenant information, I thought I had completed the process. Unfortunately, it seems an error occurred and payment was not finalized. I remained unaware of this until receiving

The mail notification late afternoon 11/4. I urgently called Monday 11/7 to pay and remedy. As of now, 11/8/2022, The fees have been paid.

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

Date: 11/8/2022 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: sierra@millenniumflats.com

Mailing Address: 3212 Adeline St. Oakland CA 94608

Phone Number: 575-937-0467 Fax Number: _____

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

This is a "printer friendly" page. Please use the "print" option in your browser to print this screen.

ACI PAYMENTS, INC.SM

City of Berkeley, CA - Rent Stabilization Board Rent Stabilization Board 3Di

Confirmation Number

035832

Date & Time

Saturday, July 16, 2022 11:58AM PT

Payment Method

Amount

VISA Ending in 8508

\$2,525.00

Account Information

Name	Carlos Carbajal
Street Address	3212 Adeline
City	Oakland
State	CA
Zip code	94608
Country	United States
Daytime phone	(575) 937 - 0467
Email	sierra@millenniumflats.com
APN	058218201901
Property Address	1862 ARCH ST BERKELEY CA 94709
Property Owner	ARCH STREET VILLAGE LLC

-10 Units

1862 Arch

RIGHT TO REFUND

You, the customer, are entitled to a refund of the money to be transmitted as the result of this agreement if ACI Payments, Inc. does not forward the money received from you within 10 days of the date of its receipt, or does not give instructions committing an equivalent amount of money to the person designated by you within 10 days of the date of the receipt of the funds from you unless otherwise instructed by you.

If your instructions as to when the moneys shall be forwarded or transmitted are not complied with and the money has not yet been forwarded or transmitted, you have a right to a refund of your money.

If you want a refund, you must mail or deliver your written request to ACI Payments, Inc. at 6060 Coventry Drive, Elkhorn, NE 68022. If you do not receive your refund, you may be entitled to your money back plus a penalty of up to \$1,000 and attorney's fees pursuant to section 2102 of the California Financial Code.

Thank you for using ACI Payments, Inc. If you have a question regarding your payment, please call us toll free at 1-800-487-4567. To make payments in the future, please visit our website at acipayonline.com.

**City Of Berkeley
Rent Stabilization Board**

Recommendation on Requested Waiver of Registration Penalties

Waiver No: W5065	Property address: 1536 CARLETON ST	Transferred: 12/13/2019
Exempt units (as of February 2021): None		
Owner(s): LEENA JANARDANAN &	Waiver filed by: OWNER	# of Units: 2
Other Berkeley rental property owned: None		

Late payment/penalty history: No late payments have been made in the last 5 fiscal years

Registration Date or Year	Units requiring registration at that time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Paid
-	-	-	-	-	-	-
Totals (penalties previously assessed)				\$0.00	\$0.00	\$0.00

Penalties Currently Under Consideration

Reason for Penalties: Illness						
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	2	\$500.00	05/20/2021	\$0.00	\$0.00	\$0.00
Totals				\$0.00	\$0.00	\$0.00

Grounds under Regulation 884(B): (1) The good cause asserted in the waiver request is a death or illness in the landlord's family.
Good cause claimed by owner: The Property owner's mother has been sick. This has caused him to spend lots of time traveling back and forth to India.

Recommendation: Staff recommends waiving 100% of the penalty fee

Staff Analysis: In the last five fiscal years this property owner has not made any late registration payments. During the 22/23 registration cycle, the property owners mother became very ill. This has caused the property owner to make several trips overseas to India. Unfortunately, in the midst of traveling the registration fees went unpaid. The owner is asking the Board to wavier their penalty fees.

- no late payments

Public

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

RECEIVED

NOV 09 2022

Initial: RM
Berkeley Rent Board

Request for Waiver of Late Registration Penalties

Please Read Important Information on Page 2

Property Address: 1536 CARLETON STREET BERKELEY CA 94703

Owner: LEENA JANARDANAN & RANJEET MANKIKAR

Date of acquisition, if new owner: ~~4/21/19~~ 12/13/19 -500 penalties

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 the circumstances 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.

I AM REQUESTING A WAIVER BECAUSE I HAVE BEEN DEALING WITH MY MOTHER'S ILLNESS. THIS HAS REQUIRED ME TO TRAVEL BACK & FORTH TO INDIA MANY TIMES. WHILE DEALING WITH THIS PERSONAL PROBLEM I SEEM TO HAVE NEGLECTED PAYING MY DOES. ANY HELP HERE IS GREATLY APPRECIATED
- Ranjeet

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

Date: 11/04/2022 Signature: Ranjeet RM

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: RANJEETRM@aol.com

Mailing Address: 2775 GLORIETTA CIRCLE SANTA CLARA CA 95051

Phone Number: 408-667-2463 Fax Number: _____

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

**City Of Berkeley
Rent Stabilization Board**

Recommendation on Requested Waiver of Registration Penalties

Waiver No: W5066	Property address: 1802 CEDAR ST BERKELEY	Transferred: 01/01/1900
Exempt units (as of February 2021): Unit # NA - COMM - Manager, Unit # NA - OCCC - Owner		
Owner(s): SAM COHEN	Waiver filed by: OWNER	# of Units: 5
Other Berkeley rental property owned: None		

Late payment/penalty history: In the last 5 fiscal years, the property has paid the 20/21, 21/22 and the 22/23 registration fees late.

Registration Date or Year	Units requiring registration at that time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Paid
-	-	-	-	-	-	-
Totals (penalties previously assessed)				\$0.00	\$0.00	\$0.00

Penalties Currently Under Consideration

Reason for Penalties: Small Claims

Registration Date or Year	Unit(s) registered late at this time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Due
FY 20-21	5	-	-	\$1,000.00	-	-
Totals				\$1,000.00	\$0.00	\$0.00

Grounds under Regulation 884(B): (2) The waiver request was filed following the initiation of legal action by the Rent Board to recover unpaid registration fees

Good cause claimed by owner: Various Covid related reasons

Recommendation: Staff recommends waiving 25% of the penalties.

Staff Analysis: The 5 unit combined commercial and residential property located at 1802 Cedar has been owed by the current owner since 1990. In the last five fiscal years, this property owner has paid the 20/21, 21/22, and 22/23 registration fees late. Due to three years of late payments and penalties; in the 2022/23 registration cycle the Rent Board moved forward with filing a small claims action. After the small claims action was filed, the property owner paid the outstanding registration fees and submitted a waiver for penalties. In the waiver submitted by the owner, it lists several Covid related reasons why the owner was unable to make the registration payments. Since the 20/21 registration season, the Rent Board commissioners have authorized three years of Covid related penalty relief if property owners had difficulty

with registration fees. At this time, it is unclear why the property owner did not take advantage of any of these amnesty periods.

RECEIVED

OCT 26 2022

Initial: _____
Berkeley Rent Board

To Berkeley Rent Board

Greetings: my name is Sam Cohen

Please accept this payment of \$1000
and I ask ^{\$ 750 + \$ 250} you to waive the
penalty for the following:

- I was financially devastated by the covid pandemic
- The city closed and shuttered my 54 year old business for 15 months
- Our mayor personally spoke to me twice by phone promising an emergency loan or grant I never saw this
- My musical instrument repair and sales business is part of the building with the living units
- The renters were also financially compromised
 - 1 offered 1/2 rent and paid until they moved back to their parents home
 - another totally defaulted but helped with some building repairs

The third defaulted with a promise to pay from a loan from their tribal council but left after 5 months - unpaid

- due to the pandemic, two units went vacant as I tried to find people to take their vacancy was 4-6 months

- Mortgages and Insurance were still due and I sold personal items and juggled finances

Unfortunately I'm in arrears with the IRS and Calif tax board

Thanks for understanding
Sam Cohen
"COH SAM"

707 332 3358

P.S. Please ask the mayor if you need confirmation

**City Of Berkeley
Rent Stabilization Board**

Recommendation on Requested Waiver of Registration Penalties

Waiver No: W5067	Property address: 1218 SHATTUCK AVE	Transferred: 01/01/1900
Exempt units (as of February 2021): Unit # 1218 SHATTUCK AVE BERKELEY CA 94709 - OOC - Owner		
Owner(s): FRANCESCA ARCHER	Waiver filed by: PROPERTY MANAGER	# of Units: 3
<p>Other Berkeley rental property owned: 1704 FRANCISCO ST BERKELEY CA 94703, 1806 62ND ST BERKELEY CA 94703, 1818 VIRGINIA ST BERKELEY CA 94703, 1812 FRANCISCO ST BERKELEY CA 94703, 2135 OREGON ST BERKELEY CA 94705, 2133 OREGON ST BERKELEY CA 94705, 2137 OREGON ST BERKELEY CA 94705, 2517 VIRGINIA ST BERKELEY CA 94709, 2425 ELLSWORTH ST BERKELEY CA 94704, 2427 ELLSWORTH ST BERKELEY CA 94704, 1511 BERKELEY WAY BERKELEY CA 94703, 1513 BERKELEY WAY BERKELEY CA 94703, 1544 SPRUCE ST BERKELEY CA 94709, 1546 SPRUCE ST BERKELEY CA 94709, 2215 CEDAR ST BERKELEY CA 94709, 2217 CEDAR ST BERKELEY CA 94709, 2221 CEDAR ST BERKELEY CA 94709, 2223 CEDAR ST BERKELEY CA 94709, 2225 CEDAR ST BERKELEY CA 94709, 2219 CEDAR ST BERKELEY CA 94709, 2227 CEDAR ST BERKELEY CA 94709, 2209 CEDAR ST BERKELEY CA 94709, 2211 CEDAR ST BERKELEY CA 94709, 1222 SHATTUCK AVE BERKELEY CA 94709, 3144 KING ST BERKELEY CA 94703, 2327 RUSSELL ST BERKELEY CA 94705, 2325 RUSSELL ST BERKELEY CA 94705, 1820 EUCLID AVE BERKELEY CA 94709, 1717 ASHBY AVE BERKELEY CA 94703, 642 NEILSON ST, BERKELEY, CA 94707, 1386 HEARST AVE, BERKELEY, CA 94702, 2542 MCGEE AVE, BERKELEY, CA 94703, 171 BROOKSIDE DR, BERKELEY, CA 94705, 793 SAN DIEGO RD, BERKELEY, CA 94707, 1024 OVERLOOK RD, BERKELEY, CA 94708, 1627 PARKER ST, BERKELEY, CA 94703, 1806 ACTON ST BERKELEY CA 94702, 189 FAIRLAWN DR BERKELEY CA 94708, 1380 HEARST ST, BERKELEY, CA 94702, 1409 HOPKINS ST, BERKELEY, CA 94702, 1641 KAINS AVE, BERKELEY, CA 94702, 1806 1/2 DWIGHT ST, BERKELEY, CA 94703, 970 EUCLID AVE, BERKELEY, CA 94708, 1007 JONES ST, BERKELEY, CA 94710, 1208 CORNELL AVE, BERKELEY, CA 94706, 1625 CORNELL AVE, BERKELEY, CA 94702, 1917 SEVENTH ST, BERKELEY, CA 94710, 1729 6TH ST 1, BERKELEY, CA 94710, 1552 MILVIA ST BERKELEY CA 94709, 1556 MILVIA ST BERKELEY CA 94709, 1527 MLK JR WAY BERKELEY CA 94709, 2901 LORINA ST BERKELEY CA 94705, 2427 SPAULDING AVE BERKELEY CA 94703, 2429 SPAULDING AVE BERKELEY CA 94703, 3007 SHATTUCK AVE BERKELEY CA 94705, 3009 SHATTUCK AVE BERKELEY CA 94705, 1401 BONITA AVE, BERKELEY, CA 94709, 2600 ASHBY AVE, BERKELEY, CA 94705, 1438 DELAWARE ST, BERKELEY, CA 94702, 1305 DELAWARE ST BERKELEY CA 94702, 1589 SENIC AVE, BERKELEY, CA 94708, 1825 VINE ST 3, BERKELEY, CA 94703, 1349 CURTIS ST, BERKELEY, CA 94702, 2817 WOOLSEY ST C, BERKELEY, CA 94705, 2903 LORINA ST BERKELEY CA 94705</p>		

Late payment/penalty history: In the last 5 fiscal years, this property has made no late payments.

Registration Date or Year	Units requiring registration at that time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Paid
-	-	-	-	-	-	-

Totals (penalties previously assessed)	\$0.00	\$0.00	\$0.00
-----------------------------------------------	---------------	---------------	---------------

Penalties Currently Under Consideration

Reason for Penalties: Illness

Registration Date or Year	Unit(s) registered late at this time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Due
FY 22/23	0	-	-	\$500.00	-	-
Totals				\$500.00	\$0.00	\$0.00

Grounds under Regulation 884(B): (1) The good cause asserted in the waiver request is a death or illness in the landlord's family.

Good cause claimed by owner: The owner has severe dementia and did not forward the billing statement to the property manager.

Recommendation: Staff recommends waiving 100% of the penalty fee

Staff Analysis: The 3 unit 2, 3 or 4 single family home located at 1222 Shattuck has been owed by the current owner since 1999. In the last five fiscal years, this property owner has not made any late registration payments. During the 22/23 registration cycle, the current property owner has very severe dementia and did not forward the billing statement to the property manager. Since then, the property manager has assumed responsibility for the property and is asking the Board to waive the registration penalties incurred.

BERKELEY RENT BOARD
RCVD 22OCT12am 11:59

Public
CITY OF BERKELEY
RENT STABILIZATION PROGRAM
2125 Milvia Street, Berkeley, CA 94704
PHONE: (510) 981-7368 • FAX: (510) 981-4910
WEB: <https://rentboard.berkeleyca.gov>

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

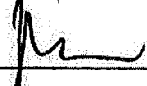
Property Address: 1222 SHATTUCK AVE
Owner: FRAN ARCHER
Date of acquisition, if new owner: _____
Name & relationship of person filing request, if not owner: PROPERTY MANAGER

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 the circumstances 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.

FRAN HAS BEEN DEMENTIA and never forwarded
this BILL TO US. WE HAVE NOW ADDED this PROPERTY
TO OUR ONLINE ACCOUNT and CHANGED ADDRESS

Please GIVE FRAN A WAIVER SHE IS ON A FIXED INCOME

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

Date: 10-7-22 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: romanfanworks@gmail.com
Mailing Address: 898 the ALAMEDA BERK CA 94707
Phone Number: 415-420-7663 Fax Number: _____

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

**City Of Berkeley
Rent Stabilization Board**

Recommendation on Requested Waiver of Registration Penalties

Waiver No: W5068	Property address: 1910 FRANCISCO ST	Transferred: 01/01/1900
Exempt units (as of February 2021): Unit # B - OWNUSE - Owner		
Owner(s): BREDA COURTNEY	Waiver filed by: PROPERTY MANAGER	# of Units: 3
Other Berkeley rental property owned: None		

Late payment/penalty history: In the last five fiscal years, the owner has not made any late payments.

Registration Date or Year	Units requiring registration at that time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Paid
-	-	-	-	-	-	-
Totals (penalties previously assessed)				\$0.00	\$0.00	\$0.00

Penalties Currently Under Consideration

Reason for Penalties: Illness						
Registration Date or Year	Unit(s) registered late at this time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Due
FY 22-23	0	-	-	\$668.00	-	-
Totals				\$668.00	\$0.00	\$0.00

Grounds under Regulation 884(B): (1) The good cause asserted in the waiver request is a death or illness in the landlord's family.

Good cause claimed by owner: The owner was ill and in the process of hiring a property management company when the registration deadline was missed.

Recommendation: Staff recommends waiving the penalty fees.

Staff Analysis: During the 22/23 registration cycle, the owner for this property became ill and was in the process of hiring ERI Property Management. Unfortunately, while taking care of her declining health, trying to manage the registration process, and hire a new property management company the registration deadline was missed. The property management company is now actively managing the property and is asking the Board to waive the penalty fees.

JUL 14 2022

Initial: _____
Berkeley Rent Board

Public
CITY OF BERKELEY
RENT STABILIZATION PROGRAM
2125 Milvia Street, Berkeley, CA 94704
PHONE: (510) 981-7368 • FAX: (510) 981-4910
WEB: <https://rentboard.berkeleyca.gov>

Request for Waiver of Late Registration Penalties

Please Read Important Information on Page 2

Property Address: 1910 FRANCISCO ST

Owner: BREDA COURTNEY

Date of acquisition, if new owner: _____

Name & relationship of person filing request, if not owner: Mary Oram, property manager

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 the circumstances 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.

SEE
2ND
PAGE

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

Date: _____ 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: _____

Mailing Address: _____

Phone Number: _____ Fax Number: _____

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



ERI PROPERTY MANAGEMENT

Client First Service Since 1986
Patience, Thoroughness & Integrity

2980 College Ave. #5, Berkeley, CA 94705
(510) 883-7070 (800) 344 3741

Realtor-Management Svcs	Mary Oram	(510) 883-7070 ext. 301
	Lic. #01127310	
Associate Management	Slavka Byrns	(510) 883-7070 ext. 302
	Lic #-01322185	

Realtor: Leases & Rental	Terrence Sims	(510) 883-7070 ext 303
	Lic #01960291	

July 7, 2022

Berkeley Rent Stabilization Board
2125 Milvia Street
Berkeley, CA 94704

Re: Request for waiver of late registration fee for 1910 Francisco Street #A & #C

To whom it may concern;

In mid 2021 Breda Courtney, the owner of 1910 Francisco Street, hired ERI Property Management to help her manage her property.

Earlier this year she became ill and had to move in order to receive the medical care she needed. She was not able to pick up her mail, so missed receiving the bill for the 2022-2023 annual rent registration fees until after July 1. We were unaware of this situation until late June. Since she had handled these bills in the past, I sent her a reminder to pay the bill but did not know that she had not done so until she forwarded the bill on to me. It arrived in the mail yesterday.

Her health is improving, but she has asked me to change the mailing address for all communications from the Rent Board so that her registration is never late again.

On her behalf, I request that you forgive the late fee of \$500 (two units paid a few days late) this once, due to the owner's illness. I have enclosed a check for the total amount including the late fee, but would I know the owner would be grateful if the late fee were waived this once.

Thank you for your consideration.

Sincerely,

Mary E. Oram



Rent Stabilization Board

DATE: December 15, 2022

TO: Honorable Members of the Rent Stabilization Board

FROM: DéSeana Williams, Executive Director
By: Aimee Mueller, Associate Management Analyst and Board Secretary

SUBJECT: Proposed 2023 Rent Stabilization Board Regular Meeting Schedule

Recommendation:

That the Board adopt Resolution 22-33 establishing the Regular Meeting Schedule for the 2023 calendar year.

Background and Need for Board Action:

The Brown Act (Gov. Code §54954 et seq.) requires a legislative body, such as the Rent Stabilization Board, to annually establish a schedule of its regular meetings, including the time and location of those meetings. The Board's longstanding policy was to hold its regular meetings on the first and third Mondays of each month in the City Council Chambers at Old City Hall. In 1996, the Board adopted Resolution 96-13 to formalize this practice. At its December 5, 2005 regular meeting, the Board adopted Resolution 05-27 revising Resolution 96-13 and re-establishing the schedule to meet monthly on the third Monday of each month.

In 2012, the Berkeley Unified School District relocated its administrative offices from the seismically-unsafe Old City Hall to the West Campus building at 1231 Addison Street. Old City Hall had remained essentially vacant ever since, unlocked and heated only for purposes of holding public meetings. In late 2018, this space was converted to a homeless shelter used during inclement weather.

Beginning December 4, 2018, the City Council relocated its meetings from Old City Hall to the New Berkeley Unified School District (BUSD) Board Room, located at 1231 Addison Street. In anticipation of the cessation of facilities services to Old City Hall, the City Council negotiated access to the BUSD Board Room for Zoning Adjustment Board (ZAB) Meetings on the second and fourth Thursdays of the month, and for Rent Board Meetings on the first and/or third Thursdays of the month. By the terms of the City Council's current contract with BUSD, no in-person meetings can take place on any other days of the week.

At the December 17, 2018 regular meeting, the Board voted to adopt Resolution 18-25 establishing the Regular Meeting Schedule and Location for the 2019 calendar year that relocated the Rent Board's regular meetings to the BUSD Board Room on the third Thursday of each month.

2023 Proposed Rent Board Regular Meeting Schedule

Page 2

At its December 21, 2019 regular meeting, the Board voted to adopt Resolution 19-28 establishing a regular meeting schedule and location for regular Rent Board meetings in the 2020 calendar year which stated, “that all meetings shall begin at 7:00 p.m. unless otherwise noticed pursuant to the requirements of the Brown Act and that regular meetings scheduled for the third Thursday of each month shall only be operative during the 2020 calendar year unless the change is made permanent by subsequent future Board Resolution, or unless the Board chooses to adopt a similar annual schedule for another year by subsequent Resolution.”

On March 4, 2020, Governor Newsom issued Executive Order N-25-20 which, among other things, suspended the requirement that public meetings be held in-person and required legislative bodies to hold meetings via teleconference. Governor Newsom thereafter issued several more Executive Orders which further required teleconferencing of public meetings until the state legislature adopted a law in 2021 that allowed legislative bodies to make their own rules as to whether they met in person or allowed for teleconferencing during a declared state of emergency.

Pursuant to the Governor’s Executive Orders and state law, the Board has conducted all public meetings remotely during the declared state of emergency since March of 2020.

Proposed dates for the 2023 Regular Meeting Schedule:

The City has not yet published its customary list of holidays for 2023, but they are noted on the attached 2023 City Calendar (Attachment 1.). The Board Secretary has reviewed these holidays as well as all other major civic and religious holidays in order to propose 2023 meetings dates for the Board’s consideration. **All 2023 meeting dates listed below fall on our designated third Thursday of the month.**

January 19	April 20	July 20	October 19
February 16	May 18	August 17	November 16
March 16	June 15	September 21	December 21

Financial Impact:

Prior to the transition to virtual meetings due to the COVID-19 Shelter-in-Place Order, each Board meeting held at the BUSD Board Room cost approximately \$3,000 - \$4,000; this included room rental, live television broadcasting, webcasting, real-time closed captioning, and the cost of producing several hard-copy agenda packets for the public and the Board’s archives. Since the Board began conducting Board Meetings remotely, our room rental costs have been temporarily eliminated but we incur a monthly subscription fee for Zoom.

Name and Telephone Number of Contact Person:

DéSeana Williams, Executive Director (510) 981-7368

Attachments:

1. City of Berkeley 2023 Calendar (with observed holidays noted)

RESOLUTION 22-33

ESTABLISHING THE REGULAR MEETING SCHEDULE FOR THE BERKELEY RENT STABILIZATION BOARD FOR THE 2023 CALENDAR YEAR

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

WHEREAS, the Brown Act (Gov. Code Section 54954 et seq.) requires a legislative body, such as the Rent Stabilization Board, to annually establish a schedule of its regular meetings, including the time and location of the meeting; and

WHEREAS, beginning in 2019, the Board relocated its meetings from Old City Hall to the New Berkeley Unified School District (“BUSD”) Board Room, located at 1231 Addison Street; and

WHEREAS, beginning in 2019, the Board changed its regular meeting day to the third Thursday of each month and wishes to continue this arrangement;

WHEREAS, pursuant to Government Code Section 54953(e) and City Council Resolution 70,030-N.S., the Board shall continue to hold its monthly meetings exclusively through teleconference and Zoom videoconference until in-person public meetings are deemed safe, and thereafter, these meetings shall be conducted at the BUSD Board Room and/or in a hybrid fashion using in-person and teleconference options in a manner to be determined at a later date;

NOW, THEREFORE, BE IT RESOLVED that the Board will hold their regularly-scheduled meetings during the 2023 Calendar year on the following dates:

January 19	April 20	July 20	October 19
February 16	May 18	August 17	November 16
March 16	June 15	September 21	December 21

RESOLUTION 22-33

**ESTABLISHING THE REGULAR MEETING SCHEDULE FOR THE BERKELEY
RENT STABILIZATION BOARD FOR THE 2023 CALENDAR YEAR**

(Page 2)

BE IT FURTHER RESOLVED that all meetings shall begin at 7:00 p.m. unless otherwise noticed pursuant to the requirements of the Brown Act and that regular meetings scheduled for the third Thursday of each month shall only be operative during the 2023 calendar year unless the change is made permanent by subsequent future Board resolution, or unless the Board chooses to adopt a similar annual schedule for another year by subsequent resolution.

Dated: December 15, 2022

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

YES:

NO:

ABSTAIN:

ABSENT:

Chair, Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director



2023 CITY CALENDAR

JANUARY						
Sun	Mon	Tues	Weds	Thurs	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

FEBRUARY						
Sun	Mon	Tues	Weds	Thurs	Fri	Sat
		1	2	3	4	
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

MARCH						
Sun	Mon	Tues	Weds	Thurs	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

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

MAY						
Sun	Mon	Tues	Weds	Thurs	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

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

JULY						
Sun	Mon	Tues	Weds	Thurs	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

AUGUST						
Sun	Mon	Tues	Weds	Thurs	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

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

OCTOBER						
Sun	Mon	Tues	Weds	Thurs	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

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

DECEMBER						
Sun	Mon	Tues	Weds	Thurs	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

2023 CITY OF BERKELEY RECOGNIZED HOLIDAYS

Jan. 1	New Year's Day - Obs. 1/2	May. 19	Malcolm X's Birthday	Sept. 4	Labor Day	Dec. 25	Christmas Day
Jan. 16	Martin Luther King Jr.'s Birthday	May. 29	Memorial Day	Oct. 9	Indigenous Peoples' Day		Pay Day
Feb. 12	Lincoln's Birthday- Obs. 2/13	June. 19	Juneteenth	Nov. 11	Veteran's Day - Obs. 11/10		Observed Holiday
Feb. 20	Washington's Birthday	July. 4	Independence Day	Nov. 23/24	Thanksgiving Day/Day After		Observed VTO Day



4x4 Joint Task Force Committee on Housing
City Council and Rent Board

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

Wednesday, November 30, 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 Task Force 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/84125201403?pwd=OGoxUzdUWEZ0T0tuaEczcWRqVWc2QT09>. 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: 841 2520 1403 and Passcode: 554148. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Committee Chair.

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

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

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



4x4 Joint Task Force Committee on Housing
City Council and Rent Board

AGENDA

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

Wednesday, November 30, 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 October 26, 2022 Committee meeting minutes (see attachment)
6. Discussion and possible action regarding recommendations on signage related to the Elevator Ordinance (requested by Vice Mayor Harrison)
7. Discussion and possible action regarding amendments to the Eviction Moratorium (BMC 13.110) proposed by Vice Mayor Harrison and Councilmember Wengraf (requested by Chair Simon-Weisberg, see attached report to the Council Agenda and Rules Committee)
8. Discussion and possible action regarding Council's use of Emergency Powers to limit/reduce the 4.4% Annual General Adjustment rent increase for 2023 for rent-controlled units (requested by Chair Simon-Weisberg)
9. Discussion of possible future agenda items
10. Confirm next meeting date
11. Adjournment

COMMITTEE MEMBERS:

Mayor Jesse Arreguín

City Councilmember Kate Harrison

City Councilmember Rigel Robinson

City Councilmember Terry Taplin

Rent Board Chairperson Leah Simon-Weisberg

Rent Board Vice-Chairperson Soli Alpert

Rent Board Commissioner Xavier Johnson

Rent Board Commissioner Andy Kelley



4x4 Joint Task Force Committee on Housing
City Council and Rent Board

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

Wednesday, October 26, 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 Task Force 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/82899637076?pwd=MIZzdFNNTVIBTFBBZ1NNeDRwbmpWdz09>. 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: 828 9963 7076 and Passcode: 272220. 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 LBursell@berkeleyca.gov with the Subject line in this format: "PUBLIC COMMENT ITEM FOR 4 X 4 COMMITTEE". Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 1:00 p.m. on the day of the Committee meeting in order to be included.**

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

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



4x4 Joint Task Force Committee on Housing
City Council and Rent Board

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

Wednesday, October 26, 2022 – 3:00 p.m.

Minutes to be Approved

- Roll call: Mayor Arreguín called the meeting to order at 3:05 p.m.
Present: Mayor Arreguín, CM Harrison, RBC Johnson, RBC Kelley, CM Robinson, RB Chair Simon-Weisberg, CM Taplin (logged off at 4:20 p.m.).
Absent: RBC Alpert.
Staff present: Diego Aguilar-Canabal, Matt Brown, Steve Buckley, Lief Bursell, Nate Dahl, Brendan Darrow, Stefan Elgstrand, Margot Ernst, Ollie Ehlinger, Jen Fabish, Hannah Kim, Alene Pearson, Mike Uberti, DéSeana Williams.
- Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*

The Land Acknowledgement Statement was read aloud.
- Approval of the agenda: M/S/C (Robinson/Harrison) Approve the agenda as written. Roll call vote. YES: Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg, Taplin; NO: None; ABSTAIN: None; ABSENT: Alpert. Carried: 7-0-0-1.
- Public comment on non-agenda matters: There were 3 speakers.
- Approval of September 28, 2022 Committee meeting minutes (see attachment): M/S/C (Arreguín/Robinson) Approve the minutes with the following correction: for item 12.a., change "November" to "October 19." Roll call vote. YES: Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg, Taplin; NO: None; ABSTAIN: None; ABSENT: Alpert. Carried: 7-0-0-1.

6. Discussion and possible action to consider a recommendation to City Council regarding amendments to the Demolition Ordinance (Steve Buckley, Planning Department, see attached October 19, 2022 staff report to the Planning Commission): Steve Buckley of the Planning Department presented, and the committee provided extensive feedback on the proposed amendments. Mayor Arreguín will work with all stakeholders to prepare revised amendments for the committee's review in November, with an eye towards Planning Commission review in either December or January. The committee's aim is for Council to consider Demolition Ordinance amendments before or along with proposed zoning changes currently expected to go before Council in the spring of 2023.

There were two public speakers.

7. Discussion on the enforcement of Short-Term Rentals (Steve Buckley, Planning Department): Steve Buckley of the Planning Department presented on enforcement efforts, and took questions from the committee. The committee discussed, amongst other things, comparing data compiled from the City's third-party vendor to Rent Board data in an effort to identify instances where units claimed as vacant with the Rent Board are listed as short-term rentals.

There were two public speakers.

8. Discussion of possible future agenda items: Demolition Ordinance. Elevator Ordinance (Harrison).
9. Confirm next meeting date: Since the fourth Wednesday (the committee's regular meeting date) is the day before Thanksgiving, committee members will work with the committee staffer to set a new November meeting date.
10. Adjournment: M/S/C (Arreguín/Simon-Weisberg) Adjourn the meeting. Roll call vote. YES: Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Alpert, Taplin. Carried: 6-0-0-2.

The meeting adjourned at 5:03 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



Susan Wengraf
Councilmember District 6

ACTION CALENDAR
November 29, 2022

To: Honorable Mayor and Members of the City Council
 From: Vice Mayor Harrison and Councilmember Wengraf
 Subject: Amendments to BMC Chapter 13.110 COVID-19 EMERGENCY RESPONSE ORDINANCE

RECOMMENDATION

Approve the proposed amendments to BMC Chapter 13.110 COVID EMERGENCY RESPONSE ORDINANCE

FINANCIAL IMPLICATIONS

None

BACKGROUND

The Governor has announced that California's State of Emergency will end on Feb 28, 2023. However, it is not clear at this time if Berkeley's Local State of Emergency will be lifted at the same time and whether or not the prohibition on evictions will be extended.

The City Council passed the eviction moratorium to protect public health during the height of the pandemic. Some tenants continue to suffer COVID-related income loss. However, the Council has heard testimony from a few smaller landlords that have suffered the unfortunate unintended consequences of a few renters in Berkeley who do not have or continue to have COVID-related income losses taking advantage of the situation created by the City's ordinance by not paying rent or refusing to move out. This includes legitimate requests for Owner-Move-In evictions and circumstances where a person is not a bona fide tenant, lodger or sub-tenant.

These proposed narrow amendments to BMC Chapter 13.110 clarify loopholes and address very specific circumstances where evictions would now be permitted. Evictions notices served prior to the effective date of this Ordinance remain invalid. Landlords would be required to issue a new notice for owner move-in or a new notice for nonpayment of rent that comes due after February 1, 2023. The amendments would continue to maintain strong tenant protections outside of these narrow exceptions.

The proposed amendments

- Change “resident” to “tenant” to clarify scope of ordinance and avoid application to situations in which there exists no agreement for the payment of rent (13.110.020.A)
- Tenants may be evicted for non-payment of rent if they fail to pay rent beginning February 1, 2023 and cannot demonstrate a Covered Reason for Delayed Payment (13.110.020.A (evictions), 13.110.020.B (eviction notices), 13.110.050.A (applicability))
- Tenants may be evicted for owner move-in (13.110.020.A (evictions), 13.110.020.B (60-day eviction notices allowed after effective date), 13.110.050.A (applicability))
- Tenants are required to provide notice to the landlord of the existence of a Covered Reason for Delayed Payment before January 15, 2023 (13.110.040.C), consistent with provisions in Santa Monica.
- Tenant’s defense is not waived by failure to provide notice of the Covered Reason for Delayed Payment (13.110.040.C, already in effect)

State law fixes/outdated language

- Repayment period for rent accrued beginning February 1, 2021 is fixed to July 31, 2023 per state law, or such later date as the State Legislature may adopt. (13.110.040.B.2.; Gov. Code 1179.05(a)(2)(B).
- Section 13.110.020.C (rent increases in commercial tenancies) has expired by operation of its original wording, which said that it would only last as long as Executive Order N-28-20 remains in effect.

ENVIRONMENTAL SUSTAINABILITY

No impact

CONTACT PERSON

Councilmember Harrison	Council District 4	510-981-7140
Councilmember Wengraf	Council District 6	510-981-7160

Attachment:

1: Ordinance Amending BMC Chapter 13.110, The COVID-19 Emergency Response Ordinance: a) tracked changes b) clean copy

ORDINANCE NO. ~~7,832X,XXX~~--N.S.

ORDINANCE AMENDING CHAPTER 13.110 OF THE BERKELEY MUNICIPAL CODE,
THE COVID-19 EMERGENCY RESPONSE ORDINANCE

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

Section 1. The Berkeley Municipal Code Chapter 13.110 is amended to read as follows:

Chapter 13.110

COVID-19 EMERGENCY RESPONSE ORDINANCE

Sections:

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13.110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**
- 13.110.100 Liberal Construction**

13.110.010 Findings and Purposes

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV2." And the disease it causes has been named "coronavirus disease 2019," abbreviated

COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the Local Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022, the council ratified an extension of the local emergency. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel.

On March 31, 2020 this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have at least the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council passed the eviction moratorium to protect public health during the height of the pandemic. Some tenants continue to suffer COVID-related income loss. However, the Council has heard testimony from a few landlords that have suffered the unfortunate unintended consequences of a few renters in Berkeley who do not have or continue to have COVID-related income losses taking advantage of the situation created by the City's ordinance by not paying rent or refusing to move out. This includes legitimate requests for Owner-Move-In evictions and circumstances where a person is not a bona fide tenant, lodger or sub-tenant.

These proposed narrow amendments to BMC Chapter 13.110 clarify loopholes and address very specific circumstances where evictions would now be permitted. The amendments would continue to maintain strong tenant protections outside of these narrow exceptions.

~~The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed~~

~~or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or in a reduced state of operations means that the commercial tenants face even more debt to the landlord when the emergency is over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.~~

~~Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable small businesses, nonprofits, and artists who form a large part of the backbone of Berkeley's economy, revenue sources, and employment opportunities. These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.~~

~~On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.~~

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110.

13.110.020 Prohibited Conduct

A. During the Covered Period, no Landlord or Lender shall evict or attempt to evict a ~~Resident-Tenant~~ of real property, or otherwise require a Tenant to vacate, unless necessary to stop an imminent threat to the health and safety of other occupants, ~~or for purposes of a lawful owner move-in eviction under Section 13.76.130.A.9, or: For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID19 illness or exposure to COVID-19, whether actual or suspected on the basis of non-payment of rent after February 1, 2023 for which the Tenant cannot demonstrate a Covered Reason for Delayed Payment, as defined below.~~

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the Covered Period, except that after the effective date of this Ordinance, an Landlord may serve a lawful notice pursuant to Section 13.76.130.A.9, and/or after February 1, 2023, a Landlord may serve a notice based on the lawful grounds for eviction in Subsection 13.110.020.A, above, in which case a tenant may establish a complete defense to eviction for nonpayment of rent by proving the existence of a Covered Reason for Delayed Payment, as defined below.

C. ~~No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local emergency declared by the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.~~

D. For the duration of the Covered Period, if a tenant has a Covered reason for delayed payment, the tenant may terminate a lease or rental agreement with 30 days' notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic.

13.110.030 Definitions

A. "Covered Period" means the period of time beginning with March 17, 2020 and concluding upon the expiration of the local emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.

B. "Covered Reason for Delayed Payment" means:

(1) The basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) which reduces the ability of the remaining tenants to pay rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and

(2) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was

caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

C. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

D. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. "Homeowner" is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.

E. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

F. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

G. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing. H. "Resident" means a Tenant, Homeowner, or their household.

I. ____ "Tenant" includes a tenant, subtenant, lessee, sublessee, lodger or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property.

13.110.040 Collection of Back Rent and Late Fees

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek ~~after expiration of the local State of Emergency as set forth below in subsection 13.110.040.B.~~ Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment. ~~The City will develop standards or guidelines for tenants to repay unpaid rent accrued during the Covered Period course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.~~

B.

1. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022, or the date adopted by state law, as applicable, to pay rent that was delayed by a

Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

2. For rent accrued beginning February 1, 2021, ~~t~~tenants shall have until ~~twenty-four (24) months after the conclusion of the Covered~~ April 30 July 31, 2023, or such later date as the State Legislature may adopt to pay rent that was delayed by a Covered Reason for Delayed Payment, or-, as applicable, unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

3. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent. However, Tenants who assert the existence of a Covered Reason for Delayed Payment after January 1, 2023 must notify the Landlord no later than January 15, 2023. The failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure sections 1161(2) *et seq.* does not waive the Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

D. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant explicitly authorizes the disclosure of the information in writing.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

13.110.050 Application

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire during the Covered Period. Unlawful detainer actions based on notices served after February 1, 2023, shall be subject to the affirmative defense set forth in Section 13.110.020.A., above, if applicable, where the Tenant can establish the existence and applicability of such Covered Reason for Delayed Payment. It does not apply to commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

B. Except where expressly required by state law (such as Assembly Bill 3088 or any subsequent statewide COVID-19 relief legislation), a landlord may seek rent accrued during the Covered Period as set forth in Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) *et seq.* or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued during the Covered Period and prior to February 1, 2023. In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time between March 17, 2020 and January 31, 2023, or if the action otherwise demands any fees or amounts contrary to the provisions of this Chapter. A landlord shall not apply any rent payment towards rent that is delayed by a Covered Reason for Delayed Payment before applying it towards any other Rent owed without the explicit written permission of the Tenant.

C. A Landlord or Lender shall not retaliate against a Resident for exercising their rights under this Ordinance, including but not limited to shutting off any utilities reducing services or amenities, refusing to make or delaying repairs to which the Resident would otherwise be entitled, or taking actions which hurt the Resident's credit rating based on nonpayment of rent between March 17, 2020 and January 31, 2023 as allowed under this ordinance.

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party.

13.110.060 Implementing Regulations

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to Residents informing them of this Chapter and the right to seek the benefits of this Chapter.

13.110.070 Waiver.

A. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy.

13.110.080 Remedies

A. In the event of a violation of this Ordinance, any person or entity aggrieved by the violation may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate.

1. An award of actual damages may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard for, the provisions of this Chapter.

2. A defendant shall be liable for additional civil penalties of up to five thousand dollars for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926, et seq., or aged sixty-five or over.

3. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees. A prevailing defendant in a civil action under this Chapter shall only be entitled to an award of attorney's fees if it is determined by the Court the action was wholly without merit or frivolous.

4. In addition, this Chapter grants a complete defense to eviction in the event that an eviction notice or unlawful detainer action is commenced, filed, or served in violation of this Chapter.

B. The protections provided by this ordinance shall be available to all Residents, regardless of any agreement wherein a Resident waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.

C. A. Violations of Section 13.110.020(C) - (Commercial rent restrictions).

1. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

2. The City Attorney may refer those violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq.

D. Nonexclusive Remedies and Penalties. The remedies provided in this subdivision are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

13.110.090 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

13.110.100 Liberal Construction

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

Section 2. Effective Date

This ordinance shall go into effect thirty days from the time of its final passage.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.:-

~~At a regular meeting of the Council of the City of Berkeley held on September 13, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:~~

~~Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.~~

~~Noes: None. Absent:~~

~~None.~~

ORDINANCE NO. X,XXX--N.S.

ORDINANCE AMENDING CHAPTER 13.110 OF THE BERKELEY MUNICIPAL CODE,
THE COVID-19 EMERGENCY RESPONSE ORDINANCE

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

Section 1. The Berkeley Municipal Code Chapter 13.110 is amended to read as follows:

Chapter 13.110
COVID-19 EMERGENCY RESPONSE ORDINANCE

Sections:

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13.110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**
- 13.110.100 Liberal Construction**

13.110.010 Findings and Purposes

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the Local Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022, the council ratified an extension of the local emergency. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19. On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel.

On March 31, 2020 this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have at least the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council passed the eviction moratorium to protect public health during the height of the pandemic. Some tenants continue to suffer COVID-related income loss. However, the Council has heard testimony from a few landlords that have suffered the unfortunate unintended consequences of a few renters in Berkeley who do not have or continue to have COVID-related income losses taking advantage of the situation created by the City's ordinance by not paying rent or refusing to move out. This includes legitimate requests for Owner-Move-In evictions and circumstances where a person is not a bona fide tenant, lodger or sub-tenant.

These proposed narrow amendments to BMC Chapter 13.110 clarify loopholes and address very specific circumstances where evictions would now be permitted. The amendments would continue to maintain strong tenant protections outside of these narrow exceptions.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110.

13.110.020 Prohibited Conduct

E. During the Covered Period, no Landlord or Lender shall evict or attempt to evict a Tenant of real property, or otherwise require a Tenant to vacate, unless necessary to stop an imminent threat to the health and safety of other occupants, or for purposes of a lawful owner move-in eviction under Section 13.76.130.A.9, or on the basis of non-payment of rent after February 1, 2023 for which the Tenant cannot demonstrate a Covered Reason for Delayed Payment, as defined below.

F. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the Covered Period, except that after the effective date of this Ordinance, a Landlord may serve a lawful notice pursuant to Section 13.76.130.A.9, and/or after February 1, 2023, a Landlord may serve a notice based on the lawful grounds for eviction in Subsection 13.110.020.A, above, in which case a tenant may establish a complete defense to eviction for nonpayment of rent by proving the existence of a Covered Reason for Delayed Payment, as defined below.

~~G. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local emergency declared by the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.~~

H. For the duration of the Covered Period, if a tenant has a Covered reason for delayed payment, the tenant may terminate a lease or rental agreement with 30 days' notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic.

13.110.030 Definitions

C. "Covered Period" means the period of time beginning with March 17, 2020 and concluding upon the expiration of the local emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.

D. "Covered Reason for Delayed Payment" means:

(3) The basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material

decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) which reduces the ability of the remaining tenants to pay rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and

(4) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

H. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

I. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. "Homeowner" is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.

J. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

K. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

L. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing. H. "Resident" means a Tenant, Homeowner, or their household.

I. "Tenant" includes a tenant, subtenant, lessee, sublessee, lodger or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property.

13.110.040 Collection of Back Rent and Late Fees

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek as set forth below in subsection 13.110.040.B. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.

B.

4. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022, or the date adopted by state law, as applicable, to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

5. For rent accrued beginning February 1, 2021, tenants shall have until July 31, 2023, or such later date as the State Legislature may adopt to pay rent that was delayed by a Covered Reason for Delayed Payment, or, as applicable, unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

6. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.

F. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent. However, Tenants who assert the existence of a Covered Reason for Delayed Payment after January 1, 2023 must notify the Landlord no later than January 15, 2023. The failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure sections 1161(2) *et seq.* does not waive the Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

G. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant explicitly authorizes the disclosure of the information in writing.

H. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

13.110.050 Application

E. This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire during the Covered Period. Unlawful detainer actions based on notices served after February 1, 2023, shall be subject to the affirmative defense set forth in Section 13.110.020.A., above, if applicable, where the Tenant can establish the existence and applicability of such Covered Reason for Delayed Payment. It does not apply to commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

F. Except where expressly required by state law (such as Assembly Bill 3088 or any subsequent statewide COVID-19 relief legislation), a landlord may seek rent accrued during the Covered Period as set forth in Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) *et seq.* or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued during the Covered Period and prior to February 1, 2023. In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time between March 17, 2020 and January 31, 2023, or if the action otherwise demands any fees or amounts contrary to the provisions of this Chapter. A landlord shall not apply any rent payment towards rent that is delayed by a Covered Reason for Delayed Payment before applying it towards any other Rent owed without the explicit written permission of the Tenant.

G. A Landlord or Lender shall not retaliate against a Resident for exercising their rights under this Ordinance, including but not limited to shutting off any utilities reducing services or amenities, refusing to make or delaying repairs to which the Resident would otherwise be entitled, or taking actions which hurt the Resident's credit rating based on nonpayment of rent between March 17, 2020 and January 31, 2023 as allowed under this ordinance.

H. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party.

13.110.060 Implementing Regulations

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to Residents informing them of this Chapter and the right to seek the benefits of this Chapter.

13.110.070 Waiver.

C. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

D. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy.

13.110.080 Remedies

A. In the event of a violation of this Ordinance, any person or entity aggrieved by the violation may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate.

5. An award of actual damages may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard for, the provisions of this Chapter.

6. A defendant shall be liable for additional civil penalties of up to five thousand dollars for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926, et seq., or aged sixty-five or over.

7. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees. A prevailing defendant in a civil action under this Chapter shall only be entitled to an award of attorney's fees if it is determined by the Court the action was wholly without merit or frivolous.

8. In addition, this Chapter grants a complete defense to eviction in the event that an eviction notice or unlawful detainer action is commenced, filed, or served in violation of this Chapter.

B. The protections provided by this ordinance shall be available to all Residents, regardless of any agreement wherein a Resident waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.

C. A. Violations of Section 13.110.020(C) - (Commercial rent restrictions).

3. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

4. The City Attorney may refer those violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq.

D. Nonexclusive Remedies and Penalties. The remedies provided in this subdivision are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

13.110.090 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

13.110.100 Liberal Construction

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

Section 2. Effective Date

This ordinance shall go into effect thirty days from the time of its final passage.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



4x4 Joint Task Force Committee on Housing
City Council and Rent Board

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

Wednesday, December 14, 2022 – 2:30 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 Rent Board Resolution 21-29, this meeting of the City Council and Rent Stabilization Board's **4 x 4 Joint Task Force 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/89280424536?pwd=aWRTQXo5SnBKRnZobVEvL1pkOHlvdz09>. 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: 892 8042 4536 and Passcode: 339987. 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 a written communication for the Committee's consideration and inclusion in the public record, 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. **Email comments must be submitted to the email address above by 12:30 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.



4x4 Joint Task Force Committee on Housing
City Council and Rent Board

AGENDA

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

Wednesday, December 14, 2022 – 2:30 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 October 26, 2022 Committee meeting minutes (see attachment)
6. Approval of November 30, 2022 Committee meeting minutes (see attachment)
7. Discussion and possible action on Committee meeting schedule for 2023 (requested by Mayor Arreguín)
8. Discussion and possible action to consider a recommendation to City Council regarding amendments to the Demolition Ordinance (Steve Buckley, Planning Department, see attached staff report)
9. Discussion of possible future agenda items
10. Confirm next meeting date
11. Adjournment

COMMITTEE MEMBERS:

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

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



4x4 Joint Task Force Committee on Housing
City Council and Rent Board

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

Wednesday, October 26, 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 Task Force 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/82899637076?pwd=MIZzdFNNTVIBTFBZ1NNeDRwbmpWdz09>. 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: 828 9963 7076 and Passcode: 272220. 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 LBursell@berkeleyca.gov with the Subject line in this format: "PUBLIC COMMENT ITEM FOR 4 X 4 COMMITTEE". Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 1:00 p.m. on the day of the Committee meeting in order to be included.**

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

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



4x4 Joint Task Force Committee on Housing
City Council and Rent Board

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

Wednesday, October 26, 2022 – 3:00 p.m.

Minutes to be Approved

- 1. Roll call:** Mayor Arreguín called the meeting to order at 3:05 p.m.
Present: Mayor Arreguín, CM Harrison, RBC Johnson, RBC Kelley, CM Robinson, RB Chair Simon-Weisberg, CM Taplin (logged off at 4:20 p.m.).
Absent: RBC Alpert.
Staff present: Diego Aguilar-Canabal, Matt Brown, Steve Buckley, Lief Bursell, Nate Dahl, Brendan Darrow, Stefan Elgstrand, Margot Ernst, Ollie Ehlinger, Jen Fabish, Hannah Kim, Alene Pearson, Mike Uberti, DéSeana 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 Acknowledgement Statement was read aloud.
- 3. Approval of the agenda:** M/S/C (Robinson/Harrison) Approve the agenda as written. Roll call vote. YES: Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg, Taplin; NO: None; ABSTAIN: None; ABSENT: Alpert. Carried: 7-0-0-1.
- 4. Public comment on non-agenda matters:** There were 3 speakers.
- 5. Approval of September 28, 2022 Committee meeting minutes (see attachment):** M/S/C (Arreguín/Robinson) Approve the minutes with the following correction: for item 12.a., change "November" to "October 19." Roll call vote. YES: Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg, Taplin; NO: None; ABSTAIN: None; ABSENT: Alpert. Carried: 7-0-0-1.

6. Discussion and possible action to consider a recommendation to City Council regarding amendments to the Demolition Ordinance (Steve Buckley, Planning Department, see attached October 19, 2022 staff report to the Planning Commission): Steve Buckley of the Planning Department presented, and the committee provided extensive feedback on the proposed amendments. Mayor Arreguín will work with all stakeholders to prepare revised amendments for the committee's review in November, with an eye towards Planning Commission review in either December or January. The committee's aim is for Council to consider Demolition Ordinance amendments before or along with proposed zoning changes currently expected to go before Council in the spring of 2023.

There were two public speakers.

7. Discussion on the enforcement of Short-Term Rentals (Steve Buckley, Planning Department): Steve Buckley of the Planning Department presented on enforcement efforts, and took questions from the committee. The committee discussed, amongst other things, comparing data compiled from the City's third-party vendor to Rent Board data in an effort to identify instances where units claimed as vacant with the Rent Board are listed as short-term rentals.

There were two public speakers.

8. Discussion of possible future agenda items: Demolition Ordinance. Elevator Ordinance (Harrison).
9. Confirm next meeting date: Since the fourth Wednesday (the committee's regular meeting date) is the day before Thanksgiving, committee members will work with the committee staffer to set a new November meeting date.
10. Adjournment: M/S/C (Arreguín/Simon-Weisberg) Adjourn the meeting. Roll call vote. YES: Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Alpert, Taplin. Carried: 6-0-0-2.

The meeting adjourned at 5:03 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



4x4 Joint Task Force Committee on Housing
City Council and Rent Board

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

Wednesday, November 30, 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 Task Force 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/84125201403?pwd=OGoxUzdUWEZ0T0tuaEczcWRqVWc2QT09>. 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: 841 2520 1403 and Passcode: 554148. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Committee Chair.

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

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

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



4x4 Joint Task Force Committee on Housing
City Council and Rent Board

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

Wednesday, November 30, 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: Mayor Arreguín (logged off at 5:34 p.m.), CM Harrison (logged off at 5:47 p.m.), RBC Johnson, RBC Kelley, RB Chair Simon-Weisberg, CM Taplin (logged on at 3:16 p.m.).
Absent: CM Robinson.
Staff present: Diego Aguilar-Canabal, Matt Brown, Lief Bursell, Brendan Darrow, Stefan Elgstrand, Ollie Ehlinger, Hannah Kim, DéSeana 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 Acknowledgement Statement was played aloud.

3. Approval of the agenda: Public comment on non-agenda items was heard prior to the approval of the agenda.

M/S/C (Harrison/Alpert) Approve the agenda with the following changes: discuss the AGA item first, then the Eviction Moratorium, followed by the Elevator Ordinance. Roll call vote. YES: Alpert, Arreguín, Harrison, Johnson, Kelley, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Robinson, Taplin. Carried: 6-0-0-2.

There were no public speakers.

4. Public comment on non-agenda matters: Public comment on non-agenda items was heard prior to the approval of the agenda. There were 4 speakers.
5. Approval of October 26, 2022 Committee meeting minutes (see attachment): This item was not discussed.

6. Discussion and possible action regarding Council's use of Emergency Powers to limit/reduce the 4.4% Annual General Adjustment rent increase for 2023 for rent-controlled units (requested by Chair Simon-Weisberg): The committee discussed this item and agreed that more legal and procedural research is necessary before the item can be fully considered. The committee also agreed that the research should be presented directly to City Council and the Rent Board rather than having the item return to the committee.

There were 12 public speakers.

7. Discussion and possible action regarding amendments to the Eviction Moratorium (BMC 13.110) proposed by Vice Mayor Harrison and Councilmember Wengraf (requested by Chair Simon-Weisberg, see attached report to the Council Agenda and Rules Committee): Vice Mayor Harrison presented. The committee and City staff discussed the proposed amendments reflected in the report, including proposed changes to definitions. No action was taken.

Staff read aloud 27 emailed comments.

There were 22 public speakers.

8. Discussion and possible action regarding recommendations on signage related to the Elevator Ordinance (requested by Vice Mayor Harrison): This item was not discussed.
9. Discussion of possible future agenda items: This item was not discussed.
10. Confirm next meeting date: Chair Simon-Weisberg mentioned possibly meeting again on December 14.
11. Adjournment: M/S/C (Simon-Weisberg/Alpert) Adjourn the meeting. Roll call vote. YES: Alpert, Johnson, Kelley, Simon-Weisberg, Taplin; NO: None; ABSTAIN: None; ABSENT: Arreguín, Harrison, Robinson. Carried: 5-0-0-3.

The meeting adjourned at 5:57 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 and Development Department
Land Use Planning Division

STAFF REPORT

DATE: December 14, 2022

TO: Members of the 4X4 Joint Committee on Housing

FROM: Steven Buckley, Land Use Planning Manager

SUBJECT: Zoning Ordinance Amendments to Berkeley Municipal Code Chapter 23.326 [Demolition and Dwelling Unit Controls]

BACKGROUND

On October 19, 2022, the Planning Commission of the City of Berkeley considered draft amendments to BMC Chapter 23.326 [Demolition and Dwelling Unit Controls] (“the Demolition Ordinance”, previously codified as Chapter 23C.08), reflecting the recommendations made by the 4x4 Committee in April 2022. The Commission considered the staff analysis, recommendations of the Committee, and public testimony, and remained concerned about several provisions of the draft ordinance. In particular, the Commission wondered if the ordinance should apply equally to all units including single-family units, wanted to ensure consistency with provisions of SB330 and Density Bonus law, hoped to obtain as many replacement units as possible and ensure that renters were able to return even if they were not income qualified, and asked that the 4x4 Committee review the ordinance once more.

The existing ordinance is presented in Attachment 1. A revised version prepared by staff following the Planning Commission meeting is presented in Attachment 2. A comparison of the two versions is provided in Attachment 3.

Summary of Existing Demolition Ordinance Provisions

The Demolition Ordinance requires a use permit to be issued prior to the demolition of a dwelling unit. The ordinance also addresses situations where units are combined (for example, when a duplex is converted to a single-family home) and conversions to other uses such as daycare centers and nursing homes. The provisions related to non-residential structures are not addressed in this ordinance revision.

The Zoning Adjustments Board (ZAB) may issue a use permit for the demolition of a dwelling unit for specific 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.” 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.” In addition, applicants must either provide below market rate replacement units to “qualifying household[s]” or pay an in-lieu fee, but the fee has never been set.

Demolition of dwelling units is prohibited where a building has been removed from the rental market during the preceding five years or where there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years. Applicants are generally required to provide relocation benefits, including moving expenses and differential rent payments. In addition, displaced tenants are provided a right of first refusal to rent new units.

Most of these provisions are carried forward in the proposed ordinance, though in modified form.

Draft Amendments to the Demolition Ordinance

In 2019, the California state legislature adopted Senate Bill 330 (SB330), “the Housing Crisis Act of 2019”, which established new statewide provisions for housing unit demolition and replacement. The proposed updates to BMC 23.326 are intended to bring Berkeley’s zoning ordinance into alignment with the state provisions, while retaining some local features as well. In particular, the local ordinance applies to units constructed prior to, and therefore subject to, local rent control. The proposed ordinance amendments also respond to feedback provided by the Planning Commission and the 4x4 Committee, who asked that staff craft the ordinance to ensure fair and equitable treatment of tenants and prevent displacement, to the greatest extent allowable by law and without compromising project feasibility. The proposed ordinance also includes amendments to address various technical and administrative issues.

Some of the central provisions of the Demolition Ordinance, and proposed changes, include the following:

- **Replacement units.** 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.” 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. SB 330 also requires that any “protected units” (including rent control or units occupied by low or very-low income households) must be replaced in kind if a new housing development project is being built. The proposed ordinance amends the City’s existing provisions to also require replacement units in every case, and to specifically require that replacement units meet the City’s affordability requirements.

- **Rights of sitting tenants.** The current ordinance establishes the right of sitting tenants to return to new units by requiring the developer to offer equivalent below-market-rate units at prior rent levels regardless of income. The proposed revision clarifies that tenants who do not qualify for below-market-rate (BMR) units due to income limits must still be provided a market-rate replacement unit at their prior rent, in addition to any required BMR units, and caps rent increases consistent with standard rent control provisions. The ordinance further establishes that tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building.
- **Relocation Assistance.** The current ordinance includes provisions for tenants that may be temporarily displaced during the period when units are demolished and replaced. The ordinance requires that the applicant subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy; and that those benefits be guaranteed in a manner acceptable to the City. Those existing provisions are carried forward in the draft ordinance revisions.
- **Applicability to legally established units.** The ordinance as originally written applies to legally established units. There are many units throughout the City that have been created without proper land use or building permits. Many are registered with the Rent Stabilization Board, have addresses, and have sitting tenants. However, they are not recognized in other circumstances, may not comply with zoning standards, and may present some hazards to the tenants. In these unwarranted units tenant protections generally apply. The City provides property owners an opportunity to correct violations rather than remove the units, particularly when there is a sitting tenant. If unpermitted units are ultimately removed to correct the violation or as part of a new development project, then they would not be replaced under this ordinance.
- **Other Housing Types.** The proposed ordinance removes provisions related to single-room-occupancy hotels (SROs) and adds Live/Work units and Group Living Accommodations to the housing types covered by the ordinance.
- **Moving Buildings.** The ordinance has been revised to simplify the review process for moving a residential building within Berkeley to encourage such measures to preserve existing housing stock. So long as the new location can conform to basic zoning requirements, then the building can be moved without further review.
- **Applicable to Single-Family and Housing Units.** The ordinance has been broadened to include all housing units instead of being limited to rent controlled multi-unit buildings, as requested by the Planning Commission. This presents issues around prioritizing by-right infill development on smaller, lower density lots. It may be possible to resolve this issue by removing the Use Permit requirement and simply require the replacement units to be consistent with

inclusionary and/or SB330 and density bonus standards, which apply to “protected units”, i.e. rent-controlled, below-market-rate, and low-income tenant units.

Next Steps and Recommendation

Staff recommends that the Committee discuss the draft Ordinance, provide direction, and forward a recommendation to the Planning Commission and City Council.

The Committee could consider the following issues in formulating its recommendation:

- Should the tenant relocation benefits and rent increase limitation for returning tenants continue indefinitely?
- Should a cap be placed on the rent differential during the period of relocation?
- Should the ordinance apply to single-family units that are not otherwise protected by State law?
- Should the relocation of a residential building be by-right or require a use permit, allowing public review and comment?
- Any other issues raised during public comment and deliberation.

ATTACHMENTS

1. Existing Ordinance
2. Revised Draft Ordinance
3. Comparison Version

Chapter 23.326
DEMOLITION AND DWELLING UNIT CONTROL

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.

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. (Ord. 7787-NS § 2 (Exh. A), 2021)

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. *Fee Required.*

(a) The applicant shall pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in Berkeley.

(b) The amount of the fee shall be set by resolution of the City Council.

(c) *In Lieu of a Fee.*

i. In lieu of paying the impact fee, the applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity.

ii. 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.

iii. The applicant shall enter into a regulatory agreement with the City of Berkeley to provide the in lieu units.

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 expenses equivalent to in Chapter [13.84](#) (Relocation Services and Payments for Residential Tenant Households).
- 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. Sitting tenants who are displaced as a result of demolition shall be provided the right of first refusal to move into the new building.
- ii. 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.
- 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.5.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.

B. *Buildings with a Single Dwelling Unit.*

1. *Applicability.* This subsection only applies to buildings with a single dwelling unit.

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.

C. *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. 7810-NS § 1, 2022; 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](#)). (Ord. 7787-NS § 2 (Exh. A), 2021)

The Berkeley Municipal Code is current through Ordinance 7830-NS, passed July 26, 2022.

Disclaimer: The City Clerk’s Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk’s Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)
[Code Publishing Company](#)

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 Demolition of Residential Units.
- 23.326.040 Eliminating Dwelling Units through Combination with Other Units.
- 23.326.050 Demolition of Accessory Buildings.
- 23.326.060 Private Right of Action.
- 23.326.070 Demolition 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 and safety goals of the City.

23.326.020 General Requirements.

A. No Residential Unit or units may be eliminated or demolished except as authorized by this chapter.

1. “Residential Unit” means, for purposes of this Chapter, any Dwelling Unit, any Live-Work Unit, any Residential Hotel unit, or any bedroom of a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op; provided, however, that for purposes of this Chapter,

2. “Residential Unit” shall not include any Accessory Dwelling Unit or Junior Accessory Dwelling Unit.

3. “Residential Unit” shall not include dwelling units created without proper Use Permit(s) or Building Permit(s); provided however that where such units are occupied by a tenant or tenants, the sitting tenant(s) shall be entitled to the protections set forth in subsections 23.326.030.D.2.-3., subject to a total rent differential cap of \$X.

23.326.030 Demolition of Residential Units.

A. *Limitation.* Demolition is not allowed if:

1. The unit (or units) was removed from the rental market through a no-fault eviction during the preceding five years; or

2. There is evidence 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. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the Zoning Adjustments Board (ZAB). The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred during a public hearing on the matter, conducted according to Use Permit procedures.

B. *Procedure and Findings.* A Use Permit is required to eliminate or demolish one or more Residential Units. The ZAB shall only approve the Use Permit if one of the following is true:

1. The building containing the units is hazardous or unusable and is infeasible to repair.
2. The building containing the unit(s) will be moved to a different location within Berkeley with no net loss of units and no change in the rent levels of the unit(s).
3. The demolition is necessary to permit construction of special needs facilities that serve the greater good of the entire community. Any conversion shall be conditioned on returning the units to residential use if the other use is vacated.
4. The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

.C. *Conditions of Approval.* Any Residential Unit(s) that will be demolished shall be replaced with units of equivalent size and comply with applicable affordability requirements in Chapter 23.328 [PENDING – Consolidated Inclusionary/Affordable Housing], and Chapter 23.330 [Density Bonus] as they may be amended from time to time.

D. *Requirements for Occupied Units.*

1. *Applicability.* The following 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.
2. *Notice.* The applicant shall provide all sitting tenants notice of the application to demolish the unit(s) no later than the date the application is submitted to the City, including notice of their rights under Municipal Code Chapter [13.76](#) (Rent Stabilization and Eviction for Good Cause Program).
3. *General Requirements.*

(a) The applicant shall provide assistance with moving and relocation assistance equivalent to the requirements set forth in Municipal Code Chapter [13.84](#) or Government Code section 66300(d)(2)(D)(i), whichever requires greater relocation assistance to displaced tenants, and shall not be subject to the limitations in section 13.84.070.B.3(a). 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. Tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building. Funding for the rent differential shall be guaranteed in a manner approved by the City Council 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).

(b) *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.*).

4. *Sitting Tenants Rights.*

(a) Any tenant of a Residential Unit that is permitted to be demolished under this section shall have the right of first refusal to rent a comparable unit at the same rent in effect at the time the unit was vacated.

(b) In the event that a displaced household is ineligible for Below-Market Rate replacement units, a market rate unit shall be made available to that household at the same rent as had been previously charged.

(c) Where a displaced tenant exercises the right to rent a comparable unit, any increase in rent for the comparable for the duration of their tenancy shall be no greater than 65% of the increase in the Consumer Price Index

for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous December 31 but not to exceed 65% of the corresponding increase in AMI for the same calendar year.

(d) *Exception.*

i. An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with the preceding requirements but must comply with the following requirement.

ii. Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed affordable housing project will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements.

23.326.040 Eliminating Dwelling Units through Combination With Other Units.

A. *Process for Projects Where Density Exceeds Current Allowance.* A Use Permit is required to eliminate one or more Residential Units by combining with another dwelling units when the residential development exceeds currently-allowable density. The ZAB shall approve a Use Permit for the elimination of one or more Residential Units by combining with another dwelling unit only if it finds that:

1. The existing number of dwelling units exceeds the current maximum allowed residential density in the zoning district where the units are 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. *Process for Projects That Restore Original Development Density.* 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.

C. *Limitations.* Combination is not allowed if:

1. The building was removed from the rental market through a no fault eviction during the preceding five years; or
2. 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. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the Zoning Adjustments Board (ZAB). The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred at a public hearing according to Use Permit procedures (Section 23.406.040).

D. *Two-Year Occupancy Requirement Following Elimination*

1. If a unit that is eliminated through combination 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 then 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 there is an unforeseeable life change that requires relocation.

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-resident occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

23.326.050 Demolition of 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 may be demolished by right except where the Accessory Building is occupied by a residential tenant (regardless of whether it is lawfully permitted) or otherwise contains a lawfully established residential unit, which serves and is located on the same lot as a lawful residential use.

23.326.060 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 shall recover reasonable attorney's fees.

23.326.070 Demolition of Non-Residential Buildings.

A. *Main Non-Residential Buildings.* A Use Permit is required to demolish a main building used for non-residential purposes on any lot.

B. *Accessory Buildings.* For any lot located in a non-residential zoning district, Accessory Buildings may be demolished as follows:

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 or Zoning Officer its comments on the application.
3. The ZAB or Zoning Officer shall consider the recommendations of the LPC when acting on the application.

D. *Findings.* A Use Permit or an AUP for demolition of a main building used for non-residential purposes on any lot or an accessory building located on a lot in a non-residential district 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 uninhabitable 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.

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 within the city 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 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.

B. *Findings.* The Zoning Officer shall approve Zoning Certificate to relocate a building upon finding that the resulting development on the receiving lot is in conformance with applicable zoning code development standards.

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](#)).

ORDINANCE NO.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23.326
DEMOLITION AND DWELLING UNIT ~~CONTROL~~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.

23.326.020 General Requirements.

23.326.030 Demolition of Residential Units.

23.326.040 Eliminating Dwelling Units through Combination with Other Units.

23.326.050 Demolition of Accessory Buildings.

23.326.060 Private Right of Action.

23.326.070 Demolition 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~~ Residential Unit or units may be eliminated or demolished except as authorized by this chapter.

1. "Residential Unit" means, for purposes of this Chapter, any Dwelling Unit, any Live-Work Unit, any Residential Hotel unit, or any bedroom of a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op; provided, however, that for purposes of this Chapter,

2. "Residential Unit" shall not include any Accessory Dwelling Unit or Junior Accessory Dwelling Unit.

3. "Residential Unit" shall not include dwelling units created without proper Use Permit(s) or Building Permit(s); provided however that where such units are occupied by a tenant or tenants, the sitting tenant(s) shall be entitled to the protections set forth in subsections 23.326.030.D.2.-3., subject to a total rent differential cap of \$X.

23.326.030 Demolition of Residential Units.

A. ~~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. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~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. — 1. — The building unit (or units) was removed from the rental market under the Ellis Act through a no-fault eviction during the preceding five years; or~~

~~ii. — 2. — There have been verified cases is evidence 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 Zoning Adjustments Board (ZAB). The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred during a public hearing on the matter, conducted according to Use Permit procedures.~~

~~B. 3. — Procedure and Findings. The ZAB may approve a Use Permit is required to eliminate or demolish a building constructed before June 1980 on a property containing two or more dwelling units Residential Units. The ZAB shall only approve the Use Permit if anyone of the following are is true:~~

~~(a)–1.~~ The building containing the units is hazardous or unusable and is infeasible to repair.

~~(b)–2.~~ The building containing the ~~units~~unit(s) will be moved to a different location within Berkeley with no net loss of units and no change in the ~~affordability~~rent levels of the ~~units~~unit(s).

~~(c)–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. Any conversion shall be conditioned on returning the units to residential use if the other use is vacated.

~~(d)–4.~~ The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

~~4.—Fee Required.~~

~~(a)–The applicant shall pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in Berkeley.~~

~~(b)–The amount of the fee shall be set by resolution of the City Council.~~

~~(c)–In Lieu of a Fee.~~

~~i.—In lieu of paying the impact fee, the applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity.~~

~~ii.—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.~~

~~iii.—The applicant shall enter into a regulatory agreement with the City of Berkeley to provide the in-lieu units.~~

5.—C. Conditions of Approval. Any Residential Unit(s) that will be demolished shall be replaced with units of equivalent size and comply with applicable affordability requirements in Chapter 23.328 [PENDING – Consolidated Inclusionary/Affordable

Housing], and Chapter 23.330 [Density Bonus] as they may be amended from time to time.

D. Requirements for Occupied Units.

~~(a)~~ 1. Applicability.

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

~~ii. These~~ The following 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)~~ 2. Notice. The applicant shall provide all sitting tenants notice of the application to demolish the buildingunit(s) no later than the date ~~#the application~~ is submitted to the City, including notice of their rights under Municipal Code ~~Section 13.76~~ Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Program).

~~(c)~~ 3. General Requirements.

~~i. (a)~~ The applicant shall provide assistance with moving ~~expenses and relocation assistance~~ equivalent to the requirements set forth in Chapter 13.84 Municipal Code Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households).

~~ii. or Government Code section 66300(d)(2)(D)(i), whichever requires greater relocation assistance to displaced tenants, and shall not be subject to the limitations in section 13.84.070.B.3(a).~~ 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. Tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building. Funding for the rent differential shall be guaranteed in a manner approved by the City. Council 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).

iii.—(b) 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~~7260 et seq.).

~~(d)~~ 4. Sitting Tenants Rights.

i.—~~Sitting tenants who are displaced as (a result) Any tenant of demolition shall be provided the right of first refusal to move into the new building.~~

ii.—~~Tenants of units~~a Residential Unit that ~~are~~is permitted to be demolished under this section 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~~a comparable unit at the same rent in effect at the time the unit was vacated.

iii.—~~Income restrictions do not apply to displaced tenants.~~

iv.—(b) In the event that a displaced household is ineligible for Below-Market Rate replacement units, a market rate unit shall be made available to that household at the same rent as had been previously charged.

(c) Where a displaced tenant exercises the right to rent a comparable unit, any increase in rent for the comparable for the duration of their tenancy shall be no greater than 65% of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous

December 31 but not to exceed 65% of the corresponding increase in AMI for the same calendar year.

(d) Exception.

~~(1) i.~~ An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with 23.326.030.A.5.a, b, and e, the preceding requirements but must comply with the following requirement.

~~(2) ii.~~ Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed building affordable housing project 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.~~

~~B. Buildings with a Single Dwelling Unit.~~

~~1. Applicability. This subsection only applies to buildings with a single dwelling unit.~~

~~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.~~

~~C. 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. 7810-NS § 1, 2022; Ord. 7787-NS § 2 (Exh. A), 2021)~~

23.326.040 Eliminating Dwelling Units through ~~Conversion and Change of Use~~Combination With Other Units.

~~A. Process for Projects Where Density Exceeds Current Allowance. A.—General. The ZAB may Use~~ Permit is required to eliminate one or more Residential Units by combining with another dwelling units when the residential development exceeds currently-allowable density. The ZAB shall approve a Use Permit for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy one or more Residential Units by a single household combining with another dwelling unit only if it finds that:

1. -The existing number of dwelling units exceeds the current maximum allowed residential density in the zoning district where the building is units are 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~~B. Process for Projects That Restore Original Development Density. 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.

C. Limitations. Combination is not allowed if:

~~(a)~~ 1. The building was removed from the rental market ~~under the Ellis Act~~ through a no fault eviction during the preceding five years; or

~~(b)~~ 2. 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 Zoning Adjustments Board (ZAB). The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred at a public hearing according to Use Permit procedures (Section 23.406.040).

~~C. Effect of Noncompliance with the D. Two-Year Occupancy Requirement. Following Elimination~~

1. -If a unit that is eliminated ~~under Subsection A (General)~~ through combination 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 then 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 if there is 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~~resident 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~~23.326.050 Demolition of 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 may be demolished by right except where the Accessory Building is occupied by a residential tenant (regardless of whether it is lawfully permitted) or otherwise contains a lawfully established residential unit, which serves and is located on the same lot as a lawful residential use.

23.326.060 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~~23.326.030 (Eliminating Dwelling Units through Demolition) and ~~23.326.040~~23.326.040 (Eliminating Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff ~~may~~shall 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~~Demolition of Non-Residential Buildings.

A. ~~-Main Non-Residential Buildings.~~ A Use Permit is required to demolish a main building used for non-residential purposes may be demolished with a Use Permit on any lot.

B. ~~-Accessory Buildings.~~ For any lot located in a non-residential zoning district, Accessory Buildings may be demolished as follows:

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 or Zoning Officer its comments on the application.

3. -The ZAB or Zoning Officer 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 main building used for non-residential purposes on any lot or an accessory building located on a lot in a non-residential district ~~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~~ uninhabitable 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 within the city 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~~ Zoning Officer shall approve ~~a Use Permit~~ Zoning Certificate to relocate a building upon finding that:

- ~~1. The building to be relocated is not in conflict with the architectural character, or resulting development on 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)~~ is in conformance with applicable zoning code development standards.

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~~), (~~Ord. 7787-NS § 2 (Exh. A), 2021~~)